

October 28, 2025

Filed via www.regulations.gov, Docket No. USTR–2025–0016

Edward Marcus
Chair of the Trade Policy Staff Committee
Office of the U.S. Trade Representative
Washington, DC 20006

Re: IIPA Comments Regarding Foreign Trade Barriers to U.S. Exports for 2026 Reporting—Argentina, Australia, Brazil, Canada, Chile, China, Colombia, Hong Kong, India, Indonesia, Japan, Kenya, Malaysia, Mexico, Morocco, Nigeria, Peru, Philippines, Russia, Singapore, South Africa, South Korea, Switzerland, Taiwan, Thailand, Turkey, the United Kingdom, Uruguay, and Vietnam—in Response to USTR’s Request for Comments on Significant Foreign Trade Barriers for the 2026 National Trade Estimate Report, 90 Fed. Reg. 44448 (September 15, 2025)

Dear Mr. Marcus:

The International Intellectual Property Alliance (IIPA),¹ which represents significant sectors of the copyright-based industries in the United States, appreciates this opportunity to provide the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), with written comments to assist “[USTR] and the TPSC in identifying significant foreign barriers to, or distortions of, U.S. exports of goods and services and U.S. foreign direct investment for inclusion in the [National Trade Estimate Report on Foreign Trade Barriers (NTE)]” to be released in 2026.

IIPA’s Interest in the 2026 NTE Report

Since 1984, IIPA and its members have worked in partnership with the U.S. government to improve the ability of the copyright industries to compete fairly in foreign markets. This cooperation has resulted in improved copyright protection and enforcement and market access in

¹ IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve copyright protection and enforcement abroad and to open foreign markets closed by piracy and other market access barriers. Members of the IIPA include Association of American Publishers (<https://publishers.org/>), Entertainment Software Association (www.theesa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association (www.motionpictures.org), and Recording Industry Association of America (www.riaa.com). Collectively, IIPA’s five member associations represent over 3,200 U.S. companies producing and distributing copyrightable content. The materials produced and distributed by IIPA member companies include video games for consoles, handheld devices, personal computers, and online; motion pictures and television programming distributed in all formats (including cinema, television, online, mobile, DVD, etc.); music recorded in all formats (from digital files to CDs and vinyl) for streaming and other online services, as well as broadcasting, public performance, and synchronization in audiovisual materials; and fiction and non-fiction books, educational, instructional and assessment materials, and professional and scholarly journals, and databases.

many countries around the world, which allows the creative industries to employ more workers at higher wages. In fact, the core copyright industries employed over 11.5 million workers in 2023, accounting for 5.43% of the entire U.S. workforce and 6.10% of total private employment in the United States.² The average annual 2023 compensation paid to core copyright workers – \$141,880 – far exceeds the average annual compensation paid to all U.S. workers – \$94,363 – amounting to a 50% “compensation premium” over the average U.S. annual wage.³ For the total copyright industries, the numbers are even more compelling, employing over 21.1 million workers in 2023, accounting for 9.91% of all U.S. employment, or 11.14% of all private employment in the United States.⁴ The average annual compensation paid to employees of the total copyright industries was 28% higher than average at \$121,018.⁵

A thriving copyright sector creates jobs, increases exports, and expands economic output. Ensuring U.S. trading partners provide high standards of protection for copyright, strong copyright enforcement, and eliminate barriers to their markets will further the goal of promoting investment as outlined in the America First Trade Policy memo and the 2025 Trade Policy Agenda. Unfortunately, too many markets continue to enact and implement unfair trade practices including inadequate protection and enforcement of copyrights and other burdensome market access barriers to U.S. creative goods and services. These unfair trade practices often create an environment ripe for piracy because they constrain the U.S. creative industries’ ability to provide legitimate goods and services. The inability to fairly compete in these markets negatively impacts revenues returning to the United States and the growth of U.S. jobs, particularly those that are connected to exporting goods and services to the worldwide marketplace. Tackling these unfair trade practices in foreign markets will support U.S. jobs and ensure the copyright industries continue to make significant contributions to U.S. employment.

In its annual submission as part of the Special 301 process, IIPA details to the U.S. government the U.S. copyright industries’ concerns regarding the inadequate protection and enforcement of copyrights, as well as barriers that deny fair and equitable market access to U.S. persons who rely on copyright. Attached to this filing is IIPA’s January 2025 Special 301 submission for the TPSC’s consideration in developing the 2026 NTE.

Significant Foreign Trade Barriers for the Copyright Industries

Barriers to Intellectual Property Protection (*e.g., the inadequate protection and enforcement of copyrights*): The significant contributions to the U.S. economy made by the copyright industries and the many workers they employ depend on adequate and effective protection and enforcement of copyrights. As noted above, the attached IIPA 2025 Special 301

² Secretariat, *Copyright Industries in the U.S. Economy: The 2024 Report* (February 2025), p. 12, available at https://www.iipa.org/files/uploads/2025/02/IIPA-Copyright-Industries-in-the-U.S.-Economy-Report-2024_ONLINE_FINAL.pdf.

³ *Id* at p. 14.

⁴ *Id* at p. 12.

⁵ *Id* at p. 14.

submission⁶ details our concerns regarding inadequate copyright protection and enforcement, which is a pervasive challenge confronting the U.S. creative industries in both developed and developing countries around the world. Some particularly concerning issues include:

- **Mexico's** improvements to its copyright law in 2020, enacted to meet its obligations under the U.S.–Mexico–Canada Agreement (USMCA), are undermined by Mexico's failure to implement these reforms in any meaningful way, advance any effort to combat rampant physical and online piracy, provide financial, personnel, or educational resources for existing intellectual property (IP) enforcement agencies, or to provide broad political will to support the creative industries. IIPA commends the May 2024 decision by the Mexican Supreme Court to uphold the 2020 reforms, including with respect to technical protection measures (TPMs) and notice and stay down. IIPA strongly urges Mexico to implement those reforms by issuing necessary implementing regulations, without delay. Unfortunately, the recent overhaul of Mexico's judiciary threatens to exacerbate existing concerns regarding the handling of ongoing and future copyright related cases. Additionally, the 2022 Cultural Heritage Law has created even more significant legal uncertainty for a range of creative industries and risks further weakening Mexico's IP regime and violating Mexico's USMCA obligations on copyright.
- In November 2023, **Uruguay's** Copyright Act was amended to introduce a right to a "fair and equitable" remuneration for performers for the communication and making available to the public of phonograms and recordings of musical works on audiovisual works. The drafters of this unclear amendment did not consult rights holders in the audiovisual and music industries or the Uruguayan Copyright Council. Subsequently, the Executive Branch of the Uruguayan government published a decree, again without stakeholder consultation, that contained additional ambiguous provisions regarding remuneration obligations for producers of phonograms that have signed a contract with the corresponding performers. Additionally, the decree introduced a sweeping change in the management of existing remuneration rights for the benefit of audiovisual authors under its proposed Article 5. Further clarification is necessary to ensure that creative industry stakeholders are not harmed by the new law in combination with the decree. IIPA urges the Uruguayan government to repeal the law and decree, and in the meantime, to ensure that any implementation addresses the negative impact of this law and decree on the creative industries.
- In late 2018, the **South African** Parliament passed the first major revision of its copyright and related laws in decades, but unfortunately that legislation fell far short of international norms for the protection of copyrighted works in the digital era. This copyright reform process failed to consider whether the proposed changes would be compliant with South Africa's Constitution and international obligations and to conduct the required economic impact assessment process. After some minor and

⁶ IIPA, 2025 Special 301 Report Submission, available at <https://www.iipa.org/files/uploads/2025/01/Website-Copy-012425.pdf> and attached.

inconsequential revisions in March 2024, President Ramaphosa referred the legislation to the Constitutional Court in October 2024, stating “[t]hese provisions address the process by which the President assents to Bills, including the ability to refer draft legislation back to Parliament after it has been passed if there are concerns regarding its constitutionality.”⁷ The legislation remains currently pending.

Enactment of the bills in their current form would place South Africa out of compliance with international norms, South Africa’s obligations under the WTO TRIPS Agreement, the WIPO Internet Treaties, and the Berne Convention, as well as the eligibility criteria of both the GSP and the African Growth and Opportunity Act (AGOA).⁸ As South Africa is an important market in Sub-Saharan Africa that other countries in the region may seek to emulate, the stakes are extremely high. IIPA recommends that the U.S. government continue to emphasize that the bills should be entirely redrafted, in close consultation with rights holders, to enable South Africa’s accession to the WIPO Internet Treaties, meet its international obligations, ensure compliance with best practices, and promote an environment favorable to investment.

- **China’s** 2021 amendments to its copyright law introduced the essential music industry rights of broadcasting and public performance for producers of sound recordings. Additional positive developments include enforcement reforms, including a ten-fold increase in maximum statutory damages and the ability to shift the burden of proof to the accused infringer; protections for TPMs, which enable digital trade of copyrighted works; and the elevation of certain elements of the three-step test into the law to appropriately confine exceptions and limitations. While these amendments are laudable, implementing regulations that were expected in 2024 have still yet to be issued.

Additionally, the amendments did not include several reforms that remain necessary to align the standard of copyright protection and enforcement with global norms and best practices in the digital age. China should fully implement its commitments under the 2019 Guidelines on Strengthening the Protection of Intellectual Property Rights (Guidelines), including to regulate websites and digital platforms to remove pirated materials, and under the 2020 Economic and Trade Agreement Between the United States and China (the Phase One Agreement).

Furthermore, China’s “e-commerce” law requires platform operators to take “necessary measures” against infringing goods or services. Importantly, the standard of knowledge

⁷ Sashnee Moodley, *Policy*, “Ramaphosa approaches ConCourt to rule on constitutionality of Copyright and Performers’ Bills,” October 15, 2024, available at <https://www.polity.org.za/article/ramaphosa-approaches-concourt-to-rule-on-constitutionality-of-copyright-and-performers-bills-2024-10-15>.

⁸ For additional details, see IIPA’s comments and post-hearing brief on South Africa’s Generalized System of Preferences (GSP) eligibility in the 2019 annual GSP review, available at <https://www.iipa.org/files/uploads/2020/01/2020-01-17-IIPA-South-Africa-GSP-Review-Written-Comments-and-Notice-of-Intent-to-Testify.pdf> and <https://www.iipa.org/files/uploads/2020/03/SOUTH-AFRICA-IIPA-GSP-Post-Hearing-Brief.pdf>.

for a platform operator to act is that the platform “knows or should know” that the good is infringing. Unfortunately, Article 43 of the law does not explicitly adopt effective practices for handling counter-notices, raising the concern that sellers of infringing products could avoid responsibility by merely objecting to rights holders’ notices of infringement. As IIPA reported previously, the new Civil Code and the Supreme People’s Court’s (SPC) Official Reply on Issues of Application of Laws for Disputes Related to Internet IP Infringement provide for improved takedown procedures that are consistent with Article 1.13 of the Phase One Agreement. It is critical that implementation of the e-commerce law is consistent with the Phase One Agreement, supports rights holders’ actions to prevent illegal trafficking of infringing goods on e-commerce platforms, and does not upset existing voluntary arrangements between rights holders and some e-commerce platforms where there is already cooperation.

- There are also several countries, notably *Canada, Indonesia, Nigeria, Peru, South Africa*, and *Switzerland*, where reforms and modernization of national copyright laws have failed to keep pace with market and technological trends. In some cases, reform efforts have become a vehicle for proposals that threaten well-established global norms enshrined in long-standing international instruments, including by introducing broad exceptions and limitations. In addition, the governments of several other economies, including *Chile, Hong Kong, Japan, Kenya, Malaysia, Philippines, Singapore, South Korea*, and *Turkey*, have introduced or enacted legislation, or taken other actions that threaten to significantly weaken, not strengthen, copyright protections or enforcement in those countries. IIPA urges the U.S. government to monitor developments in these countries and proactively engage with these governments to ensure their legislative proposals result in adequate and effective copyright protection and enforcement.
- IIPA also supports the U.S. government’s work in the G7 Hiroshima AI Process, which has set forth important rules of the road for the development of Artificial Intelligence (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.”⁹ 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.”¹⁰ In the June 17, 2025, G7 Leaders’ Statement on AI for Prosperity, the G7 Leaders indicated they would “leverage the outcomes of the Hiroshima AI Process (HAIP) to foster trust.” The Leaders further committed to “[p]romote economic prosperity by supporting SMEs to adopt and develop AI that respects personal data and intellectual property rights, and strengthen their readiness, efficiency, productivity and competitiveness” and stated, “We recognize the need to

⁹ See Hiroshima Process International Code of Conduct for Organizations Developing Advanced AI Systems, p. 8, available at <https://www.mofa.go.jp/files/100573473.pdf>.

¹⁰ See *id.*, p. 5.

respect intellectual property rights in enabling these efforts.”¹¹ IIPA and its members strongly encourage the U.S. government to ensure that all countries meet the standards set forth by the G7 Hiroshima AI Process. The U.S. government should also ensure that foreign governments provide meaningful stakeholder engagement and due process regarding this type of work, including by affording adequate opportunity to review and comment on legislative and regulatory proposals governing copyright and AI, including in *Vietnam*.

- Finally, as detailed in the attached IIPA 2025 Special 301 submission, *Chile*, *Colombia*, and *Peru* have not adequately implemented their bilateral trade obligations to the United States. regarding the protection and/or enforcement of IPR.

Services barriers (e.g., prohibitions or restrictions on foreign participation in the market, including quotas on imports of foreign films, unreasonable restrictions on what services may be offered, discriminatory or burdensome barriers to cross-border data flows, discriminatory practices affecting trade in digital products, and restrictions on the provision of Internet-enabled services):

- Many countries around the world, including *Brazil*, *Indonesia*, *Thailand*, and *Vietnam*, maintain theatrical screen quotas, limiting the U.S. film industry’s access to foreign theatrical markets. In 2019, *Indonesia* issued regulations to maintain its 60% local screen quota, dubbing restrictions, and further limitations on screen time by a single distributor, importer, or producer to 50%, though they have yet to be enforced.
- In addition to many other market barriers—including restrictions on foreign film releases during peak periods, film import monopoly, and film distribution duopoly—*China* has imposed artificial limits on market access for imported films. As part of the U.S.-China Film Agreement, China committed, in 2017, to make a meaningful increase to compensation for revenue-sharing theatrical releases, as the current 25% U.S. share of revenue is far below comparable markets. Furthermore, the official quota on revenue sharing releases of 20-plus-14 (enhanced format) remains. However, review and additional compensation have never occurred, and China must be pressed to comply with its obligations.

These barriers have virtually eliminated U.S. independent films from China’s theatrical marketplace, reducing their share of the market to the point near exclusion. Since 2012, the independents’ share of the market has decreased from 10% of U.S. films released in China to 2.6% at the end of 2019. In 2021, there were just nine independent theatrical releases in China, representing the lowest percentage of slots (1.8%) ever allocated for independent films recorded by the Independent Film and Television Alliance (IFTA). The situation as of this filing remains the same for the independent film and television industry. U.S. independent producers who rely on private distributors and the payment

¹¹ See G7 Leaders’ Statement on AI for Prosperity, June 17, 2025, available at <https://g7.canada.ca/assets/ca689367/Attachments/NewItems/pdf/g7-summit-statements/ai-en.pdf>.

of minimum guaranteed or flat license fees to raise production financing and secure distribution have seen their licensing revenues plummet and, in many cases, stop altogether.

Another obstacle for U.S. producers in China is that private Chinese distributors, including video-on-demand (VOD) platforms, arbitrarily, without clear explanation, request from U.S. producers an excessive and particularly burdensome amount of legalized documentation regarding production and distribution to complete a license agreement or obtain government approvals that permit access to China's online marketplace. These unique types of documentation requests cause uncertainty and additional expense that slow or kill negotiations for licensing films to China. However, China's recent accession to the Apostille Convention on November 7, 2023, a welcome development, is expected to ease burdens for rights holders who suffered from previous documentation requirements. IIPA is closely monitoring the rollout of the Apostille Convention in China, particularly considering the inconsistent application of still-present legalization requirements in certain types of enforcement actions.

In July 2023, China's revised Anti-Espionage Law, originally introduced in November 2014, came into effect. The revisions significantly broaden the scope of what constitutes "espionage" and grant relevant authorities enhanced powers to investigate and prosecute suspected espionage activities. Many provisions in the revised law were previously included in existing regulations, such as the Anti-Espionage Law's Implementing Rules from 2017, which outlined enforcement procedures; and the Provisions on Anti-Espionage Security Precautions from 2021, which have largely been integrated into the updated law. The consolidation of these amendments into a single, powerful Anti-Espionage Law with broad applicability is significant. The most significant change is the expanded definition of "espionage," which now encompasses the collection, storage, or transfer of any information deemed to be relevant to national security interests, including "documents, data, materials, or items." This definition was previously limited to classified information and state secrets. Such a broad interpretation could lead to uncertainties even in the context of friendly collaborations, including where foreign investment is permitted, such as in online music services. For example, Chinese companies may now be unwilling or cautious to share with potential foreign investors key financial or business-related information that would be considered necessary to establish a joint partnership.

- In some markets, including *Australia, Brazil, Canada, China, Indonesia, South Africa, Switzerland, Taiwan, and Vietnam*, governments maintain quotas in the television market, and others are considering such quotas. Some countries, such as *Indonesia, Mexico, and Russia*, impose limitations on advertising services, impeding growth of the television industry. In addition, China appears to now apply its content review regime to books intended for other markets. Books merely being printed in China but otherwise intended for distribution in other markets now also appear subject to China's burdensome content review regime. Books that were previously being printed in and exported from China without issue appear to be subject to the more

stringent application of the regime. Extending the reach of its burdensome content review regime to books merely being printed in the country but otherwise intended for distribution in other markets forces an arbitrary and unjustified discriminatory burden on foreign publishers, who, for decades, have used printing partners in China, and is arguably a disguised restriction on international trade.

- The digital trade in goods and services protected by copyright is increasingly critical to the U.S. creative industries' ability to license and distribute their content to both large and niche online platforms around the world. Copyright Industries in the U.S. Economy: The 2024 Report highlights the significant contributions the copyright industries make to the digital economy, at least as that concept has been defined by the U.S. Bureau of Economic Analysis (BEA).¹² In 2022 the core copyright industries accounted for approximately 51.39% of the digital economy value added and over 49.1% of digital economy employment, and the total copyright industries accounted for 63.13% of the digital economy value added and 56.6% of digital economy employment.¹³

The 2024 IIPA Report points out that these numbers likely understate the total contribution of the copyright industries to the digital economy, because the BEA's digital economy classification does not encompass the full range of the copyright industries' digital activities such as digital production of music, postproduction of movies, theatrical distributions of movies in digital formats, and e-book publishing. Unfortunately, despite the undeniable importance of researching the digital economy, BEA's Digital Economy Satellite Account is no longer produced due to alleged budget constraints. The last update was December 6, 2023.

- The U.S. creative industries require strong, transparent, and anti-discriminative digital trade rules that ensure strong copyright protection and support U.S. digital exports of copyright-intensive goods and services. Unfortunately, some countries, including *Australia, Canada, China, Indonesia, Mexico, and Vietnam*, are pursuing policies that discriminate against foreign content distributed online. While these policies are often framed as cultural promotion policies, they limit consumers' access to legitimate, diverse content from around the world.
- In addition to distribution, digital trade facilitates the creation of works by allowing creators from around the world to collaborate efficiently. The creation process requires the seamless and secure transfer of digital information. Moreover, the free flow of such information across borders, consistent with the protection of intellectual property rights (IPR), allows U.S. creative industries to deliver enhanced and personalized services to a broader base of customers. Conversely, foreign market access barriers to digital trade undermine the ability of the U.S. creative industries to deliver their content. Such barriers include unreasonable taxes on streaming services; data flow restrictions and

¹² Secretariat at 20.

¹³ Id.

server localization requirements; measures forcing companies to transfer technology or IP to do business in a country; limitations and constraints on the freedom of contract; and foreign investment restrictions. Removal of these barriers to digital trade is critically important to the business of the creative industries.

The WTO established a moratorium prohibiting customs duties on electronic transmissions in a 1998 Declaration on Global Electronic Commerce, which has been periodically renewed ever since. Similarly, U.S. trade agreements from the 2001 U.S.-Jordan Free Trade Agreement through the USMCA include a prohibition against such duties. Prohibiting duties on electronic transmissions has been critical to fostering digital trade, including by ensuring that cumbersome customs procedures do not hamper the dynamic online marketplace that is central to the U.S. creative industries' global competitiveness. IIPA urges the U.S. government to continue to ensure trading partners, especially **India** and **Indonesia**, who have previously expressed reservations about continuing to extend the e-commerce moratorium, refrain from imposing duties on electronic transmissions, which would significantly harm the creative industries and threaten U.S. jobs. Per the Joint Statement on Framework for United States-Indonesia Agreement on Reciprocal Trade, IIPA welcomes Indonesia's commitment to support the permanent extension of the moratorium and encourages India to do so as well.

- Many governments around the world, both in developed and developing countries, are considering or have imposed constraints and restrictions that would discriminate against the U.S. creative industries on “over-the-top” (OTT) services. Such barriers include local content quotas and prominence requirements; opaque, cumbersome, and discriminatory censorship regimes; dubbing requirements; limitations and constraints on the freedom of contract; foreign investment restrictions; requirements to invest in local content; local presence requirements; requirements to use local payment gateways; and advertising restrictions. Countries where IIPA members have confronted such restrictions and proposals include **Australia, Brazil, Canada, India, Indonesia, Mexico, South Africa, South Korea, Russia, Switzerland, Taiwan, Thailand, and Vietnam**. In Australia, Canada, and South Korea, these proposed measures would violate bilateral trade obligations to the United States. By restricting the availability of U.S. content overseas, these governments are curbing the licensing of U.S. works, and, as such, eroding residual payments for U.S. workers. Governments should ensure that any regulation for the OTT market be a light touch to avoid stifling innovation and to encourage further development of this sector.
- **China** has introduced several alarming draft proposals and measures that would or are discriminating against U.S. producers and distributors of creative content. For example, in May 2016, the former State Administration of Press, Publication, Radio, Film and TV (SAPPRFT, now replaced by the China Film Administration) proposed policies that, if implemented, would provide state-owned media companies with voting control over leading online platforms for films and TV content. In June 2016, China published new content approval regulations for mobile video games that have made it extremely difficult for foreign publishers of mobile games to access the Chinese market. China

should increase the number of approvals for foreign video games to match the number of domestic approved video games. The draft Radio and Television Bill released by the National Radio and Television Administration (NRTA) in March 2021 could tighten regulation standards for online audiovisual programs and restrict foreign producers from participating in radio and television activities, including online.

Other examples of barriers to digital trade in China include 2014 government-imposed rules capping the online distribution of foreign films and TV dramas at 30% and requiring online distributors to register content, obtain permits, and submit content for review, resulting in extended delays and further uncertainty. The 2016 Online Publishing Rules, which appear to expand the scope of longstanding restrictions on the involvement of foreign entities in online publishing activities, are creating a chilling effect on foreign investment in online publishing services where, prior to the rules, some latitude appeared to have been granted.

Ultimately, the market access restrictions discussed above impede the entry of legitimate digital products and services and make it easier for pirate operations to fill the void by becoming the “exclusive” distributors of sought-after U.S. content. These infringing businesses cement strong loyalties with their user base, eroding future opportunities to create a legitimate marketplace, which negatively affects the creative industries and those that they employ.

Import policies (*e.g., tariffs and other import charges, quantitative restrictions, and customs barriers*):

- Periodically, countries have adopted or considered customs valuation practices for filmed entertainment that are out of line with international best practices. For example, **Argentina** and **Russia** assess customs duties on certain audiovisual works based on the potential royalty value of the work rather than on the value of the carrier medium. This runs counter to international best practice and is a form of double taxation, as royalties are subject to withholding, income, value-added, and remittance taxes.
- **Brazil’s** high tariffs and taxes on video game products and entertainment software are a long-standing concern. While 2022 showed signs that Brazil would at last implement significant reductions of the industrial product tax (IPI) for video game consoles and accessories, the tax burden on these products unfortunately remains significant. IIPA encourages Brazil to continue efforts to further reduce or eliminate the federal-level IPI and import tax and the state-level (ICMS) and municipal-level (ISS) taxes on video game consoles, accessories, and portables. When these and other taxes are all applied to consoles, for example, the final prices tend to be more than twice the original imported price. IIPA has similar concerns related to high tariffs on video game software and hardware in Mexico.

Investment barriers (*e.g., limitations on foreign equity participation, and local content requirements*):

- **Vietnam** has long imposed severe investment restrictions on what it considers “cultural products” or services, hindering the growth of core copyright businesses in the country, with the June 2022 Cinema Law reaffirming that foreign direct investment in cinema construction and film production and distribution is limited to 51% in Vietnam. **Taiwan’s** Cable Radio and Television Law limits foreign direct investment in domestic cable television services to 20% of the operator’s total issued shares. Foreign investment in satellite television broadcasting services is also restricted to no more than 50%. Additionally, **Thailand** strictly prohibits foreign ownership/investment in terrestrial broadcast networks.
- In 2019, the **Australian** Competition and Consumer Commission, through its Digital Platforms Inquiry Final Report, introduced the possibility of local content obligations extending to VOD services. The Albanese government in its 2023 National Cultural Policy outlined a commitment to introduce an investment obligation for VOD services by 2024. Such a mandate would be violative of Australia’s FTA commitments to the United States. As of this filing, there is no evidence to support any assertion of a market failure.
- In **Canada**, with Bill C-11 (Online Streaming Act) passing into law in 2023, the Canadian Radio-television and Telecommunications Commission (CRTC) now has the explicit power to regulate non-Canadian digital media services, including the authority to impose financial and reporting obligations to support the Canadian broadcasting system. As part of its regulatory plan to implement the Online Streaming Act, the CRTC issued a decision in June 2024 requiring non-Canadian digital media services with \$25 million or more in annual Canadian gross broadcasting revenues (or part of an ownership group reaching the threshold in the aggregate) to pay 5% of those revenues to certain funds. Payments were to be made by August 31, 2025. Certain aspects of this decision are currently under appeal. The CRTC’s plan also provides for additional public consultations culminating in finalized contribution requirements and implementation guidelines, which are expected to be issued by the end of 2025.
- **China** continues to maintain investment restrictions on many creative industries; while a WTO Panel and Appellate Body decision confirmed China may not maintain such restrictions, some areas (e.g., publishing, and certain activities related to film) remain mostly out of reach for foreign businesses. For example, China’s Special Administrative Measures for Foreign Investment Access (the “Negative List”), revised in 2024, continues to prohibit, among other things, foreign investment in the “editing, publication and production of books, newspapers, periodicals, audio and video products, and electronic publications,” and in “online publishing services, online audio and video program services.” However, the newly revised 2024 Negative list continues to permit foreign investment in online music services, which remains a welcome positive step.

Competition (*e.g., government-tolerated anti-competitive conduct of state-owned or private firms that restrict the sale or purchase of U.S. goods or services in the foreign country's markets*):

- Collective Management Organizations (CMOs) in some markets interfere with the ability of U.S. rights holders to actively engage in licensing of their works. For example, **Morocco** granted the *Bureau Marocain des Droits d'Auteur et Droits Voisins* (Moroccan Office of Copyrights and Related Rights) a legal monopoly as the sole entity for the management and enforcement of all forms of copyright exploitations. In **Indonesia**, **Kenya**, and **Russia**, the respective state-accredited sound recording rights CMOs lack transparency and are poorly governed, thwarting music rights holders' attempts to license their works. Other competition concerns include that, in **China**, China Film Group dictates the release dates and length of theatrical runs of foreign films, often undermining the ability of the U.S. producer to exploit the value of the film to its fullest potential. China also restricts the ability of private, local distributors to compete with or operate independently from the state-owned CFG and Huaxia Film Distribution Company Ltd., the sole importers and theatrical distributors of non-Chinese films. Additionally, in both China and **Vietnam**, censorship regimes are opaque, unpredictable, and slow.

Addressing the foreign trade barriers identified by IIPA in this submission can permit the U.S. copyright industries to enjoy greater economic growth from foreign sales and exports. As documented in Copyright Industries in the U.S. Economy: The 2024 Report, sales of select U.S. copyright products in overseas markets amounted to \$272.6 billion in 2023.¹⁴ This number represents a fraction of the potential sales and exports that could be achieved if the barriers outlined above and discussed in the attached were addressed.

IIPA and its members appreciate the opportunity to provide USTR and the TPSC with information pertaining to the development of the 2026 NTE Report. We encourage USTR or the TPSC to contact us with any questions or requests to provide further information.

Respectfully submitted,

/Pete Mehravari/

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¹⁴ Secretariat at p. 17.

IIPA 2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT



**SUBMITTED JANUARY 27, 2025
TO THE
UNITED STATES TRADE REPRESENTATIVE
BY THE
INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®**



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January 27, 2025

Submitted via regulations.gov Docket No. USTR-2024-0023

Mr. Daniel Lee
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Re: IIPA Written Submission in Response to USTR's *Request for Comments and Notice of a Public Hearing Regarding the 2025 Special 301 Review*, 89 Fed. Reg. 97161 (Dec. 6, 2024)

Dear Mr. Lee:

The International Intellectual Property Alliance (IIPA) provides this submission in response to the above-captioned Federal Register Notice as a part of the "Special 301" review.¹ The filing focuses on three concerns affecting the competitiveness of the copyright industries in foreign markets: (i) inadequate copyright and related laws, particularly where rights holders are unable to fully exercise their rights; (ii) inadequate and ineffective enforcement of existing copyright and related laws; and (iii) market access barriers that inhibit the licensing and dissemination of copyrighted works and sound recordings.

On behalf of its member associations, IIPA has filed comments every year since the 1988 Trade Act established the Special 301 review proceeding. The annual Special 301 review requires the U.S. government to identify "foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection."² IIPA members appreciate USTR's continued adherence to the requirements of the Special 301 statute and the intent of Congress by using this important trade tool to improve and strengthen copyright protection and enforcement in the reported countries and to open up these markets for U.S. creators, producers, and workers who rely on copyright protection. As USTR has noted in past Special 301 Reports, Congress expressed concern that intellectual property (IP) protection and market access deficiencies "seriously impede the ability of the United States persons that rely on protection of intellectual property rights to export and operate overseas, thereby harming the economic interests of the United States."³ The ultimate goal of the Special 301 review, therefore, is not to catalog trade barriers or admonish foreign governments for deficient laws or enforcement regimes as such, but rather to expand economic opportunities for the copyright industries by opening markets for American copyrighted materials in digital and hard copy formats.⁴

In the 2024 Special 301 Report, USTR recognized that the Report "serves a critical function by identifying opportunities and challenges facing U.S. innovative and creative industries in foreign markets and by promoting job

¹ IIPA will file under separate cover a Notice of Intent to Testify at the February 19th, 2025 public hearing on Special 301.

² 19 U.S.C. Section 2242(a)(1).

³ See, e.g., 2024 Special 301 Report at 4, citing Omnibus Trade and Competitiveness Act of 1988, § 1303(a)(1)(B), and referencing S. Rep. 100-71 at 75 (1987) in footnote 2 ("Improved protection and market access for U.S. intellectual property goes to the very essence of economic competitiveness for the United States. The problems of piracy, counterfeiting, and market access for U.S. intellectual property affect the U.S. economy as a whole. Effective action against these problems is important to sectors ranging from high technology to basic industries, and from manufacturers of goods to U.S. service businesses.").

⁴ The most recently identified market access and other trade barriers around the world, including those pertaining to intellectual property rights, are detailed in the U.S. Trade Representative's 2024 National Trade Estimate Report on Foreign Trade Barriers (March 29, 2024). That report is available at <https://ustr.gov/sites/default/files/2024%20NTE%20Report.pdf>.

creation, economic development, and many other benefits that effective IP protection and enforcement support.”⁵ Indeed, American creators, producers, publishers, workers, and consumers all benefit when U.S. trading partners enact strong copyright laws, effectively enforce those laws, and eliminate barriers to their markets. These benefits include the enrichment of American culture and consumers through enjoyment of creative and scholarly content, including books and journals, video games, movies and television programming, and music.⁶ Strong copyright protection and enforcement also help U.S. trading partners develop, nurture, and enjoy the economic and cultural benefits from their own cultural and creative sectors, ultimately to the benefit of local consumers. This is particularly important for developing economies, which is why the United Nations has recognized the creative industries as critical to advancing development.⁷ Dynamic digital market conditions, including fair and equitable market access, create enormous opportunities to further expand economic growth, which results in more well-paying jobs and foreign sales.

The benefits to American creators, producers, and workers are demonstrated in IIPA’s December 2022 update of its comprehensive economic report, *Copyright Industries in the U.S. Economy: The 2022 Report*, prepared by Secretariat Economists, Inc. (2022 Report). According to the 2022 Report, in 2021, the “core” copyright industries in the United States: (i) generated over \$1.8 trillion of economic output; (ii) accounted for 7.76% of the entire economy; and (iii) employed approximately 9.6 million workers, which is nearly 4.9% of the entire U.S. workforce and over 5.5% of total private employment in the United States.⁸ The jobs created by these industries are well-paying jobs; for example, copyright industry workers earn on average 51% higher wages than other U.S. workers. Further, according to the 2022 Report, the core copyright industries outpaced the U.S. economy, growing at an aggregate annual rate of 6.15% between 2018 and 2021, while the U.S. economy grew by 1.76%. When factoring in other industries that contribute to the copyright economy (which together comprise what the 2022 Report calls the “total” copyright industries), the numbers are even more compelling.

The 2022 Report also illustrates the positive contribution of selected copyright sectors to the overall U.S. trade balance. According to the report, foreign sales and exports of selected copyright products in overseas markets totaled

⁵ See 2024 Special 301 Report at 4.

⁶ See, e.g., 2024 Essential Facts About the Video Game Industry, available at <https://www.theesa.com/resources/essential-facts-about-the-us-video-game-industry/2024-data/> (highlighting the benefits of playing video games, including building skills, providing stress relief, creating a feeling of community, and helping players stay connected to friends and family).

⁷ See UN Trade & Development (UNCTAD), “Creativity is the answer we’ve been looking for – now is the time to embrace and invest in it,” available at <https://unctad.org/news/creativity-answer-weve-been-looking-now-time-embrace-and-invest-it> (“With the formal announcement of the 2021 United Nations Year of Creative Economy for Sustainable Development, the creative economy was finally recognised as a powerful force for good, livelihoods, social cohesion and economic development through the trade in creative goods and services . . . Developing countries face many challenges exporting their creative economy outputs, and we need to do more to protect intellectual property and improve data analysis for the industry.”); see also UNCTAD, International Year of Creative Economy for Sustainable Development, 2021, available at <https://unctad.org/topic/trade-analysis/creative-economy-programme/2021-year-of-the-creative-economy>. Furthermore, the World Intellectual Property Organization (WIPO) recently highlighted the video game industry as an important industry for spurring development. See WIPO “Making Innovation Policy Work for Development,” 106-124, available at https://www.wipo.int/web-publications/world-intellectual-property-report-2024/assets/60090/944_WIPR_2024_WEB.pdf.

⁸ See Secretariat Economists, *Copyright Industries in the U.S. Economy: The 2022 Report* (December 16, 2024) available at https://www.iipa.org/files/uploads/2022/12/IIPA-Report-2022_Interactive_12-12-2022-1.pdf. Core copyright industries are those whose primary purpose is to create, produce, distribute, or exhibit copyright materials. The link between copyright protection and economic growth has been well documented by the World Intellectual Property Organization (WIPO). See, e.g., *WIPO Studies on the Economic Contribution of the Copyright Industries: Overview* (2014), available at https://www.wipo.int/export/sites/www/copyright/en/docs/performance/economic_contribution_analysis_2014.pdf. The WIPO website provides links to 51 country studies employing virtually the same agreed-upon methodology as the methodology used by Secretariat Economists. See <https://www.wipo.int/en/web/copyright/economic-performance>. These studies provide the economic underpinnings for efforts to reform copyright laws, improve enforcement, and lower market access barriers. For the video game industry, see a February 2024 report by ESA *Video Games in the 21st Century: The 2024 Economic Impact Report*, available at <https://www.theesa.com/resources/2024-economic-impact-report/>. This report highlights how the video game industry not only provides entertainment, learning opportunities and connection to millions, with the dual DNA of technology and art, but also is an important driver of the 21st century U.S. economy. For the music industry (RIAA), see the 2020 *Jobs & Benefits Report*: <https://www.riaa.com/wp-content/uploads/2021/02/The-U.S.-Music-Industries-Jobs-Benefits-2020-Report.pdf> and the *50 States of Music* website – <https://50statesofmusic.com/> – that provides (qualitative and quantitative) state-by-state contributions. There are also music industry reports on employment and economic contributions in specific regions, e.g., Europe, available at https://www.ifpi.org/wp-content/uploads/2020/11/IFPI_music_in_Europe_WEB_spreads.pdf, as well as in specific countries, e.g., India, available at https://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/IMI%20report_singlePage.pdf. For the motion picture industry (MPA), see the 2020 U.S. economic contribution infographic, available at https://www.motionpictures.org/wp-content/uploads/2022/01/MPA_US_Economic_Contribution_2020_Final.pdf. See also individual (country) MPA economic contribution reports for Australia (<https://www.mpa-apac.org/wp-content/uploads/2022/09/Report-The-Economic-Impact-of-VOD-Services-in-Australia-2022.pdf>), India (https://www.mpa-apac.org/wp-content/uploads/2021/12/Logos_India-Frontier-The-Economic-Impact-of-OCC-in-India.pdf), and the United Kingdom (<https://www.mpa-emea.org/wp-content/uploads/2018/09/OO-UK-AV-sector-economic-contribution-report-FINAL-2018.09.21.pdf>). These reports illustrate the economic value of the production and distribution of motion picture and television programs and include analyses of direct and indirect economic impacts (i.e., employment and tax analyses).

\$230.3 billion in 2021, exceeding the foreign sales of other major U.S. industries. Leveling the playing field for the U.S. copyright industries in foreign markets would significantly increase these important U.S. exports, boosting U.S. job creation and economic growth and further improving the U.S. trade balance.

Importantly, the *2022 Report* highlights the significant contributions the copyright industries make to the digital economy, at least as that concept has been defined by the U.S. Bureau of Economic Analysis (BEA). In 2021, the core copyright industries accounted for over 52.26% of the digital economy value added and over 48.1% of digital economy employment, and the total copyright industries accounted for nearly 64.87% of the digital economy value added and nearly 58.9% of digital economy employment. The report points out that these numbers likely understate the total contribution of the copyright industries to the digital economy, because the BEA's digital economy classification does not encompass the full range of the copyright industries' digital activities.

As the *2022 Report* demonstrates, improving trading partners' legal frameworks to expand digital trade in copyrighted materials would foster job growth in the United States and increase economic opportunities around the world. The copyright industries continue to be at the forefront of digital technological advances, creating and disseminating copyrighted materials using a wide variety of media, ever-more sophisticated systems (including new services and applications (apps)), and new digital business models. As a result of these digital technological advances, more copyrighted material is now legally available, in more diversified ways and with more varied pricing options than at any other time in history, for the enrichment and enjoyment of consumers.⁹

Though the copyright sector has long been employing electronic means to produce and deliver its products and services to meet global consumer demand, laws and enforcement regimes in many foreign markets lack even well-established minimum standards for combating online infringement and ensuring the safety and security of online marketplaces. The success of the creative community depends on strong copyright laws and enforcement practices that foster a legitimate online economy. Open markets and modern copyright laws, when combined with effective and efficient enforcement of those laws, enable creators and producers to invest in the creation and dissemination of new high-quality content to better meet worldwide consumer demand.

IIPA members recognize and appreciate that USTR has made the Special 301 process a positive catalyst for change to effectively address the challenges faced by the U.S. creative industries in key markets around the world. In our view, the process continues to yield results, including positive legal reforms, enforcement actions, and the removal of market access barriers. In addition to recommending improvements, IIPA's comments also highlight some of the recent successes and positive outcomes in several countries.

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⁹ For example, there are now over 100 million licensed tracks on some of the major music streaming services. See e.g., <https://www.apple.com/au/apple-music/> and <https://www.amazon.com/music/unlimited> and hundreds of digital music services. The number of subscriptions to online audiovisual services worldwide increased to 1.3 billion in 2021, a 14% increase from 2020. See, <https://www.motionpictures.org/wp-content/uploads/2022/03/MPA-2021-THEME-Report-FINAL.pdf>. There are more than 27,000 games available for immediate digital download and play on the three major gaming consoles (12,511 on Xbox, see <https://www.xbox.com/en-US/games/browse>; more than 5,000 on Nintendo Switch, see <https://www.nintendo.com/au/nintendo-eshop/>; and at least 10,000 on PlayStation, see <https://store.playstation.com/en-us/pages/browse>). In addition, there are at least 30,000 available at any time on the STEAM platform (see <https://store.steampowered.com/about/>) and 2,900 on the Epic Game Store (<https://store.epicgames.com/en-US/news/epic-games-store-2023-year-in-review>). For more information generally on the proliferation of services, see, <https://www.motionpictures.org/watch-it-legally/> (movies and television content); and <http://www.whymusicmatters.com>, <https://www.ifpi.org/pro-music/>, and the IFPI Global Music Report 2024 at <https://globalmusicreport.ifpi.org/> (music).

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I. IIPA RECOMMENDATIONS ON DESIGNATIONS AND A SUMMARY OF COUNTRY REPORTS

IIPA's submission focuses on the markets where IIPA members believe active engagement by the U.S. government can reap positive results for creators and the industries that support and invest in them. The Country Reports contained in the filing include a summary of developments from 2024 along with key issues to focus on in 2025. Most of the Country Reports identify key priorities and, wherever possible, detail the legal, enforcement, and market access concerns specific to each market. Some Country Reports also contain details of specific unmet trade obligations to the United States in bilateral, regional, or multilateral trade agreements that, if addressed, could improve the local market. In a few instances, the Country Reports focus on only a few key issues or one or two industries.

IIPA's 2025 Submission includes this Cover Letter plus three appendices—Appendix A, Appendix B, and Appendix C.

Appendix A includes 20 Country Reports with recommendations for designation in USTR's Special 301 Report this year.¹⁰ These 20 Country Reports cover: **Argentina; Belarus; Brazil; Canada; Chile; China; Colombia; India; Indonesia; Mexico; Morocco; Nigeria; Russian Federation; South Africa; Switzerland; Taiwan; Thailand; United Arab Emirates; Uruguay; and Vietnam.**

For these countries, the IIPA recommends:

IIPA 2025 Special 301 Recommendations	
Priority Watch List	Watch List
Argentina	Belarus
Chile	Brazil
China	Canada
India	Colombia
Indonesia	Morocco
Mexico	Nigeria
Russian Federation	Switzerland
South Africa	Taiwan
Vietnam	Thailand
	United Arab Emirates
	Uruguay
9	11

Appendix B identifies additional concerns in other key foreign markets, including **Australia, Belgium, Bulgaria, Germany, Guatemala, Hong Kong, Japan, Kenya, Malaysia, Peru, Philippines, Singapore, South Korea, Turkey, and the United Kingdom (UK).** Like the countries identified in Appendix A, these countries also have significant problems, including shortfalls in copyright protection and enforcement and concerns regarding legal reform efforts and market access that the U.S. government should address.

Appendix C provides a Historical Chart of countries' placement on Special 301 lists by USTR since 1989 and IIPA's 2025 Special 301 recommendations.¹¹

¹⁰ The Country Reports were prepared by IIPA Staff, including Peter Mehravari, Sydney Blitman, and the undersigned. We particularly thank Sydney Blitman for her contributions to the preparation, production, and dissemination of this submission. The Country Reports are based on information furnished by IIPA's member associations. The information contained in this submission should not be construed as providing legal advice.

¹¹ A number of countries/territories have appeared on a Special 301 list every year since 1989, or for a considerable number of years. A 1994 amendment to Section 182 of the Trade Act, dealing with identification of "priority foreign countries," provides that USTR must consider "the history of intellectual property laws and practices in the foreign country, whether the country has been identified as a priority foreign country previously, and U.S. efforts to obtain adequate and effective intellectual property protection in that country." Uruguay Round Agreements Act Statement of Administrative Action, reprinted in H.R. Doc. No. 103-316, vol. I, at 362 (1994).

II. ABOUT IIPA AND IIPA'S INTEREST IN SPECIAL 301

IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve copyright protection and enforcement abroad and to open foreign markets closed by piracy and other market access barriers. Members of IIPA include: Association of American Publishers (www.publishers.org), Entertainment Software Association (www.theesa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association (www.motionpictures.org), and Recording Industry Association of America (www.riaa.com).

Collectively, IIPA's five member associations represent over 3,200 U.S. companies producing and distributing copyrightable content. The materials produced and/or distributed by IIPA-member companies include: video games for consoles, handheld devices, personal computers, and online; motion pictures and television programming distributed in all formats (including cinema, television, online, mobile, DVD, etc.); music recorded in all formats (from digital files to CDs and vinyl) for streaming and other online services, as well as broadcasting, public performance, and synchronization in audiovisual materials; and fiction and non-fiction books, educational, instructional and assessment materials, and professional and scholarly journals, and databases.

III. INITIATIVES TO STRENGTHEN IP PROTECTION AND ENFORCEMENT IN FOREIGN MARKETS

IIPA highlights positive developments in the following markets in the past year:

Argentina: The *Unidad Fiscal Especializada en Investigación de Ciberdelitos* (The Specialized Cybercrime Investigation Unit, UFEIC) participated in Brazil's September 2024 Operation 404 wave discussed below, taking down 76 infringing websites, blocking six infringing websites, arresting three people, and blocking two Internet applications, all of which were based in Argentina.

Brazil: In September 2024, Brazil's Ministry of Justice and Public Security initiated the seventh phase of Operation 404 to tackle online piracy, taking down 673 websites and 14 illegal streaming applications. In addition, officials served 30 search and seizure warrants and arrested eight people in Brazil and Argentina. The action was coordinated by the Cyber Operations Laboratory (Ciberlab) of the Operations and Intelligence Directorate (Diopi) of the National Public Security Secretariat (Senasp), the Civil Police of Espírito Santo, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Paraná, Pernambuco, Rio de Janeiro, Rio Grande do Sul and São Paulo, and the Public Prosecutors' Offices of São Paulo (Cyber Gaeco) and Santa Catarina (Cyber Gaeco). Brazil has demonstrated increasing leadership in the region through Operation 404, this year facilitating cooperation with enforcement authorities and IP protection associations from Brazil and other countries, such as Argentina, the United States, Paraguay, Peru and the UK.

India: Following the 2012 revision to the Copyright Act, which created a statutory license for the use of musical works and sound recordings for radio and television broadcasting, the Department of Industrial Policy and Promotion, now 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.

It was encouraging that in May 2024 the Indian Court granted an interim injunction against the operators of *Doodstream* following a lawsuit by MPA members in the Delhi High Court. However, as of September 2024, the domains are still active, and the Defendants have failed to comply with the court's orders. Further contempt proceedings have been hampered by delay tactics. For effective civil enforcement, IIPA encourages the Indian Courts to facilitate

timely and effective interim relief, meaningful enforcement of Court orders, and effective case management to ensure progress in a timely manner.

Mexico: In response to the July 2020 reforms implementing the United States-Mexico-Canada Agreement (USMCA), Mexico's National Human Rights Commission and a group of Senators from opposing parties filed a case in the Mexican Supreme Court seeking to void the copyright provisions as unconstitutional, particularly those regarding criminal sanctions for circumvention of technological protection measures (TPMs) and notice and takedown. In June 2024, the Mexican Supreme Court rejected this challenge, upholding the reforms as constitutional. With the uncertainty surrounding these reforms lifted, IIPA urges the Government of Mexico to fully implement these reforms without further delay by issuing the corresponding implementing regulations by the Minister of Culture and the Copyright Office (INDAUTOR). For additional details, see the Mexico country report in [Appendix A](#).

Paraguay: The *Dirección Nacional de Propiedad Intelectual* (The National Directorate of Intellectual Property, DINAPI) participated in Brazil's September 2024 Operation 404 wave discussed above, taking down six infringing websites based in Paraguay. DINAPI has also been very cooperative with events and activities organized by the recorded music industry, participating in several workshops and webinars on copyright protection and enforcement.

Peru: In September 2024, Peru's Executive Branch published Legislative [Decree 1649](#) in the Official Gazette, amending Article 217 of the Criminal Code to reinforce measures against the unauthorized reproduction of audiovisual works in cinemas and similar venues (i.e., camcording). The measure stipulates that the unauthorized reproduction, dissemination, distribution, or circulation of a work without the author's consent will be punishable by two to six years in prison, and fines. In more severe cases, where the work is reproduced in whole or in part for sale, rental, public lending, or other forms of transfer, and where the total value of the sale exceeds two tax units (approximately USD \$2,729 or 10,300 soles), the penalty increases to four to eight years in prison and larger fines. This welcome development addresses a longstanding problem of source piracy in Peruvian cinemas. The *Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* (The National Institute for the Defense of the Competition and Protection of Intellectual Property, INDECOPI) remains a solid ally for the protection of IP rights in the region, despite political changes in the country that affected many other public institutions in recent years.

In addition, INDECOPI participated in Brazil's September 2024 Operation 404 wave discussed above, taking down 419 infringing websites based in Peru.

Vietnam: Vietnamese authorities took several significant enforcement actions in 2024. In August 2024, the Vietnamese Ministry of Public Security, supported by the Alliance for Creativity and Entertainment, shut down the largest pirate streaming operation in the world. The illegal piracy operation was comprised of *Fmovies* and numerous other notorious piracy sites, such as *bflixz*, *flixtorz*, *movies7*, *myflixer*, and *aniwave*. Domains controlled by this piracy syndicate drew more than 6.7 billion visits between January 2023 and June 2024. While the takedown of the sites is a positive development, it is now important that the case against the *Fmovies* operators moves through the criminal process without delay and that a suitably deterrent sentence—one that reflects the unprecedented scale of the criminal activity involved in this case—is imposed on all operators.

In addition, Vietnamese Courts handed down the first criminal convictions for copyright offences since the Penal Code was amended in 2015 to include copyright offenses. This included the conviction by the Hanoi People's Court of the operators of the *BestBuyIPTV* pirate service and the conviction by the Quang Binh Province People's Court of the operators of the *bilutvt.net*, *tvhayh.org*, and *hlss.pro* services. While these first criminal convictions are undoubtedly a positive development, both convictions resulted only in suspended sentences against the operators. IIPA encourages the Vietnamese government to enhance the penalties that can be meted out under the Penal Code and ensure that the penalties are commensurate with the significant damage and harm caused by such illegal activities and sufficient to deter operators of existing and future piracy services.

IIPA welcomes these positive developments from 2024 and looks forward to continuing to work with governments to foster a healthy ecosystem for the creative industries. Despite these positive developments, serious additional legal reform and enforcement issues remain in several of these countries. The details of these concerns can be found in the respective Country Reports in [Appendix A](#) and in [Appendix B](#).

IV. KEY CHALLENGES FOR THE COPYRIGHT INDUSTRIES—PROTECTION, ENFORCEMENT, AND MARKET ACCESS ISSUES

Notwithstanding the positive developments noted above, the U.S. copyright industries face complex challenges in overseas markets that fall into three distinct, but overlapping, categories: (i) inadequate copyright and related laws; (ii) inadequate and ineffective enforcement of existing copyright and related laws; and (iii) market access barriers that inhibit the licensing and dissemination of copyrighted works and sound recordings. Below is a summary of the major challenges across global markets in each of these categories:

A. Inadequate Copyright and Related Laws

The Country Reports highlight specific concerns and deficiencies in the copyright legal regimes in each of the identified countries, though there are concerns that are shared across several countries. First, the current legal regimes of many U.S. trading partners fail to meet their obligations to the United States, evolving global norms, or the minimum standards of the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties). Second, rather than working to address these shortfalls, WIPO has unfortunately strayed from its founding mandate and, in some instances, taken steps that threaten to further undermine copyright protections around the world. Third, in several countries, collective management organizations (CMOs) do not operate fairly or properly, failing to accord with international standards and best practices, resulting in the denial of monies to rights holders. Related to these concerns, as outlined in [Appendix A](#) and [Appendix B](#), several countries undertaking major overhauls of their copyright and related laws are considering adopting or have adopted proposals that would weaken copyright protections or enforcement mechanisms, thereby undermining markets for the creation or dissemination of rights holders' materials, particularly in the digital environment.

1. Failure to Meet Legal Reform Obligations, Evolving Global Norms, and Global Minimum Standards

Several U.S. trading partners have unmet legal reform obligations from their numerous bilateral, regional, and multilateral trade agreements with the United States. These agreements include: (a) the WTO TRIPS Agreement, to which 164 countries have now acceded (and over 20 additional countries are in the process of acceding); and (b) free trade agreements (FTAs) or trade promotion agreements (TPAs) with over 20 countries, including the 2020 agreement with **Mexico** and **Canada** (USMCA), as well as bilateral agreements that entered into force in 2012 with **South Korea**, **Colombia**, and **Panama**. These agreements are intended to open foreign markets to U.S. goods and services dependent on copyright protection, enforcement, and a regulatory environment for investment in copyright works, chiefly (although by no means exclusively) by mandating improved and modernized copyright laws, and, in most cases, higher standards for on-the-ground enforcement of these laws.¹² The United States also has a series of Bilateral Investment Treaties (BITs) that are increasingly relied upon to resist efforts by foreign governments to impose heavy-handed regulations, such as mandated local-content quotas, purchase requirements, or restrictions on audiovisual

¹² In addition, some countries, such as the United Kingdom (UK) and Japan, are actively seeking additional trade agreements with their trading partners, some of which are paying dividends in stronger intellectual property (IP) protection and enforcement obligations that, through the most favored nation (MFN) principle, should afford benefits to U.S. rights holders as well. For example, the UK-New Zealand Free Trade Agreement (FTA), signed on February 28, 2022, includes several important obligations, such as providing injunctive relief against intermediaries for copyright infringement (Article 17.70), incorporating a "commercial scale" definition, mirroring that of U.S. FTAs, that requires criminalization of "significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace" (Article 17.75), and providing for "blocking orders" (Article 17.82), among others. In addition, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) contains similar disciplines, for example regarding "commercial scale" criminal liability, which now bind countries like Vietnam, which has had notoriously weak criminal enforcement.

over-the-top (OTT) businesses. IIPA urges the U.S. government to ensure that any ongoing or future trade initiatives continue to make progress opening foreign markets to U.S. goods and services dependent on copyright protection and do not in any way reduce or undermine high standards of copyright protection, including obligations in the WIPO Internet Treaties and the WTO TRIPS Agreement. In addition, the WTO TRIPS Council is presently considering a Review of the implementation of the TRIPS Agreement under Article 71.1. In accordance with Article 71.1, any such Review must be limited strictly to implementation issues.

Some signatories to existing FTAs have not met their agreement obligations, yet these countries continue to enjoy advantageous access to the valuable U.S. markets for goods and services. These concerns are detailed in the Country Reports, notably in **Chile** and **Colombia**, where the legal frameworks for online enforcement remain deficient. As detailed in the **Mexico** Country Report, Mexico has enacted key copyright reforms to implement certain obligations under the USMCA (and longstanding commitments under the WIPO Internet Treaties), but has yet to fully implement them, notwithstanding the recent Mexican Supreme Court decision affirming the constitutionality of these reforms as noted above.

The U.S. government has entered into other wide-ranging bilateral agreements, including binding trade agreements, in which our trading partners have committed to taking steps to modernize and strengthen their copyright laws and/or enforcement regimes.¹³ Some of the agreements were negotiated bilaterally in the context of accession of U.S. trading partners to international entities such as the WTO, or in the settlement of WTO disputes, while others constitute “action plans” or similar pledges resulting from negotiations to resolve bilateral issues.

Our trading partners should be urged to bring their laws into line with evolving global norms regarding the duration of copyright protection. Setting the term of copyright protection at life of the author plus 70 years (or at least 70 years from fixation or first distribution for works or sound recordings not measured by the life of the author) has become the *de facto* global norm. More than 80 countries, including most of the United States’ major trading partners in Europe and in the Americas, and all but a handful of Organization for Economic Cooperation and Development (OECD) countries, already meet or exceed this norm for some or all categories of creative works and recordings. Several U.S. trading partners have not yet adopted longer terms for works, sound recordings, or both. It is hoped that countries that have not yet adopted this longer term of copyright protection, particularly in Asia and Africa, will follow recent examples (many in Latin America) and extend copyright term accordingly.

The U.S. government should also make it a priority in 2025 to encourage all U.S. trading partners to accede to and fully implement the WIPO Internet Treaties, leading up to the 30th anniversary of their conclusion in 2026. At the time they came into force, the WIPO Internet Treaties set the global minimum standards for providing copyright holders with the full panoply of exclusive rights in the digital networked environment. The treaties include an overarching commitment for countries to enable effective exercise of these rights in practice and to provide deterrent levels of enforcement of these rights online (and offline). The treaties also represent the culmination of a global consensus on the need to provide legal protection for TPMs that copyright owners (or their licensees) use to control access to and control the copying of their works and recordings. These controls, particularly access controls, are key enabling technologies for a full range of online digital services. For example, TPMs enable the provision of subscription streaming services that deliver creative works to consumers at a time and place convenient to them and in a manner that protects the rights of and payments to creators and producers. Publishers of online video games use a variety of TPMs, ranging from password protection of accounts to anti-cheat software, to prevent unauthorized access to and copying of in-game items, and to maintain safe and fair conditions in games. Furthermore, the importance of TPMs in supporting a healthy ecosystem for the manufacture, distribution, and security of devices, such as video game consoles and peripherals and the content designed for them, remains as crucial as ever for the growth of the United States’ most cutting-edge innovations including immersive entertainment. IIPA urges the U.S. government to remain vigilant on this issue, especially regarding legislation in any country purporting to implement the WIPO Internet Treaties and copyright

¹³ See, for example, the intellectual property rights agreements maintained by the Commerce Department’s Office of Trade Agreements Negotiation and Compliance, available at: <https://www.stopfakes.gov/article?id=Intellectual-Property-Rights-Agreements-Database>.

reforms undertaken in countries that are parties to an agreement with the United States. In particular, anti-circumvention prohibitions (i.e., protections for TPMs) should protect access controls regardless of the method or technology and should apply independent of whether there is an accompanying copyright infringement. Only in this way can TPM legislation establish effective, practical, and enforceable anti-circumvention prohibitions that protect and support digital content services.

IIPA supports the U.S. government's work in the G7 Hiroshima AI Process, which has set forth important rules of the road for the development of artificial intelligence (AI) systems. For example, the International Code of Conduct for Organizations Developing Advanced AI Systems includes the following code of conduct: "Organizations are encouraged to implement appropriate safeguards, to respect rights related to privacy and intellectual property, including copyright-protected content."¹⁴ 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."¹⁵ In the September 20, 2024 G7 Ministers' Declaration on Culture, the Common Good of Humanity, and Common Responsibility, the G7 Ministers recognized "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."¹⁶ IIPA and its members strongly encourage the U.S. government to work to ensure that all countries meet the standards set forth by the G7 Hiroshima AI Process. The Country Reports in Appendix A and Appendix B identifying additional concerns in other key foreign markets include discussions of AI-related concerns where they are present in those markets.

2. Activities Before the World Intellectual Property Organization (WIPO) Threaten to Undermine Copyright Protections Around the World

WIPO has a long history of driving global innovation through initiatives that strengthen the protection and enforcement of IP—a key role that it continues to play, including through the administration of treaties and a variety of important IP awareness and facilitation programs. At the same time, however, some developments at WIPO threaten to exacerbate the concerns regarding inadequate copyright and related laws discussed in this submission. According to the Summary of the Convention Establishing WIPO (1967), "WIPO's two main objectives are (i) to promote the protection of intellectual property worldwide; and (ii) to ensure administrative cooperation among the intellectual property Unions established by the treaties that WIPO administers."¹⁷ While there are numerous aspects of WIPO's work that advance these critical objectives,¹⁸ there are several concerning aspects of the work underway in the Organization that threaten to contravene WIPO's mandate to promote the protection of IP worldwide. Left unchecked, these trends could ultimately harm the ability of creators to protect and promote their IP across WIPO Member States. The work of WIPO should be to ensure that fundamental norms of national sovereignty and consensus are upheld and to carry out the objectives enshrined in the WIPO Convention. It is vital that the Organization, its committees, its programing (including capacity building and advisory functions), and its representatives (including Secretariat staff, consultants, and authors writing under the WIPO name) advance these objectives. Likewise, WIPO as a whole, as well as each of its constituent parts, must refrain from facilitating negotiating outcomes and otherwise promoting efforts to

¹⁴ See Hiroshima Process International Code of Conduct for Organizations Developing Advanced AI Systems, p. 8, available at <https://www.mofa.go.jp/files/100573473.pdf>.

¹⁵ See Hiroshima Process International Guiding Principles for Organizations Developing Advanced AI System, p. 5, available at <https://www.mofa.go.jp/files/100573471.pdf>.

¹⁶ See Ministerial Declaration at the G7 Ministers' Meeting on Culture, September 20, 2024, available at <https://www.g7italy.it/wp-content/uploads/G7-Culture-Declaration-EN-DEF.pdf>.

¹⁷ See Summary of the Convention Establishing the World Intellectual Property Organization (WIPO Convention) (1967), available at https://www.wipo.int/treaties/en/convention/summary_wipo_convention.html.

¹⁸ For example, in 2023 WIPO and Music Rights Awareness Foundation launched Creators Learn Intellectual Property (CLIP), an online learning platform for creators (see <https://goclip.org/en/>), and WIPO's Building Respect for Intellectual Property undertakes important activities to help develop understanding of and respect for IP (see <https://www.wipo.int/en/web/respect-for-ip>).

diminish IP protections, such as drafting “chairs” texts, implementing overbroad exceptions and limitations as part of WIPO treaty implementation or Member State legal reforms, selecting panelists who promote such efforts, and drafting tool kits that steer Member State authorities toward diminishing IP protections.

IIPA members support the U.S. delegation to WIPO’s engagement and encourage its continued leadership in advancing strong copyright protection and enforcement. In WIPO’s Standing Committee for Copyright and Related Rights (SCCR), the United States should continue to work with other WIPO delegations as well as the WIPO Secretariat to prioritize work that supports WIPO’s mission to promote the protection of IP worldwide, such as projects that encourage full and proper implementation of the treaties that are currently administered by WIPO (e.g., the WIPO Internet Treaties). IIPA has significant concerns regarding several items on the current agenda of the SCCR. For example, discussions on a possible broadcasting treaty should focus on a limited scope of rights and should not include exceptions that would undermine copyright protections, and the agenda item on exceptions and limitations, including the Africa Group’s proposed draft work program, is highly concerning and should not include normative work. Further, the agenda item on copyright and the digital environment, which has focused on remuneration issues, should be removed from the agenda because it has been adequately discussed and because the SCCR is not the proper forum to address marketplace or contractual issues or to resolve matters relating to private parties. IIPA supports the introduction of an affirmative agenda in the SCCR demonstrating the contributions of copyright to economic growth and development, employment, and cultural vibrancy and diversity and urges WIPO SCCR delegations, the SCCR Chair, and SCCR Secretariat staff to facilitate such discussions. IIPA shares similar concerns with the current work taking place in the Committee for Development and IP (CDIP) on exceptions and limitations and on remuneration.

Likewise, IIPA urges the United States to engage intensively in the WIPO Intergovernmental Committee (IGC) to ensure that work related to traditional cultural expressions (TCEs) complements WIPO’s mission to promote innovation. IIPA is concerned that WIPO’s IGC has been focusing solely on normative discussions that are not supported by consensus, lacking a clear mandate from the organization’s full membership. IIPA is equally concerned that the draft articles on traditional knowledge and TCEs discussed at IGC sessions do not reflect the views of all Member States. These articles’ various iterations focus on enabling a *sui generis* exclusive rights system that is broad in scope, includes burdensome obligations, would create significant legal uncertainty, and threatens to interfere with existing licensing practices and undermine the existing international copyright framework. Instead, TCEs should be addressed in the context of the existing international copyright framework, and the draft articles should reflect the contributions of all Member States, including views that protection of TCEs should be addressed in the context of the existing international treaties. IIPA is also concerned that IGC is not advancing informative work to support an adequate assessment of the issues at stake. Studies published by the Secretariat have been useful but are outdated, while new proposals have not been considered. Informative work produced thus far does not provide an assessment of the impacts that a purported *sui generis* system will have on creative industries and on international copyright law, nor does it present protection options already available under the existing international legal framework. IIPA recommends WIPO Member States agree on a future IGC mandate in 2025 that is focused on informative work to enhance the understanding of the issues at stake, assess options of protection through the existing legal framework, and determine the impacts that the *sui generis* system discussed by IGC will have on creative industries and on the international copyright framework. IIPA further recommends that IGC holds two annual meetings like other WIPO committees, to enable regular participation of all observers, including those from the creative industries.

WIPO remains an important institution that, when operating consistently within its mandate, can play a critical role in improving copyright protection and enforcement around the world. The United States should press the WIPO Secretariat in the various Committees to engage in Member State-driven priorities, consistent with WIPO’s founding charter “to promote the protection of intellectual property worldwide.”

3. Laws and Regulations Governing Collective Management Organizations (CMOs)

Direct licensing of copyrighted works and sound recordings by individual rights holders of their exclusive rights should always remain the baseline. However, in certain circumstances where it makes economic sense, rights holders may prefer to exercise some of their rights voluntarily on a collective basis, e.g., through CMOs. For audiovisual works, for example, collective licensing of rights is the exception and not the rule. It applies (with all of the above-noted limitations) for simultaneous transmissions of broadcast signals, but mandatory collective rights management is otherwise opposed by the motion picture and television industry. For musical works and recordings, certain public performance and broadcasting rights are more frequently licensed collectively, because often a large number of users (potential licensees) are involved (such as, for example, cafés and restaurants and radio stations), and the value of individual transactions may be relatively small compared to the transactional costs. However, even regarding those exploitations, mandatory collective management should never be imposed. Rights holders should decide how they wish to exercise their exclusive rights.

Royalties for the retransmission of audiovisual works and public performances of musical works and recordings are significant revenue sources for all music rights holders and represent an important source of monies for financing the production and dissemination of new works and recordings. This importance has heightened the need for efficient, transparent, and accountable collective management services. It is therefore essential, particularly for music industry rights holders, to set up and govern their own CMOs on a voluntary basis. Governmental roles should be limited to establishing regulatory frameworks that enable efficient, fair, and non-discriminatory operations of CMOs backed by rights holders, and, where appropriate, providing expert fora for the resolution of disputes on certain aspects of collective management, including by ensuring that users cooperate in good faith in the licensing process and that rights are properly valued based on reliable economic evidence (using the willing buyer/willing seller standard).

Serious concerns regarding rights holders' ability to fully exercise their rights, especially the public performance right, through collective management in key markets are detailed in the Country Reports in [Appendix A](#) and [Appendix B](#) identifying additional concerns in other key foreign markets.

B. Inadequate and Ineffective Enforcement of Existing Copyright and Related Laws

As a minimum standard, the WTO TRIPS Agreement requires “effective action” and “remedies that constitute a deterrent” to infringement, through civil, administrative, and criminal channels, and effective adjudication in the courts.¹⁹ To be effective, enforcement tools must address the modern infringement challenges of all rights holders, including all variety of online uses and those outside a territorial jurisdiction (frequently running anonymously), often across multiple countries. Moreover, enforcement authorities need adequate resources and the capability to do their jobs effectively.

As digital technologies have expanded consumer access to copyrighted materials, rogue services have exploited those technologies to facilitate different forms of piracy that undermine rights holders' investments in the production and distribution of new and existing materials and services. For example, cloud computing and streaming technologies are used by cyberlockers and various platforms that do not have licenses for the content they make available. In addition, various stream-ripping sites and apps, the most prevalent form of online infringement of music, circumvent TPMs and convert licensed streams (i.e., music authorized only for online streaming) into unlicensed downloadable content.

Enforcement systems (and trade commitments to address enforcement) must be adaptable, agile, efficient, and effective to deter the myriad forms of infringing activities. To deter all copyright piracy on a commercial scale, countries should look to the standard in U.S. trade agreements, other bilateral trade agreements (such as the recent UK-New Zealand FTA), and regional trade agreements (such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)), which define “commercial scale” piracy as not only “acts carried out for

¹⁹ See WTO TRIPS Articles 41 and 61. There are many obligations for civil, administrative, and criminal remedies in Articles 41 through 61, including for provisional relief and judicial procedures (e.g., injunctive relief), which are particularly critical for online enforcement.

commercial advantage or financial gain” but also “significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.” Countries should incorporate these best practice standards in amending their criminal laws to ensure they can best address the latest forms of piracy.

This Section highlights some of the enforcement challenges confronting IIPA members. The Country Reports in [Appendix A](#) and [Appendix B](#) identifying additional concerns in other key foreign markets provide detailed discussions of these challenges where they are present in those markets.

1. Online and Mobile Network Piracy

Digital delivery, whether through wired online or mobile networks, is the dominant form of delivery for copyrighted materials, including music, films and television programs, journal publications, and video games—both by licensed and unauthorized services. The entrenchment of infringing services (including those misconstruing laws to avoid licenses) is a leading barrier to U.S. creators’ and rights holders’ access of markets worldwide. For example, piracy via cyberlockers, which are often based in countries where enforcement is difficult, and BitTorrent and other peer-to-peer (P2P) services continues to pose constant and serious problems for the creative industries. To address these concerns, IIPA recommends the following four steps:

(1) Identification: Identify and close down services and actors, especially criminal syndicates, engaged in copyright infringement activities through the use of criminal enforcement remedies and other tools. USTR makes an indispensable contribution to this step by regularly conducting its “Special 301 Out-of-Cycle Review of Notorious Markets.”²⁰ As detailed throughout this filing, there have been many successes with the closure of Internet sites and services identified as notorious markets by USTR. IIPA’s long-standing recommendation is that USTR should urge trading partners either to convert sites and services to licensed disseminators of works and recordings, or these notorious markets should be taken down followed by, where appropriate, criminal enforcement actions with deterrent penalties.

Many online sites involved in illicit activity have no identifiable jurisdictional nexus, complicating enforcement. This could be ameliorated by restoring the availability of identifying data for the operators (or their proxies) of sites engaged in illegal activity such as IP infringement. IIPA members therefore encourage the European Union’s ongoing national implementation of Article 28 of the NIS-2 Cybersecurity Directive, which was finalized in December 2022. This Directive entered into force on January 16, 2023, and Member States then had 21 months, until October 17, 2024, to transpose its measures into national law. Article 28 imposes general obligations on domain name registries, registrars, and other registration service providers to collect, verify, and maintain the data of domain name registrants (often referred to as WHOIS data), to make publicly available, without undue delay, domain name registration data which are not personal data, and to provide access, without undue delay, to specific domain name registration data that includes personal data to those with legitimate interests, such as those seeking to enforce intellectual property rights. Accurate WHOIS data is critical to copyright owners seeking to enforce their rights against websites engaged in blatant piracy.

(2) Establish an Adequate and Effective Legal Framework: The goal is a legal framework that: (i) prevents the operation of services that promote or otherwise induce infringement; (ii) criminalizes online infringement (particularly all “commercial scale” piracy, in line with the best practice definition described above); and (iii) provides strong incentives for neutral intermediaries to work with rights holders to curb the use of their proprietary networks and services for infringing purposes. In particular, such a legal framework should: (i) provide the relevant panoply of exclusive copyright and related rights (as well as effective protections for TPMs and rights management information (RMI)) starting with the minimum standards mandated by the WIPO Internet Treaties and including global best practices for copyright protection in the digital environment; (ii) ensure that any Internet service provider (ISP) liability limitations,

²⁰ The most recent report is USTR’s Out-of-Cycle “2024 Review of Notorious Markets for Counterfeiting and Piracy” (January 2025), available at: [https://ustr.gov/sites/default/files/2024%20Review%20of%20Notorious%20Markets%20of%20Counterfeiting%20and%20Piracy%20\(final\).pdf](https://ustr.gov/sites/default/files/2024%20Review%20of%20Notorious%20Markets%20of%20Counterfeiting%20and%20Piracy%20(final).pdf) (NM 2024 Report).

if present, do not reduce the scope of substantive copyright protections and require appropriate conditions to be met for eligibility, including obligations for ISPs to remove infringing content expeditiously upon obtaining knowledge or awareness of infringing activity, to take measures demonstrated effective in preventing or restraining infringement, and to implement an effective repeat infringer policy; (iii) recognize online piracy as a form of cybercrime (consistent with the Budapest Convention and global best practices); and (iv) foster cooperation among all industry stakeholders (including ISPs) in the online supply chain, including the removal of impediments to collaboration. In the case of AI, an effective legal framework should also require key entities in the AI chain to uphold key data governance principles.

While systems for notice and takedown of infringing materials are in place in many markets, a mistaken perception often exists that they are the only means of online enforcement. The mere takedown obligation is not sufficient or effective and should not be the only *quid pro quo* for limiting liability. Indeed, the U.S. Copyright Office has said in a report about the U.S. notice and takedown system that such laws must properly “balance the rights and responsibilities of [online service providers] and rightsholders in the creative industries.”²¹ Moreover, some services, including some blatantly pirate services, attempt to rely on notice and takedown procedures to avoid proper copyright licensing. Clear primary and secondary liability rules are necessary to discourage abuses and to avoid inaction or license evasion. In addition, governments should require marketplaces and encourage all relevant intermediaries to implement “know your business customers” (KYBC) policies to ensure they keep up to date and accurate information about their customers and to allow rights holders to obtain accurate information to protect their rights against direct infringers.

Where infringing activity rises to the level of criminal liability, imposing responsibility for aiding and abetting infringement can be an effective remedy against commercial platforms. Proposals granting overbroad immunity to ISPs and other platforms from any civil or criminal liability remain a concern. Separately, any copyright safe harbors should apply to only passive and neutral parties that do not contribute to infringements. Additionally, there are concerns with provisions that immunize parties who induce or facilitate infringement of copyright. Mitigating and preventing online piracy should be a shared responsibility with balanced obligations between online intermediaries and rights holders, particularly because online intermediaries are best positioned to assist with the mitigation and prevention of online piracy. Absent legal incentives to foster the cooperation of ISPs and other online intermediaries, such intermediaries have little interest in fully cooperating with rights holders.

(3) Provide Injunctive Relief: Governments should provide in their respective legal systems mechanisms that ensure ISPs can impose effective relief to remove infringement. Injunctive relief is an effective and efficient means through which to reduce usage of infringing sites and increase traffic to legitimate offerings of copyrighted material. Government agencies and courts in over 42 countries—including **Australia, Belgium, Brazil, Denmark, France, India, Ireland, Italy, Peru, Portugal, Singapore, South Korea, Spain, Sweden, the UK and the United States**—employ or have made legally available injunctive relief or administrative orders to compel ISPs to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders’ applications to appropriate authorities. In Europe, Article 8(3) of the EU Copyright Directive (2001/29/EC) requires Member States to ensure injunctive relief is available “against intermediaries whose services are used by a third party to infringe a copyright or related right.” However, not all Member States have adequately implemented the provision. The UK-New Zealand FTA includes a provision that is similar to Article 8(3), serving as a regional and international best practice.²²

In short, there is a wide spectrum of judicial and administrative means through which to impose restrictions, under defined circumstances, when other domestic remedies are insufficient, and this deserves the close attention of the U.S. government. After over a decade of experience, studies have shown that injunctive relief can reduce usage of infringing sites and increase traffic to legitimate offerings of copyrighted material. These steps are also effective against service operators who cannot be identified or who avoid service of legal process. Unfortunately, as discussed in

²¹ US Copyright Office, Section 512 of Title 17, at <https://www.copyright.gov/policy/section512/section-512-full-report.pdf>.

²² Article 17.82 (“Blocking Orders”) of the UK-New Zealand FTA provides, “Each Party shall ensure that injunctions as provided for in Article 17.67 (Provisional and Precautionary Measures) and Article 17.70 (Injunctions): (a) are available against an OSP, where its online services are used by a third party to infringe an intellectual property right; and (b) include injunctions requiring that OSPs disable access to infringing content.”

Appendix A and Appendix B, several important markets do not yet provide a legal basis for injunctive relief or administrative orders to compel ISPs to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities.

(4) Develop Inter-Industry Cooperation: Because Internet services (including piratical services) are enabled by and interlinked with a wide spectrum of supporting services, combating systematic online infringement of copyright requires the active cooperation of all participants in the e-commerce ecosystem, including: online advertising players (advertisers, ad agencies, ad networks, and the providers of advertising placement and related services); payment processors; hosting providers (including reverse proxy providers and related optimization services); domain name registrars and registries; search engines; and marketplaces and app stores. As entities with a direct stake in a safe, secure, and stable Internet and in the healthy growth of legitimate e-commerce, including e-commerce in products and services protected by copyright, cooperation against threats to that security, stability, and health is part of a sound business strategy for all Internet intermediaries. Governments in many countries can do much more to foster and encourage such cooperation and the development of best practices to advance the common goal of a safer online marketplace. For example, governments should encourage private sector agreements, especially those that provide enforcement rights, to properly reflect the needs of industry stakeholders and ensure any remedies outside of a legal framework are available to all copyright owners.

2. Circumvention of Technological Protection Measures (TPMs), Including Stream Ripping, Modification of Video Game Devices, and Unauthorized Digital Goods (UDGs)

The range and variety of legitimate material now digitally available to consumers, in so many formats and on so many platforms, is possible because of the widespread use of TPMs by content producers and licensed services. TPMs have fostered many of the innovative products and services available online by allowing creators and rights holders to control and manage access to copyrighted works, as well as to diversify products and services and their pricing. In short, new business models depend on these technological controls. TPMs also ensure that works made available in hard goods (DVDs and Blu-ray discs), in the online or mobile environment (including e-books and video games), or through on-demand streaming services or conditional access (e.g., pay-TV, pay-per-view) are not easily stolen and that pirated copies of video games are not playable on console platforms.

Unfortunately, there are business models built entirely around providing services, or manufacturing and distributing technologies, software, devices, components, or tools, to circumvent TPMs to gain unlawful access to the content or to copy it without authorization. One example is stream ripping. Stream-ripping services infringe the making available right and circumvent the TPMs used to prevent download of music streams. These services have proliferated in the last few years, making stream ripping, as noted above, the dominant method of music piracy globally. Stream-ripping sites, services, and apps enable users to make a permanent, free download of music that was licensed only for streaming on a video website such as YouTube and then allow that consumer to listen to it whenever and wherever they wish, without paying for a licensed download or a premium streaming subscription or accessing the stream on the licensed platform. This harms both legitimate streaming services and channels for authorized downloads.

Circumventing TPMs to enable the play of pirated games remains far too common, and ESA and its members must constantly combat efforts to circumvent TPMs protecting video game consoles. To mitigate the dissemination of circumvention devices, circumvention software, and modified consoles used to enable pirated games, the video game industry regularly requests that online marketplaces remove these listings for sale from their platforms. In 2023, ESA had 2,673 listings removed from various online marketplaces worldwide targeting U.S. consumers. Every year, the video game industry spends millions of dollars taking down illegal circumvention and trafficking operations. For example, "[t]hree members of an international criminal organization known as Team Xecuter were indicted on charges related to the development and sale of 'illegal devices that hacked popular video game consoles so they could be used

to play unauthorized, or pirated, copies of video games,' according to a federal indictment filed in Seattle."²³ While legal protection of TPMs, where properly implemented, enables effective enforcement actions against distributors of unlawful circumvention technologies, these efforts are often undermined by countries that have yet to implement adequate protections against circumvention activities and services.

The distribution of unauthorized digital goods (UDGs) reflects the increasing decentralization and complexity of intellectual property infringement online. Increasingly, digital assets that are available within a video game environment or work alongside a video game, are being traded, transferred, and distributed in violation of a publisher's rules and/or Terms of Service, and intellectual property rights. While these digital assets are created intentionally by video game companies for the use and enjoyment of players, their unauthorized use or distribution by third parties for value poses significant threats to the public and IP rights holders, and often involves the circumvention of TPMs. UDGs can be identified by seven different types: Cheats (unauthorized software that modifies or circumvents the original programming of a video game in order to gain an unfair or impermissible advantage, either playing alone or against others), Account Boosting (the sale of services in which a more experienced player of a game receives access to a coalescing buyer's account and advances that account), Digital Keys (the unauthorized selling of digital code for games, account memberships, or gift cards), In-Game Item Resales (the unauthorized re-selling of goods like skins or emotes for a game), Digital Account Resales (the sale or transfer of video game or console accounts that are typically loaded with games, in-game items, or enhanced status to provide advantages in gameplay), UDG betting (transactions that allow the wagering of digital items based on the outcome of randomized digital games of chance or the outcome of events such as sporting events, esports tournaments, Premier League matches, or other similar events), and Virtual Currency Sales (the unauthorized transfer or sale of in-game virtual currencies using prohibited techniques, given that most video games do not have a direct, in-game mechanism for transferring currency between player accounts).

Courts in the United States confirm that UDGs represent an infringement of intellectual property and violation of TPMs, and increasingly recognize the serious threat they pose to creative industries seeking to offer sustainable business models. For example, in May 2024, a video game developer secured a successful jury verdict over cheat developer AimJunkies, arguing the defendants knowingly and willfully infringed on its copyrights through its unauthorized access of game programming, reverse engineering, and the sale of UDGs.²⁴ The developer employed a variety of TPMs that restricted unauthorized access to the game, and restricted a player's ability to copy or modify the game. The defendant AimJunkies' cheat software evaded those protections to offer its users access to hidden player data, modify or abuse existing game functionality, and evade detection by the developer's anti-cheat mechanisms. In September 2024, after multiple appeals from AimJunkies, the developer secured a \$4.3 million arbitration award for unauthorized copying and distribution of the game's code and for circumventing the developer's TPMs. Decisions such as this one illustrate the importance of robust copyright laws and the protection of TPMs for enforcement actions in an ever-changing landscape of online infringement.

3. Piracy of Books and Journals

Combatting book and journal piracy requires consistent action by law enforcement authorities against entities engaged in the unauthorized reproduction of books, textbooks, and other professional books, as well as the unauthorized reproduction and distribution of journal articles online. While the production of counterfeit/pirated books continues to be problematic in certain markets, online piracy affecting books, ebooks, and audiobooks, as well as journal articles is the publishing industry's primary concern. Piracy sites such as *Sci-Hub* and the Library Genesis Project (*Lib-Gen*) and their many mirror sites (such as *anna's archive* and *z-Library*) collaborate to harvest and make available significant volumes of infringing digital copies of books and journal articles and enable the flow of the illegally obtained unauthorized copies between the various piracy sites.²⁵

²³ Brooke Wolford, *The News Tribune*, "International hackers accused of pirating Xbox, Nintendo, PlayStation games, feds say," October 2, 2020, available at <https://www.thenewstribune.com/news/nation-world/national/article246183785.html>.

²⁴ See *Bungie Inc. v. Phx. Dig. Grp.*, C21-0811 TSZ (W.D. Wash. May. 31, 2024).

²⁵ Both *Sci-Hub* and the Library Genesis Project (*Lib-Gen*) were listed as notorious markets in USTR's 2024 report. See NM 2024 Report. For additional information on *Sci-Hub* and *Lib-Gen* see the China and Russia Country Reports in Appendix A.

4. Piracy of Motion Picture and Television Programs by Piracy Devices and Piracy-as-a-Service

A damaging piracy ecosystem has emerged around piracy devices and apps, i.e., illicit streaming devices (ISDs). These ISDs provide illegal access to movie and television content through a variety of means, including downloading and streaming content, as well as unauthorized streaming of live television and sporting events, thus undermining the licensing fees paid by distributors on which content creators depend. The motion picture and television industry continues to suffer enormously from a growing threat of these devices and apps. Streaming devices that are preloaded with infringing apps and illicit TV/video-on-demand (VOD) subscription services can be found online and in physical markets. The challenge is particularly acute in countries where the legality of the devices (i.e., boxes), and of activities surrounding their trafficking, remains in doubt. Additionally, illegal apps that can place infringing material on otherwise legitimate streaming devices can be found through a myriad of mainstream and specialty app repositories. This issue was the focus of USTR's 2017 Notorious Markets Report.²⁶

Because these piracy devices and apps are part of a sophisticated and integrated online ecosystem facilitating access to pirated audiovisual materials, enforcement against them presents complex challenges. Under the right fact patterns, the retailer/distributor can be held liable; alternatively, the app developer can be prosecuted (if identified). Governments can also take action against key distribution points for devices that are used illegally, including marketplaces (both online and physical) where such devices are sold. Many of the physical marketplaces of greatest concern to the copyright industries now increasingly feature goods and services enabling piracy devices and apps, or stalls, kiosks, or "repair" shops that offer to load unauthorized copyright material or piracy-enabling apps onto a preset device (e.g., a Kodi Box). Vigorous action is needed to lessen the growing harm to the legitimate digital delivery of copyright materials by these devices.

In addition, "Piracy-as-a-Service" (PaaS), which is a subset of the larger threat of Cybercrime-as-a-Service, was identified by Europol as a growing threat enabling a variety of cybercrimes. PaaS encompasses a suite of often off-the-shelf services that make it easy for would-be pirates without any technical knowledge to create, operate, and monetize a fully functioning pirate operation, such as website templates, databases of infringing content, and hosting providers specialized in servicing infringers. The existence of PaaS services shows the scale, sophistication, and profitability of modern online commercial copyright infringement and is now a key concern of the motion picture and television industry and a top priority for its antipiracy efforts.

5. Illegal Camcording of Theatrical Motion Pictures

Stopping camcording or the illegal recordings of movies in theaters is a priority for the motion picture industry. One digital (camcorder) copy, uploaded to the Internet and made available around the world, can undermine global markets and the huge investments needed to produce and distribute a feature film. Illicit camcording in theaters decreased significantly in 2021, because many theaters closed due to the COVID-19 pandemic. With the re-opening of theaters around the world, illicit camcording resumed, and in 2024 there were 161 documented camcording incidents through October.

A multifaceted approach is needed to tackle camcording that includes: (i) enacting and enforcing anti-camcording legislation to outlaw the use or attempted use of an audiovisual recording device in a theater to make or transmit a copy of all or part of a motion picture; (ii) educating the public about how unauthorized camcording hurts both businesses and the consumer; and (iii) working with the private sector to identify and prevent unauthorized camcording in cinemas. This strategy has been implemented in many foreign markets (including **Canada, Japan, and South Korea**) with good results.

²⁶ In its 2017 Notorious Markets Report, USTR spotlighted the growing problem of Piracy Devices (i.e., PDs), concluding that they "pose a direct threat to content creators, sports leagues, and live performance, as well as legitimate streaming, on-demand, and over-the-top (OTT) media service providers." See USTR, 2017 Out-of-Cycle Review of Notorious Markets at 8-9, <https://ustr.gov/sites/default/files/files/Press/Reports/2017%20Notorious%20Markets%20List%201.11.18.pdf>.

6. Broadcast, Pay-TV, and IPTV Piracy

Another long-standing problem for the motion picture and television and recorded sound industries is the unauthorized broadcast, cablecast, or satellite delivery of audiovisual content, and music and sound recordings, including the unauthorized retransmission of broadcast signals over the Internet. Cable and satellite piracy (including: the use of hacked set-top boxes; decoding or decrypting signals; and, stealing signals from neighboring countries that are within the satellite's footprint) persists in some markets, particularly in Central America and the Caribbean regions.²⁷

Nevertheless, IPTV services have become the dominant threat in major markets. Pirate IPTV services provide access to stolen telecommunication signals or channels and offer on-demand infringing film and episodic television content to a global audience via dedicated web portals, third-party applications, and piracy devices configured to access these services. Thousands of illegal IPTV services operate worldwide, offering thousands of channels sourced from multiple providers, along with VOD content of unauthorized movies and television programs.²⁸ Many of these illegal services are subscription-based, for-profit services, with monthly or yearly user packages, and often coincide or are found or used with more typical online piracy sites (e.g., streaming, BitTorrent, P2P). The technical infrastructure of these services is often vast and complex, making the identification of content sources and service operators extremely challenging. The marketing and sale of these IPTV services are often carried out by a network of global IPTV re-sellers who purchase subscriptions at wholesale prices and re-sell them for a profit, further complicating investigations. IPTV services have been the driving force in the emergence of related illegal businesses, including those engaged in the re-sale of IPTV services or the theft, distribution, and sale of channel feeds. In addition, IPTV services rely on infrastructure and support services, including from hosting providers, media servers, and panel hosts, sometimes without the knowledge or approval of the illegal services or product (but sometimes in cooperation with these services). As a result, criminal enforcement against these large-scale operations is the most effective deterrent.

C. Market Access Barriers that Inhibit the Licensing and Dissemination of Copyrighted Works and Sound Recordings

In addition to the key challenges pertaining to copyright protection and enforcement, which constitute *de facto* market access barriers, the U.S. copyright industries are also adversely affected by a variety of formal market access barriers, investment restrictions, and discriminatory measures that make it difficult for U.S. producers and distributors to participate fully in crucial foreign markets. These barriers also include interference with rights holders' contractual freedoms or with their licensing practices. The issues of copyright protection of authorized materials and enforcement against infringing goods are moot if rights holders cannot disseminate legitimate American works and recordings in a particular market in a fair and equitable manner to meet consumer demand. Market access barriers take many forms, including:

- Restrictions on the ability to fully engage in the business of development, creation, production, distribution, promotion, and publication of copyright materials;
- High tariffs (such as through inclusion of royalties in the calculation of duties), taxes (including digital services taxes), or fees (including network usage fees) on core copyright businesses and their products and services;
- Arbitrary restrictions on the ability of rights holders to decide how to manage their rights, in particular by mandatory collective licensing and with government interference in the operation of CMOs and rate setting;

²⁷ Enforcement actions (and regulations) need to focus on: (i) prohibiting the trafficking in pay-TV or signal theft devices or technologies; (ii) the unlawful decryption of encrypted cable or satellite signals; and (iii) the forwarding of decrypted signals (whether lawfully or not) without the authorization of the rights holders of the content or of the signal. These actions can help to foster the licensing of broadcasters and cablecasters and to weed out unlicensed television distributors.

²⁸ In the United States, these illegal services are valued at over \$1 billion in piracy subscriptions alone (and estimated profit margins range from 56% for retailers to 85% for wholesalers worldwide). See, *Money for Nothing: The Billion-Dollar Pirate Subscription IPTV Business*. Digital Citizens Alliance and NAGRA (August 2020) at <https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/DCA-Money-for-Nothing-Report.pdf>.

- Quotas on audiovisual programming or complete bans on foreign programming, which overall curb the ability of film and television producers to compete fairly, and which limit consumer access to legitimate content;
- Local content investment requirements;
- Restrictions on advertising, including local content requirements;
- Restrictions on ownership and investment in copyright-related businesses;
- Discriminatory, onerous, and/or dilatory content review/censorship systems;
- Periods during which foreign governments prevent U.S. producers from opening their films or impose onerous restrictions on the window for theatrical distribution (including unfairly shortening the run of a theatrical motion picture);
- Mandatory local replication requirements for films (that may also compromise the security of digital materials); and
- Other forms of government interference with the exercise of rights or contractual freedoms by rights holders.

The Country Reports in Appendix A and Appendix B identifying additional concerns in other key foreign markets include detailed discussions of these formal market access barriers in the markets in which they occur. Whatever form they take, all market access restrictions that impede the timely entry of legitimate products increase the appeal of unauthorized production and distribution operations. Often these illegal operations saturate the market with infringing and pirated copies, severely damaging the market for legitimate products. U.S. officials should continue to strive to open markets for American creators and producers and to eliminate or phase out market access barriers, as identified in this year's IIPA submission. IIPA members are committed to the promotion and protection of cultural diversity and believe that governments can, in lieu of market access barriers, effectively rely on the flexibilities built into FTAs, including permissible support programs, to promote their cultural interests.

V. CONCLUSION

As detailed in *the Copyright Industries in the U.S. Economy: The 2022 Report*, the U.S. economy depends on a thriving copyright sector to create jobs, increase exports, and expand economic output. It is essential to the continued growth and future competitiveness of the U.S. creative industries that our trading partners provide: high standards of protection for copyright; more effective policies and tools to enforce that protection; and more free and open markets. Taking these steps will also greatly improve the health and competitiveness of our trading partners' economies. Open markets foster jobs in the creative industries, benefit workers, increase cultural diversity, promote international trade and exports, increase tax revenues from legitimate businesses, and attract more foreign direct investment. IIPA continues to urge the U.S. government to use the Special 301 review and other trade tools to encourage the countries and territories identified in our submission to make the necessary political commitments and take the necessary actions to strengthen their copyright protection and enforcement regimes and open their markets, thereby bringing real commercial gains for the U.S. creative industries.

We look forward to continuing to work together with USTR and all the U.S. agencies engaged in copyright legal reforms, enforcement, and market access to meet the goals identified in this submission.

Respectfully submitted,

/Kevin M. Rosenbaum/

Kevin M. Rosenbaum, Executive Director
International Intellectual Property Alliance

APPENDIX A

COUNTRY SURVEYS

PRIORITY WATCH LIST

ARGENTINA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

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

Executive Summary: Despite some initial positive intellectual property (IP) enforcement and market access actions during President Javier Milei's first year, sweeping reforms matched with full political prioritization are needed to make meaningful and sustainable improvements to Argentina's copyright protection and enforcement regime and to tackle its high piracy rates.

Stream ripping, online and signal piracy, and the importation and use of circumvention devices, modified game consoles, and illicit streaming devices (ISDs) continue to persist at high levels in Argentina. Unauthorized reselling of digital accounts, digital counterfeits, and other unauthorized digital goods (UDGs) for video game platforms also remains rampant. Unfortunately, Argentina's IP enforcement agencies continue to lack the necessary political will and resources to address these significant and long-standing piracy concerns, which have accelerated and diversified in the past several years. Overall, there is a dire need for a national agenda and strategic policy for copyright enforcement and interagency cooperation, especially between prosecutors and law enforcement cybercrime experts. The situation under the new administration showed initial signs of progress last year after the reestablishment of the National Anti-Piracy Roundtable, Argentina's participation in Operation 404, the shutdown of several popular versions of *MagisTV*, and the establishment of a new cybersecurity initiative. However, the new administration will need to make a wider range of immediate and sustainable changes to Argentina's copyright enforcement regime to meaningfully reduce piracy levels, create deterrents for piracy operations and operators, and streamline enforcement procedures.

The new administration must also work closely with the other branches of government to ensure executive-led anti-piracy initiatives can be implemented through effective legislation and supported by properly resourced courts. Unfortunately, Argentina still has not established protections for technological protection measures (TPMs) and rights management information (RMI), which are critical for enabling legitimate online business models and products and which Argentina is obligated to provide as a signatory to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively the WIPO Internet Treaties). Additionally, last year saw Argentina enact a controversial bill that expanded exceptions to the public performance right that conflict with the normal exploitation of musical works and sound recordings and broadens the definition of types of public performances. However, while some market access obstacles persist, the removal of the longstanding motion picture quotas and the expiration of the PAIS tax on streaming services were welcome developments in 2024.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Encourage the new administration to increase political will and resources necessary to combat piracy at the federal level and support enhanced coordination with other IP enforcement entities.
- Promote private sector discussions on cross-industry cooperation to tackle online piracy.
- Provide adequate legal powers and financial resources to the *Dirección Nacional del Derecho de Autor* (Ministry of Justice's Copyright Office, DNDA) and undertake routine, *ex officio* actions, such as inspections and raids of physical markets to stop commercial piracy, including ISDs.

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

- Incentivize the Argentine Customs Office (DGA-AFIP) to prioritize copyright enforcement actions and to monitor and perform border operations.

Legal Reforms

- Introduce legislation establishing adequate protections for TPMs and RMI and provide legal remedies against their removal.
- Repeal Decree 765/2024 that expanded exceptions to the public performance right.
- Repeal provisions empowering *El Fondo Nacional de las Artes* (FNA, National Endowment for the Arts) to charge fees for the "Paying Public Domain."

Market Access

- Ensure quotas for motion pictures and television content are not reimposed or extended to over-the-top (OTT) services.
- Reject customs duties on audiovisual works based on the potential royalty value of the work rather than on the value of the carrier medium, as well as other customs duties and taxes that burden foreign rights holders.
- Amend legislation to adapt the split of performance rights collections of music performers and phonogram producers to the 50-50 international standard, instead of the currently inequitable split of 67% to performers and 33% to producers.

ENFORCEMENT

Piracy remains a very serious concern after continued failures by past administrations to provide the political will and resources necessary to tackle the growing physical and online piracy problems in Argentina. The International Federation of the Phonographic Industry (IFPI)'s Music Consumer Study for 2023 found that Argentina had one of the highest music piracy rates in the world, with 50.7% of internet users aged 16-64 (compared with the global average of 29%) and 62.9% of 16-24-year-olds pirating music on at least a monthly basis. The most prominent form of music piracy in Argentina is stream ripping. Cyberlocker sites also remain a music piracy threat in Argentina, particularly *Krakenfiles.com*, *Hitfile.net* and *Rapidgator.net*. IFPI's study found that 20.5% of all respondents had used cyberlockers to download pirated music in the previous month.

In 2024, Argentina ranked 17th 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, Argentina ranked ninth in the world for unauthorized file-sharing of mobile games, 17th in the world for console-based games, and 19th in the world for PC-based games. Video game content was the second most popular type of content shared on BitTorrent networks, reflecting a 5% growth compared to 2023. The most harmful type of videogame piracy in 2024 was the unauthorized reselling of digital accounts, digital counterfeits, and other UDGs² via websites operated by local users in Argentina. While this type of digital piracy is popular on online marketplaces, such as *MercadoLibre* and *Shopee*, the number of websites attempting to join this trend is increasing. Regarding linking sites dedicated to video game piracy, the most popular sites are located overseas and include *FitGirl* and *DODI Repacks*. Physical piracy offered via the Internet, the so-called retro games, or preloaded consoles, are also very popular among e-commerce platforms and websites in the country. These growing piracy

² Unauthorized digital goods (UDGs) are unauthorized sales of in-game digital items. They have become a growing concern for the entertainment software industry. Closely related to these in-game items are software products (collectively known as "cheat software") that enable the unfair and rapid collection and aggregation of virtual goods, such as bots, hacks, and "cheats," or that otherwise tilt the scales in favor of one player over another. The rise of UDGs and cheat software has a negative impact on video game companies and consumers in the following ways: (1) sellers of UDGs and cheat software divert significant revenue away from video game developers and publishers; (2) sales of digitally delivered items, like in-game digital items, have the potential for consumer fraud (such as stolen payment methods or compromised accounts) and the facilitation of money laundering schemes; (3) the unchecked sales of cheat software can threaten the integrity of game play, alienating and frustrating legitimate players; and (4) video game publishers and developers are forced into a perpetual virtual "arms race" to update their products and security technology before the sellers can update theirs.

challenges have not only harmed U.S. creative industries, but also have devastated the Argentinian economy, with some estimating the Argentine industry loses US\$ 258 million annually due to piracy.³

- **Encourage the new administration to increase political will and resources necessary to combat piracy at the federal level and support enhanced coordination with other IP enforcement entities.**

Since President Milei assumed office in December 2023, IIPA has closely monitored how his administration would address these longstanding and growing piracy concerns that severely harm both local and foreign creative industries. There were some positive developments in his first year.

- In March 2024, Argentina's *Unidad Fiscal Especializada en Ciberdelincuencia* (the federal prosecutor's special cybercrime unit, UFEIC) and Federal Police accepted four cases related to local commercial websites offering unauthorized reselling of digital accounts, with such targets being among the most popular in the country's digital game piracy scene. Federal Police concluded the four investigations in June 2024 and referred them to the prosecutor. As of this report, the four cases remain pending and await search warrants and domain seizure court order requests.
- In July 2024, the National Anti-Piracy Roundtable convened for the first time by the Ministry of Security as part of a new Productive Security Program organized by the Ministry of Security. Chaired by the Director of Operations and Deployment Control of the Ministry of Security, participants included the president of the Argentine Civil Anti-Piracy Association and the head of the *Federación de Comercio e Industria de la Ciudad de Buenos Aires. Adherida* (the Chamber of Commerce and Industry, FECOBA) along with representatives from the Argentine Naval Prefecture, National Gendarmerie, Federal Police, and other business associations. The Roundtable had been dormant since its launch in 2017 and ties in with the new administration's general concerns regarding national security. No tangible outcomes have been reported from the roundtable as of this report.
- In September 2024, Argentina participated in the seventh phase of Brazil-led Operation 404, a joint international effort to stop digital piracy in the region. Based on a complaint by the Alliance Against Audiovisual Piracy (*Alianza*), UFEIC blocked 70 domain names related to the reportedly largest illegal Internet protocol television (IPTV) service in Latin America, *MagisTV*, which is also designated as a "Notorious Market" in USTR's 2024 Notorious Markets List.⁴ Additionally, UFEIC and Federal Police, following orders by the San Isidro court, conducted raids in Buenos Aires and Misiones to uncover and seize LSDs that had been pre-loaded with the *MagisTV* app and arrested three Argentines and two Brazilians, including the primary operator of the piracy operation.⁵ In the *MagisTV* cases, although there are no final sentences, injunctions were granted by courts creating relevant precedents for future cases.
- On January 8, 2025, the Government of Argentina announced the creation of the Strengthening Cybersecurity and Cybercrime Investigation (ForCIC) program.⁶ The program is designed to increase the capacity of prevention, detection, analysis, response and investigation of cyber incidents and cybercrime, and to strengthen investigative activities in specific areas of computer crimes dependent on federal police and

³ See statements by Regional Director for the Southern Cone of La Asociación Interamericana de Empresas de Telecomunicaciones (ASIT) Pablo García de Castro at an October 2024 anti-piracy seminar, available at <https://www.gruposos.com/argentina/la-pirateria-le-cuesta-a-argentina-mas-de-us-258-millones-al-ano-se-dijo-en-jornadas-internacionales-2024/>.

⁴ See "Argentine court orders Google to delete IPTV software from Android phones," *Tecmundo*, September 25, 2024, available at <https://www.tecmundo.com.br/software/289977-justica-argentina-ordena-google-apague-software-iptv-celulares-android.htm>; see also The Office of the United States Trade Representative (USTR) 2024 Review of Notorious Markets for Counterfeiting and Piracy (the Notorious Markets List), available at [https://ustr.gov/sites/default/files/2024%20Review%20of%20Notorious%20Markets%20of%20Counterfeiting%20and%20Piracy%20\(final\).pdf](https://ustr.gov/sites/default/files/2024%20Review%20of%20Notorious%20Markets%20of%20Counterfeiting%20and%20Piracy%20(final).pdf).

⁵ See "Argentina: Magis TV blocked, its Android app shut down as part of Operation 404," *Piracy Monitor*, September 21, 2024, available at <https://piracymonitor.org/argentina-shuts-down-magis-tv-as-part-of-operation-404-collaboration-with-brazil-and-others/>.

⁶ See "The Government created a cybersecurity strengthening program," *24 Hours Worlds*, January 8, 2025, available at <https://24hoursworlds.com/entertainment/901784/>.

security forces, among other goals. Although the scope of the program is not restricted to piracy, IIPA hopes this new ForCIC program is a major step to combating copyright infringement in the digital environment. In February 2022, the previous administration issued Resolution #86/2022 to create a similar ForCIC program. This old program failed to address Argentina's cybersecurity and digital piracy in the years since. Therefore, it is important for the new administration to fully implement their attempt to take meaningful action against cybercrimes, including online piracy.

These initial steps are a welcome development and a hopeful signal that the new administration will make real efforts to tackle Argentina's growing piracy epidemic this year. The Government of Argentina will need to fully prioritize this issue to make any meaningful impact. The new administration has already shown that when an issue is a political priority, for example, illegal online betting, the government is able to make sweeping reforms. For example, in 2024, as part of a comprehensive strategy to combat a growing trend of illicit online betting by youth, the Government of Argentina created national awareness campaigns, instituted access controls with biometric technological measures, and directed the *Ente Nacional de Comunicaciones* (the National Communications Entity of Argentina, ENACOM) to block illegal betting sites. As of September 2024, ENACOM reported blocking a thousand websites dedicated to illegal online betting.⁷ This effective political will and allocation of the necessary resources to successfully implement measures to tackle one form of crime should now be mirrored to combat piracy. In doing so, the new administration will need to make a wide range of immediate and sustainable changes to Argentina's copyright enforcement regime in order to reduce piracy levels, create deterrents for piracy operations and operators, and streamline enforcement procedures. It is also important to note that the above successes all originated in the executive branch, and not the legislature or the judiciary, which both play key roles in modernizing outdated legal frameworks and adjudicating anti-piracy cases in view of new technological piracy trends. It will be critical for the new administration to work with all branches of government to have a truly effective solution.

To address the longstanding piracy enforcement challenges in Argentina, and to leverage the opportunity presented by some positive steps by new administration, the Government of Argentina should provide the political will and resources necessary to enact a coordinated, long-term anti-piracy agenda at the federal level to address online piracy, including by making the following changes:

- **Create a specialized IP prosecution office and establish federal jurisdiction over copyright crimes:** The Government of Argentina should establish greater cooperation among federal enforcement agencies to address online piracy as a united front by creating a specialized IP Prosecution Office and establishing federal jurisdiction over copyright crimes.
- **Increase prioritization of and resources for IP cases:** Law enforcement authorities should be trained and politically motivated to recognize the importance of online intellectual property rights (IPR) protection as an important part of the Government's efforts to foster the Argentine digital economy. These authorities should also be made aware of the benefits for public security policies resulting from stronger online copyright enforcement. Additionally, law enforcement authorities should take further concrete steps to establish an agenda that reflects short- and long-term goals for tackling illegal sites and services and piracy groups operating in the country. Further, more investment in investigation and prosecution of IP crime is required.
- **Improve federal and state coordination:** There is general inaction and lack of coordination between federal and state jurisdictions when handling online infringement investigations and cases. For example, when an online IP crime is reported, both the Federal Police and a state prosecutor might independently proceed in processing the case without communicating or sharing data. The Federal Police view copyright infringement as a federal crime, while the state prosecutor views it as a crime involving a local Argentine citizen. These jurisdictional conflicts remain a significant barrier to initiating a successful copyright enforcement case.

⁷ See Viktor Kayed, *ENACOM Reaches 1000 Blocked Illegal Gambling Websites in Argentina*, SBCNews, September 9, 2024, available at <https://sbcnews.co.uk/marketing/2024/09/09/enacom-reaches-1000-blocked-illegal-gambling-websites-in-argentina/>.

- **Impose deterrent sentences:** There are few, if any, instances where sentences are consistently applied at a level that would deter piracy operators in any meaningful way from targeting Argentina and its consumers.
- **Target commercial-scale piracy operations:** Capitalizing on its action against multiple instances of *MagisTV*, the Government of Argentina should prioritize actions against commercial-scale piracy operations by continuing to conduct full-scale raids against piracy websites and apps, stopping the importation of circumvention devices, and ISDs into the country, and taking action against unlicensed retransmission and theft of pay-TV signals. Additionally, cybercrime entities and ENACOM should proactively monitor and perform online operations against high-profile sites and commercial activities occurring in online marketplaces and e-shops. However, based on feedback from the criminal enforcement authorities, it is understood they view any infringing site that makes money through advertising as not making direct profits from copyright infringement, and therefore, safe from criminal prosecution. This narrow interpretation of the law is not compatible with the TRIPS Agreement obligation that parties ensure that criminal enforcement measures are available, at a minimum, against commercial-scale copyright infringement.
- **Promote public-private partnerships:** Law enforcement and administrative authorities are not promoting actions by the private sector, nor are they taking initiative to tackle copyright piracy by securing the assistance of domain name registrars. IIPA urges Argentina's authorities to partner with rights holders to use industry expertise to combat cybercrime.
- **Leverage Argentina's cybercrime initiatives:** 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.⁸ 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 time users spent on infringing sites directly correlated to their likelihood of downloading malware.⁹ 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.¹⁰ 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.¹¹ 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.¹² 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

⁸ 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/>.

⁹ See 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.

¹⁰ 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>.

¹¹ 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>.

¹² See 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>.

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.

- **Promote private sector discussions on cross-industry cooperation to tackle online piracy.**

Last year, the general absence of government action against online piracy continued to reinforce low levels of compliance by Internet service providers (ISPs) and payment providers used by these illegal services. Obtaining civil injunctive relief against piracy sites remains challenging due to overly lengthy procedures, the often-limited nature and scope of the injunctions, and the vast number of sites that need to be blocked to generate impact in the pirate ecosystem. This being said, civil courts have recently issued and updated several injunctive relief decisions, which is a positive development. For example, in November 2022, the National Court of Original Jurisdiction in Civil Matters issued a decision ordering ISPs to effectively block access to the stream-ripping site *Y2mate.com*. This was the first time ISPs in Argentina had been ordered to block a stream-ripping website. Prior to this, ISPs were ordered to block *The Pirate Bay* by the National Court of First Instance in Civil Matters No. 64 (Case 67,921/13). Despite the success of the rare blocking actions against *The Pirate Bay* and *Y2mate.com*, it should be stressed that, due to the time required to prepare the evidence and information gathering for the action to move forward, as well as the jurisdictional disputes that arise in ordinary civil and federal procedures, improved criminal enforcement is still required. Following the *Y2mate.com* decision, in March 2023, a National Court in Buenos Aires issued a dynamic site blocking decision targeting 30 streaming sites following a complaint by *Alianza*. While positive outcomes, these actions had little impact on the overall piracy rates in Argentina.

Administrative injunctive relief against piracy sites remains unavailable because there is no legal basis for such procedures. Rights holders currently need to rely on criminal injunctive relief mechanisms, often linked to enforcement proceedings against the illegal service operator. Within that criminal framework, Argentine authorities are to be commended for their collaboration with Brazilian law enforcement on Operation 404, a major regional antipiracy effort, and for recent enforcement action against *Futbol Libre*, one of Argentina's most popular pirate streaming sites.

The lack of law enforcement actions also presents a challenge for further cooperation as it reinforces the status-quo and provides no safe space for cooperation discussions among stakeholders and supported by authorities. Instead, rights holders continued to directly rely more on cooperation with other actors in the online ecosystem. For example, in August 2022, the Alliance for Creativity and Entertainment (ACE) took down seven Argentina-based piracy domains based in Argentina connected to the *Pelismart/Pelispop* ring, whose websites combined had over 27 million visits per month. Due to ACE's actions, the operator agreed to take down the content, transfer the domains to ACE, and enter into a settlement agreement. However, it is important to note that this enforcement action was undertaken by a private entity (ACE) and not by the Argentine government.

Additionally, in a continuing positive development, the video game industry continues to increase its cooperation with *MercadoLibre's* regional office, based in Buenos Aires, as a strong partner through which UDGs and other infringing video game items are removed from listings, as well as to combat commercial game piracy in the entire region. ESA reports that from 2022 to 2023, *MercadoLibre* successfully completed approximately 5,300 takedown requests, nearly triple the number it completed during the previous year. Furthermore, in 2024, the number of listings offering UDGs and accounts decreased on *MercadoLibre*, due to *MercadoLibre* updating their Terms of Use to prohibit such listings. Additionally, ESA reports a takedown rate of over 99% on *MercadoLibre* and that *MercadoLibre* is proactively filtering and analyzing newly listed products for automated removal if they are found to be infringing.

Emulating the positive outcomes by ACE and ESA, Argentina should create forums to promote cooperation within the private sector. For example, the Government of Argentina should host private sector discussions on potential cross-industry cooperation to tackle online piracy more effectively.

- **Provide adequate legal powers and financial resources to DNDA and undertake routine, *ex officio* actions, such as inspections and raids of physical markets to stop commercial piracy, including ISDs.**

DNDA is underfunded. The Government of Argentina should strengthen the Office's ability to respond to commercial piracy by assigning it adequate legal powers and financial resources. Moreover, the Government of Argentina should undertake routine, *ex officio* actions, such as inspections and raids of physical markets to stop commercial piracy.

- **Incentivize DGA-AFIP to prioritize copyright enforcement actions and to monitor and perform border operations.**

Another potential strategy in the fight against piracy in Argentina is to increase involvement from and coordination with DGA-AFIP. The Government of Argentina should actively involve DGA-AFIP in copyright enforcement actions and engage customs authorities to monitor and perform border operations against counterfeit, high-value products, such as circumvention devices and modified game consoles, and ISDs entering the country via airports and land borders.

LEGAL REFORMS

- **Introduce legislation establishing adequate protections for TPMs and RMI and provide legal remedies against their removal.**

Argentina continues to lack protections for TPMs and RMI, which are critical for enabling legitimate online business models and products. In addition to protections, Argentina should also enact legislation that provides civil and criminal sanctions for all activities relating to the manufacturing of, or trafficking in, circumvention devices or technologies that circumvent TPMs. The lack of these legal tools creates an obstacle to enforcement against circumventions of protections for copyright works and means that Argentina is not meeting its international obligations as a signatory to the WIPO Internet Treaties. For example, the absence of adequate protections for TPMs in Argentine legislation raises significant concerns regarding the protection of online content, including digital account resale, modified game consoles, and cracked game titles for download, or the ability to prevent the unauthorized copying of music by stream-ripping services.

- **Repeal Decree 765/2024 that expanded exceptions to the public performance right.**

On August 27, 2024, the Government of Argentina issued Decree 765/2024 (Decree 756), which problematically expanded exceptions to the public performance right. Article 1 of Decree 765 amended Article 33 of Decree No. 41,223/34 of 1934 to state that there is "no public representation or performance when it takes place in a private setting, whether permanent or temporary."¹³ The previous narrower provision in the 1934 Decree limited this exception to "one that takes place in any place other than a private home and, even within one, when the performance or representation is projected or broadcast abroad." Article 1 of Decree 765 also broadens the definition of a public performance as "a musical or cinematographic work, records, sound films, radiotelephone transmissions and their retransmission or broadcasting by loudspeakers... which is carried out by performers or singers, as well as that which is carried out by mechanical, electronic or digital means, including the Internet."¹⁴

Rights holders are very concerned that this boarder exception, a clear violation of the three-step test, could be seen to permit the unauthorized transmissions of copyrighted content in hotel rooms, private event spaces, convention centers, and the like. In these cases, these institutions that have previously lawfully licensed this content

¹³ See The Official Gazette of Argentina, Intellectual Property, Decree 765/2024, August 27, 2024, available at <https://www.boletinoficial.gob.ar/detalleAviso/primera/312933/20240828>.

¹⁴ See id.

for years in Argentina may now believe they are exempt from performance licenses and payments. This decree should be repealed immediately because the exception conflicts with a normal exploitation of musical works and sound recordings, and potentially with a larger segment of copyrighted works given the now broader definition of types of public performances.

More recently, stakeholder groups in Argentina met several times with government representatives, including Minister of Deregulation responsible for issuing the order (Mr. Federico Sturzenegger), to express their concerns about the detrimental impact of Decree 765 on performance rights' collections from hotels, ballrooms and rented parties (which accounts for more than 30% of total collections in the country). Rights holders found that government representatives are not able to support any amendment or repeal of Decree 765. In view of this situation rights holders filed a constitutional challenge against the order on December 3, 2024, seeking injunctive relief and a declaratory judgment for violation of a constitutional right. This lawsuit was filed jointly by the record producers' local association (CAPIF) and the local CMO representing music performers (AADI). Copyright holders (including composers and publishers) filed a similar lawsuit, represented by SADAIC. The potential outcome of these cases is uncertain but there's no doubt that Decree 765 is causing significant damage to all copyright holders in the music sector in Argentina and is a very negative precedent that has already been held up as an example in other markets in Latin America.

- **Repeal provisions empowering FNA to charge fees for the “Paying Public Domain.”**

Argentina's FNA is an autonomous body within the Ministry of Culture of the Nation, that has the power to collect fees for copyright works that have fallen into the public domain. According to Law No. #1,224 and Resolution #15,850/77, FNA's main source of funding is the Paying Public Domain (“DPP”). The DPP is a fee (not a tax) that must be paid in Argentina for the use of a work authored by a national or foreign creator who died more than 70 years ago (the copyright term in Argentina is the life of the author plus 70 years). In 2022, Argentina adopted Resolution #662/2022, extending FNA's authority to charge fees against DPP rights used in the digital environment. Since the enactment of Resolution #662/2022, the video game industry reports receiving invoices from the FNA for using adaptations of stories from the public domain, including centuries-old mythologies, in video games. This highly unusual practice, rather than furthering the arts, discourages creative expression by introducing unwarranted uncertainty and financial and administrative burdens for the creative sector. The recent enforcement of the PDD reflects the funding pressures the FNA faces; indeed, the legislature recently proposed to close the agency due to budgetary restraints. If Argentina is to continue FNA's mission to encourage the creative arts, it should do so without burdening the creative community it seeks to support.

MARKET ACCESS

- **Ensure quotas for motion pictures and television content are not reimposed or extended to OTT services.**

Since 2004, the Government of Argentina, in particular the *Instituto Nacional de Cine y Artes Audiovisuales* (National Institute of Cinema and Audiovisual Arts, INCAA) and ENACOM, imposed burdensome quotas for motion pictures and television content that distorted the market, discriminated against U.S. audiovisual content, and likely resulted in increased piracy because Argentine consumers were unable to lawfully view sought-after U.S. content. INCAA and ENACOM also received pressure to extend these content quotas to streaming services. In a recent positive development, the new administration enacted Decree 662/2024 (Decree 662) on July 23, 2024, which effectively eliminated the screen quotas originally codified in the Regulation of the National Cinematographic Activity Promotion Law No. 17,741 (2001) and its amendments.¹⁵ This was a very welcome development. However, Article 9 of Decree 662 still allows the President of INCCA to establish future screen quotas. IIPA strongly urges INCCA to not impose new quotas or further efforts to expand potential quotas to streaming services. Additionally, while quotas do not seem

¹⁵ See The Official National Gazette of Argentina, Promotion of National Cinematographic Activity, Decree 662/2024, July 23, 2024, available at <https://www.argentina.gob.ar/normativa/nacional/decreto-662-2024-401988>.

to be a priority for the current administration, quotas continue to be sought by the other political parties and promoted by the local audiovisual sector.

- **Reject customs duties on audiovisual works based on the potential royalty value of the work rather than on the value of the carrier medium, as well as other customs duties and taxes that burden foreign rights holders.**

Argentina assesses customs duties on audiovisual works based on the potential royalty value of the work rather than on the value of the carrier medium. This runs counter to international best practice and is a form of double taxation, as royalties are subject to withholding, income, value-added, and remittance taxes.

In December 2017, the government passed a tax reform law that imposes a 35% customs duty on imported video game consoles, which negatively impacts the entertainment software industry as consumers resort to “unofficial importation” to avoid paying the extra charges. Moreover, the law also imposed a 21% Value Added Tax (VAT) on OTT services as well as on a range of services provided by companies in the “collaborative economy.” Then, in December 2019, the Fernandez Administration imposed a 30% Social Solidarity and Productive Reactivation Tax (PAIS Tax) over OTT services, including video game, music, and movie services. In a positive development, the PAIS tax expired on December 31, 2024. Additionally, on September 19, 2020, Argentina’s Central Bank imposed a 35% fee on foreign credit card charges, which has a negative impact on Internet and streaming services such as online game platforms that operate in the country and use foreign currency. These laws contradict international norms and should be amended or repealed.

- **Amend legislation to adapt the split of performance rights collections of music performers and phonogram producers to the 50-50 international standard, instead of the currently inequitable split of 67% to performers and 33% to producers.**

Argentina’s current law, approved in 1974, establishes that collections on behalf of music performers and phonogram producers shall be distributed 67% to performers and 33% to producers. This unfair distribution rule, imposed by law, goes against international practice and basic fairness. IIPA urges Argentina to consider legislation that establishes a more balanced distribution of 50% to performers and 50% to producers. This unfair situation can be changed only by legislation. As of October 2023, this disproportionate split in the distribution of revenue from performance rights remains the same.

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 2025.¹

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

¹ 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.² 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),³ 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 37th 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 22nd in the world for unauthorized file-sharing of mobile games and 24th 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.**

² 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.

³ 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.⁴ 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.⁵ 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.⁶ 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.⁷ 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.⁸ 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.⁹ 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.

⁴ 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/>.

⁵ 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.

⁶ 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>.

⁷ 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>.

⁸ 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>.

⁹ 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.¹⁰

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

¹⁰ Available at <https://mpaa.app.box.com/s/j69kjttd3l23tkggcfi1tvdnrmrn0pm6>.

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.”

CHINA (PRC)

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that USTR maintain China on the Priority Watch List in 2025 and that China be monitored under Section 306 of the Trade Act.¹

Executive Summary: Market access restrictions remain the primary driver behind persistent, evolving, and rampant piracy in China. While significant piracy in China's domestic market remains an enduring challenge, the exporting of pirated content, piracy services, and piracy devices (PDs) from China to foreign markets is a growing and equally troubling global trend. Longstanding market access concerns, including the inability for foreign rights holders to freely engage in distribution of video-on-demand (VOD) services or online video games, timing and deterrence concerns in court cases, and remaining legislative shortcomings all hamper rights holders' ability to distribute and effectively protect their copyright content, including holding back the Chinese creative marketplace from reaching its full potential.

China's 2021 amendments to its Copyright Law included positive developments such as the introduction of the rights of broadcasting and public performance for producers of sound recordings, a ten-fold increase in maximum statutory damages, the introduction of punitive damages, and the ability to shift the burden of proof to the accused infringer; protections for technological protection measures (TPMs); and the elevation of certain elements of the three-step test into the law. While these developments are laudable, regulations for this law and other judicial proposals and guidelines must be fully and properly implemented. Moreover, the amendments to the Copyright Law omitted several critical reforms, including extending the term of protection to match the international standard of at least 70 years, amending the scope of the making available to the public right, and the adoption of a more effective online liability framework.

The Supreme People's Court (SPC) continues to steadily improve the position of rights holders generally by clarifying, strengthening, and streamlining the application of copyright laws with respect to civil, criminal, and administrative enforcement actions brought in Chinese courts. The National Copyright Administration of China (NCAC) also pursues administrative actions against certain online services that facilitate piracy, but these actions alone are not sufficient to meaningfully deter widespread and commercial-scale online piracy. Other serious enforcement challenges in China include unauthorized distribution of journal articles, the manufacture and worldwide distribution of PDs (also known as illicit streaming devices or ISDs) and TPM circumvention devices, the operation of pirate servers to host illegally installed video games, among many other concerns.

While China's recent accession to the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (the Apostille Convention) was a welcomed development—although inconsistent implementation is being closely monitored—China still remains one of the most challenging markets in the world for the distribution of copyright content. Extensive market access barriers, both in law and in practice, severely limit foreign participation in the market. Notably, some of these barriers are violative of China's multilateral and bilateral obligations to the United States. Rather than continue to pursue policies that impede access to its market which exacerbate Chinese domestic and global piracy, China should meet its trade commitments, eliminate market access barriers, and take other steps to open its marketplace for the U.S. creative industries.

¹ For more details on China's Special 301 and Section 306 monitoring history, see previous years' reports at: <https://www.iipa.org/reports/reports-by-country/>. For the history of China's Special 301 placement, see <https://www.iipa.org/files/uploads/2025/01/Appendix-C-2025.pdf>.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Fully implement the *2019 Guidelines on Strengthening the Protection of Intellectual Property Rights*.
- Improve effectiveness of administrative enforcement by addressing repeat infringement, including against services which are geo-blocked in, but facilitate infringement outside of China, and providing timely, consistent, coordinated, and transparent administrative actions with prompt and efficient transfer of copyright cases from administrative to criminal authorities for investigation and prosecution.
- Improve the effectiveness of civil and criminal enforcement, including by issuing deterrent-level civil and criminal penalties against operators of piracy services, with sufficiently high damages to compensate rights holders and deter piracy, as well as by reducing burdensome procedural requirements.

Legal Reforms

- Swiftly and effectively implement amendments to the Copyright Law, including by accelerating the formulation and promulgation of the new Regulations on Implementation of the Copyright Law (a draft for public comment was expected in late 2024), to ensure effective implementation relating to: protection of TPMs for access controls and copy controls; appropriately narrow exceptions to prohibitions against circumvention; and the effective exercise and management of the new broadcast and public performance rights in accordance with international best practices.
- Address shortcomings in the Copyright Law relating to the scope of the right of communication over information networks, safe harbors from liability for intermediaries, term of protection for sound recordings and other works, and in the Criminal Law to ensure that criminal penalties are available for all online piracy on a “commercial scale.”
- Fully implement the intellectual property rights enforcement commitments of the U.S.-China Phase One Agreement.
- Ensure legislative proposals related to artificial intelligence meet the standards set forth by the G7 Hiroshima AI Process.
- Fully implement the *Judicial Proposals on Enhancing IP Protection and Serving Promotion of High-Quality Development of Film Industry*.

Market Access

- Abandon the slew of longstanding regulations and proposals that discriminate against U.S. producers and distributors of creative content.
- Immediately and fully implement all the terms of the 2012 U.S.-China Film Agreement and fulfill the Phase One services purchasing obligations.
- Reconsider measures prohibiting foreign involvement in online publishing activities, allow distribution of audiovisual content on online video platforms, and increase the number of approvals for foreign video games to match the number of domestic approved video games.
- Refrain from extending China's burdensome content review regime to books intended for other markets, lift content review procedures for imported physical sound recordings, and avoid instituting troublesome regulations for online games.
- Repeal discriminatory and additional impediments to China's market for U.S. audiovisual content, including higher censorship standards, caps on online distribution of foreign films and TV dramas, limited content review windows and lengthy and unclear content review procedures, burdensome documentation and re-submission requirements, and investment restrictions.
- Adopt a voluntary, age-based classification system to help eliminate disparate treatment of U.S. content and ensure that China's content review process is transparent, predictable, and expeditious.

ENFORCEMENT

China is a significant market for the creative industries, and China's online marketplace continues to expand. China leads the world in the number of cinemas and China's total box office revenue was US\$7.73 billion in 2023, up 83% from 2022. China was also the fifth largest music market in 2023 and had the fastest rate of growth in any top ten market at 25.9%, and was the second largest market for video games, where in 2023 a record 668 million gamers and revenues of US\$42.27 billion were reported. Yet, China's market for legitimate, licensed content continues to be devastated by piracy, which is only exacerbated by market access restrictions that delay the availability of legitimate, licensed content. Online piracy in China—including illegal downloading and streaming of copyrighted content through piracy websites, apps, and devices—has evolved extensively in recent years and remains a significant concern. For example, the Entertainment Software Association (ESA) reports that in 2023 China ranked seventh in the world in number of connections by peers participating in the unauthorized file-sharing of ESA member video game titles on public peer-to-peer (P2P) networks. According to this same metric, China ranked fifth in the world for unauthorized file-sharing of console-based video games and seventh for PC-based video games. Moreover, the music industry reports that 75% of surveyed users in China admitted to using unlicensed or illegal sources to listen to music.² A more holistic enforcement response is needed to effectively combat the entire online piracy ecosystem, which poses the greatest threat to the continued growth of legitimate businesses in China.

In addition to illegal downloading and streaming of copyrighted content, online journal piracy remains a significant and persistent challenge. Given the unfortunate lack of deterrence in the marketplace, online platforms engaged in providing unauthorized copies of journal articles and academic textbooks continue to operate. These platforms host unauthorized PDF copies of academic monographs, edited collections, and textbooks and facilitate access to infringing content online in several other ways, including by providing users with search tools, through the use of Internet bots, and by bypassing TPMs to gain unauthorized access to legitimate online services. Pirated print publications and compromised log-in credentials continue to be available on e-commerce sites, which also serve as platforms through which producers of pirated and counterfeit textbooks advertise and sell the infringing copies. *Lib-Gen*, a repository of large volumes of pirated content, remains among the top sites by Chinese Internet users and mimicked by Chinese-language piracy platforms. Some Chinese copycat sites have also added payment processing services to their cloned repositories of infringing book and research content, while the copied pirate repositories lack such processes.

Music piracy remains widespread despite the positive market movement, hampering the development of the legitimate market to its full commercial potential. In the International Federation of the Phonographic Industry's (IFPI) 2023 Music Consumer Study, 70.6% of Internet users in China admitted downloading pirated music in the previous month with stream ripping from unlicensed use uploaded content (UUC) video sites the major issue, such as *Miaopai*. The wide availability of pirated music on cyberlockers such as domestic cloud storage providers like *Baidu Pan* and through BitTorrent activity via clients such as *Xunlei* were also issues. China is also a large exporter of high-quality counterfeits, such as CDs and 'deluxe edition' collection sets that have almost identical artwork and packaging to the genuine products and that contain genuine-looking IFPI SID (source identification) codes. The production of counterfeit vinyl is now also an issue in China. By way of example, following a criminal investigation initiated in 2022 into the "Sound of Vinyl," a prominent seller on the Taobao platform, 13 defendants were convicted of copyright infringement offences relating to the production of 1.2 million vinyl products, infringing the rights in 1,000 sound recordings (local and international repertoire).

Due to the Chinese government's enhanced enforcement actions to combat piracy, including against pirated video games, recent years have seen a shift in piracy tactics. Instead of traditional methods that involve technical cracking of game software for complete duplication and distribution, game piracy in China is increasingly characterized by reskinning the original games with non-substantial revisions. This includes, but is not limited to, making minor modifications to the source code of original games before releasing them or more intricately copying elements of the

² International Federation of the Phonographic Industry (IFPI), *Engaging with Music 2023*, p. 13, available at [IFPI-Engaging-With-Music-2023_full-report.pdf](https://www.ifpi.org/downloads/engaging-with-music-2023-full-report.pdf).

pirated game, such as text, images, audio-visual materials, gameplay, and rules. These actions, by virtue of modifying the original game, pose greater challenges in establishing infringement compared to traditional piracy. As online games have become more sophisticated and the development costs for original developers have risen, piracy in the form of game modification poses a growing threat. Legislation and judicial practices in China currently cannot respond to this evolution in commercial-scale piracy and the copyright protections and remedies needed to stem this form of illicit game modification are unavailable. In practice, rights holders must either divide the online game into individual copyrighted works—such as text, art, or music—protected by copyright law, which incurs high litigation costs and difficulty in evidence collection or recognize the entire online game as a type of audiovisual work protected by copyright law. However, the lack of explicit classification of online games as a type of work under copyright law leads to uncertainty for game companies seeking to protect their rights.

Finally, pirate streaming sites (such as *btbt12.com* and *99meiju.cn*), cyberlockers, Internet protocol TV (IPTV) services (such as *Wang Fei Mao* and *MagisTV*, now rebranded as *Flujo TV*), and Piracy-as-a-Service (PaaS) providers directed to global audiences that are operated from within China were a growing problem in 2024. For example, companies that run apps like *LokLok* which target Southeast Asian markets, companies that manufacture, promote, distribute, and export PDs such as *MagisTV* (rebranded as *Flujo TV*) which target Latin American markets, and sites like *GIMY* (currently at *GIMY.ai*) which target Taiwan, are just some of the growing number of piracy operations that focus their illicit behavior outside of China. Given these significant piracy challenges in China, IIPA and its members strongly encourage China to take the priority actions identified below.

- **Fully implement the 2019 Guidelines on Strengthening the Protection of Intellectual Property Rights.**

Late in 2022, the China National Intellectual Property Administration (CNIPA) published a three-year Plan (Plan) (replacing the prior 2020-2021 plan) implementing the *2019 Guidelines on Strengthening the Protection of Intellectual Property Rights* (the *Guidelines*), which were jointly released by the Office of the Chinese Communist Party's (CCP) Central Committee and the Office of the State Council in November 2019.³ CNIPA's plan specifies 114 measures related to intellectual property (IP) in six categories (with deadlines). The Plan contains items relevant to the copyright industries, and IIPA is monitoring these developments closely. Industry has identified some measures as having direct relevance to the protection and enforcement of copyright, including lowering criminal thresholds, streamlining evidence processes, establishing a list of repeat infringers, and regulating websites to “remove infringing content, disrupt pirated website links, [and] stop the dissemination of infringing information.”

Moreover, China should separately define criminal violations regarding circumvention of TPMs or trafficking in circumvention technologies as noted in the *Guidelines*. As the world's primary manufacturer, producer, supplier, and exporter of video game circumvention devices and software components, China drives significant amounts of online video game piracy around the world. Game copiers or modification chips are devices commonly used to bypass TPMs in a video game console to allow the downloading and playing of infringing video games on “modded” consoles or handhelds. The harm they cause is not limited to console and handheld makers because almost all games developed for play on consoles or handhelds, including those developed and published by third parties, can be illegally downloaded from the Internet. In addition, some Chinese software developers have recently started exporting software which circumvents TPMs used by legitimate digital music services such as Spotify.

Additionally, two other measures will help advance the protection and enforcement of copyright, including measure 56, to “[p]ush IP Courts to hear IP criminal cases, continuously push reform of ‘Three in One (criminal, civil, and administrative cases in one court)’ IP trial mechanism,” and measure 51, to “[f]urther enhance management of website platforms, push fulfillment of platform accountability, and based on opinions of related departments, dispose suspected IP infringement information/content online, in accordance with laws.” The “Three in One” approach is one

³ See, e.g., IIPA 2020 at 23 for additional information on the *Guidelines*, which were issued jointly by the Communist Party of China's Central Committee (CPCCC) and the State Council.

that IIPA members would like to see fully implemented, particularly against the piracy app ecosystem and also against the massive proliferation of the manufacture, promotion, and distribution of PDs, ISDs, and TPM circumvention devices that are ravaging copyright holders' legal businesses. China remains the hub for the manufacture, promotion, and distribution of PDs, ISDs, and TPM circumvention devices, including ones that are mass exported from China, which fuel much of the world's piracy problems. This concern is so rampant that the entire Asia-Pacific Economic Cooperation (APEC) member community has examined the landscape for legal protections on this issue,⁴ and Singapore and Malaysia have already enacted and implemented laws to crack down on PD/ISD resellers, meaning the Government of China can do more to tackle this problem.

- **Improve effectiveness of administrative enforcement by addressing repeat infringement, including against services which are geo-blocked in, but facilitate infringement outside of China, and providing timely, consistent, coordinated, and transparent administrative actions with prompt and efficient transfer of copyright cases from administrative to criminal authorities for investigation and prosecution.**

Administrative enforcement measures in China are without lasting impact, as administrative authorities are unwilling to act against previously sanctioned entities unless the rights holder files a new complaint for the same infringing conduct. Rights holders must meet lengthy procedures involving repetitious and complicated evidentiary requirements. Additionally, domestic e-commerce platforms have onerous formal requirements for complaints from rights holders or agents, including complex evidentiary requirements. Depending on the scale of infringement, local cultural enforcement authorities may pursue a warning and removal of infringing content, administrative penalties, and closure of the online shop, or may refer the case to the public security authorities for criminal investigation. Further, the emergence of new technologies for enabling mass infringement, especially in the online and mobile environments, requires a vigorous enforcement response that China's administrative enforcement entities are unprepared to meet. These challenges are compounded by domestic e-commerce platforms having onerous formal requirements for complaints from rights holders or agents, including complex evidentiary requirements. Even if the platforms do accept the complaint, they will delist only the specific infringing items and generally do not take any further action to suspend or close the online shop. China should instead provide in its legal system mechanisms that 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.

IP enforcement officials conducted the annual Sword Net anti-piracy campaign, from August to November of 2023. During this campaign, 2.44 million infringing links were deleted; 2,390 pirated websites were shut down; and 1,513 cases related to Internet piracy were handled. For theatrical films in particular, NCAC deleted 117,500 links to infringing theatrical films, shut down 224 pirated video websites and apps, and terminated 2,075 accounts of repeat infringers. Additionally, under NCAC's supervision, online platforms have taken the initiative to disrupt roughly 1.26 million infringing links of films since 2023. When it comes to NCAC acting on specific piracy targets as part of the Sword Net campaign, rights holders have experienced different rates of success. For example, from October to December 2023, the Motion Picture Association (MPA) submitted 17 targets to the NCAC under the Sword Net campaign. However, as of 2024, the NCAC informed the MPA that it has not received any updates from local enforcement agencies with regard to any of the targets. In August 2024, MPA submitted 16 new targets to the NCAC under the Sword Net campaign. Preliminarily, NCAC indicated that it will forward five targets to the relevant local enforcement agencies for handling, and it remains to be seen if any action will be taken against the targets this year.

On the other hand, between August 2023 and July 2024, (IFPI's Greater China Office filed a total of 521 administrative Sword Net campaign complaints, with 57 local enforcement agencies participating in the Sword Net campaign contacting IFPI, including from Shanghai, Guangzhou, Liaoning, Hunan, Hubei, Shenzhen, Anhui, Nanjing, Huizhou, and more. Stemming from IFPI's complaints, over 101 infringing websites and physical piracy complaints

⁴ See Report on Results of Survey Questionnaire on Domestic Treatment of Illicit Streaming Devices by APEC Economies, March 2021, at <https://www.apec.org/publications/2021/03/apec-report-on-domestic-treatment-of-isds>.

were investigated and closed, with over 394 infringing websites or physical piracy sites warned and ordered to delete infringing music contents or mute the infringing music content. IFPI reported a 95% overall compliance rate. In another positive development, in October 2023, the Chinese government, through a multi-agency administrative enforcement operation, blocked 29 *Sci-Hub* domains that made available infringing copies of journal articles, along with other sites that likewise provided access to infringing content. Throughout 2024, the relevant departments of the Chinese government maintained close communication with international publishers, providing continuous support in combating infringing websites like *Sci-Hub*.

While the Sword Net campaigns and other administrative actions have produced some good results over the years, there is a need for greater regularity and transparency, including providing rights holders with timely and detailed information regarding the process and the results of administrative actions, and more consistent treatment of actioned cases as results have varied among provinces. Additionally, these administrative enforcement actions should encompass all piracy sites and services operated within or from China, regardless of whether they are accessible or geo-blocked within China. Unfortunately, NCAC does not appear to take referrals against piracy services that are not accessible within China, even when they are hosted, or their operators are located within China. This allows China-based operations to evade enforcement action by simply geo-blocking their services from access within China or serving a different set of content to users accessing these services from within China.

Administrative enforcement and coordination between administrative enforcement authorities should also be improved by expanding the resources and capability of the NCAC, local Copyright Administrations (CAs), and Cultural Law Enforcement Administrations (CLEAs) and improving the mechanism between NCAC, the Ministry of Industry and Information Technology (MIIT), and ISPs for shutting down infringing websites operating without a business license (consistent with the *Guidelines*). Administrative enforcement should also be improved by imposing enhanced penalties for repeat infringers without the need for a new complaint and imposing administrative penalties in situations where administrative authorities are unable or unwilling to engage with the operators of infringing services. In addition, administrative authorities should ensure the prompt, efficient, and transparent transfer of administrative complaints to the criminal authorities for investigation and prosecution.

The NCAC should establish a mechanism with the MIIT and ISPs to shut down infringing sites operating without a business license, and the government should, consistent with the *Guidelines*,⁵ take immediate steps to guide and regulate management of all types of websites to “remove infringing content, block or disconnect pirated website links, [and] stop the dissemination of infringing information.” Further, NCAC should be empowered to prevent platforms from imposing practical barriers to reporting infringements at scale, including burdensome formalities and limitations on the number of infringements that can be reported or processed. Infringing content is also widely made available on UUC platforms and apps, and administrative remedies have had limited effect to curb infringement, including against repeat infringers. The absence of clarity regarding the liability for UUC platforms also leads to large scale availability of unlicensed content online.

Finally, China's Customs Database allows rights holders to record IP and authorized licensees for use in preventing infringing items from being exported from or imported into China. However, the database is in Chinese only and does not support any other languages. It would be helpful for the database to support other languages, at least English, to reflect the transnational nature of infringement activity across China's borders. Additionally, it would be supportive if the database could be amended to allow for automatic updating as opposed to a manual entry process, which is both time-consuming and inefficient.

⁵ See, e.g., IIPA 2020 at 23 for additional information on the Guidelines, which were issued jointly by the Communist Party of China's Central Committee (CPCCC) and the State Council.

- **Improve the effectiveness of civil and criminal enforcement, including by issuing deterrent-level civil and criminal penalties against operators of piracy services, with sufficiently high damages to compensate rights holders and deter piracy, as well as by reducing burdensome procedural requirements.**

The past few years saw several positive civil and criminal piracy enforcement cases that could signal Chinese courts, and the judiciary, may be slowly improving the way these cases are handled and ultimately decided. For example, in June 2024, a Guangzhou court found cyberlocker host *Baidu Pan* indirectly liable for copyright infringement of certain TV programs, holding *Baidu Pan* was negligent in failing to prevent the sharing of infringing content stored on its cloud service. However, the court did not require *Baidu Pan* to permanently remove the infringing content and damages were significantly lower than expected. In September 2022, the Shanghai Pudong New Area People's Court found a virtual goods trading platform liable for unfair competition by organizing and facilitating the sale of game cheating programs. The court found the platform knowingly provided services to merchants selling cheat software while collecting transaction fees, and even assisted in concealing the illicit activities. The court ordered the platform to cease unfair competition practices and pay compensation of approximately US\$103,000 for economic losses and reasonable expenses. This judgment established intermediary platform liability for organizing the sale of game cheating software and clarified circumstances that prevent platforms from claiming immunity. IIPA hopes that this judgement will contribute to a more comprehensive approach to combat video game cheats. In addition, several judgments favorable to copyright owners were obtained from the Shanghai Yangpu District People's Court against the operators of piracy apps (formerly known as *RenRen ShiPin*) which holds all the operators jointly liable for copyright infringement as facilitators of infringement of third-party users.

On the criminal side, several actions have been taken to address massive online infringement by operators located in China, including those servicing users outside China.⁶ Notably in March 2024, Chinese authorities shut down one of the largest illegal anime websites, *B9GOOD*, operated in Jiangsu Province, fined the operators approximately US\$250,000 for copyright infringement, and sentenced the owner and operator to three years in jail.⁷ The *B9GOOD* case is a good example of how enforcement efforts can achieve a deterrent result.

While these actions were helpful, they are not enough to deter the widespread and commercial-scale piracy taking place in China, particularly when compounded by China's many informal and formal barriers that restrict the distribution of legitimate foreign content in China. Chinese courts must issue deterrent-level civil and criminal penalties against operators of piracy websites that make infringing content available, reduce documentation requirements to establish copyright ownership and infringement, and ensure timely enforcement of monetary damages. Unfortunately, civil and criminal enforcement against copyright infringement involves significant challenges for IP rights holders, including, among other things, costly and burdensome civil litigation requirements contrasted with low damages awards. Additionally, while China recently acceded to the Apostille Convention, IIPA members continue to report instances where burdensome legalization procedures for certain court documents are still required, including for some

⁶ For example, in 2023, a Shanghai court heard a case in which the defendant, a former employee of the plaintiff, copied the plaintiff's game code without authorization. The defendant made minor modifications to the original game code and launched a pirated version, generating approximately US\$3.7 million in illegal revenue. The court ruled that the pirated game was substantially similar to the original, and the defendant was convicted of copyright infringement and sentenced to one to three and a half years in prison with a fine of approximately US\$140,000. The judgment recognized online video games as compilations of works and granted protection accordingly. In determining substantial similarity, the court went beyond merely comparing game codes but instead conducted a comprehensive analysis of various game elements, including map names, navigation paths, quest items, character designs, and visual displays. The court ruled that such substantial similarity made the pirated game an unauthorized reproduction prohibited by the crime of copyright infringement under the Criminal Law. This ruling effectively expanded the scope of the crime of copyright infringement in combating game piracy and could help in combatting reskinning infringement where revisions are made to the original games. In February 2023, Guangzhou Public Security Bureau (PSB) cracked a criminal syndicate that assembled video game consoles with pirated games installed. The syndicate distributed such infringing video game consoles to 29 cities across 16 provinces, generating approximately US\$1.4 million in illegal revenue. Guangzhou PSB shut down 11 production, sales, and storage locations and arrested 26 suspects. The case was transferred to the procuratorate for prosecution. In April 2023, Jiangsu High People's Court convicted two video game piracy operators for the unauthorized copying and distribution of the online game *Tales of Dragons' Dawn* and sentenced them to three years in prison with a fine of approximately US\$457,000. In June 2023, the People's Court of Kunshan City convicted two defendants for the illegal sale of the *Chicken Leg* cheat game plug-ins for the online games *Game for Peace* and *PUBG MOBILE* and sentenced both defendants to four years in jail for copyright infringement and imposed a fine of approximately US\$2.7 million.

⁷ Zakaria Ali, "Latest Attack on Anime Piracy Marks an Historical Achievement for The Industry," Screen Rant, March 8, 2024, available at <https://screenrant.com/anime-piracy-arrests-china-b9good/>.

take down notices, and where properly legalized foreign evidence alleging infringement was prohibited from consideration entirely. For example, in a recent case where four China-based manufacturers were accused of exporting infringing video game controllers abroad, a Chinese court was unwilling to accept properly legalized foreign evidence stemming from the seizure of the infringing controllers by Belgian customs officials, where the evidence identified the manufactures as the source of the infringing controllers. The combined result of such “high costs and low benefits” of bringing civil cases, including this example, forces rights holders to rely on administrative and criminal enforcement rather than civil litigation.

While the situation might improve with the recent introduction of “Internet Courts” in several cities, for the time being, the effectiveness of copyright enforcement in China remains dependent on the action of the State in taking up rights holders’ administrative and criminal complaints. In some industries, notice-and-takedown procedures on major platforms have proven ineffective at addressing large-scale piracy abuses on their services. Platforms are frequently reluctant to act against infringing activity occurring on the platform and some have onerous requirements to file takedown notices (including requirements to register IP or entities, or providing burdensome documentation to prove ownership, before being able to file takedown notices); opaque or inconsistent approaches to taking action on takedown notices, and/or extended delays in processing takedown notices. Even if platforms delete the links upon the receipt of notices, in some cases, this deletion happens days after the infringing content is posted when the damage has already occurred. Further, when the same content reappears, many platforms do not take any measures against users that repeatedly upload infringing content, including repeated piracy facilitated through cloud-based hosting services such as *Baidu Pan* and on unlicensed short form video platforms (such as *XiaoHongshu*, *Douyin*, and *Kuaishou*).

When filing civil cases, if there are several copyright works and recordings that are infringed by the same infringer, rights holders are required by some Local People’s Courts to file separate cases (i.e. are forced to file a series of separate cases with only one work involved per case), instead of allowing rights holders to file a single case in respect to all the infringed works/recordings involved. This practice leads to an artificial increase in the number of cases accepted by the courts, but it also unnecessarily increases rights holders’ litigation costs, increases the workload of the courts, and wastes judicial resources. This burdensomely narrow form of civil action in copyright cases is a major shortcoming because penalties for single-title infringement are often much lower than if an infringer is charged with multiple counts of infringement in a single court case, when often thousands of titles are pirated by the same operator. These lower penalties would likely not be considered deterrent penalties *considering the overall scope of piracy by the infringer*.

Judgments from courts in different regions can reach contrasting conclusions despite the cases involving similar facts, which impacts judicial certainty and credibility, and disadvantages rights holders seeking to enforce their rights. Recently, the SPC issued guidance to improve this situation, including the *Guidance Opinions of the Supreme People’s Court on Increasing the Identity of Laws’ Application and Strengthening the Search for Similar Cases (for Trial Implementation)*. In this regard, it is hoped that the SPC will have the opportunity to issue more judgments with positive outcomes for rights holders as guidance cases for the lower courts. Local People’s Courts at all levels also need to be urged by the SPC to search for similar cases to those that come before the lower courts and ensure the same application of the laws to achieve greater consistency in the application of the law across the country and the court system. The consistency of judgements is a major area where there is a need for improvements in judicial practice.

Because the operation of piracy services is often overseas or multinational, cross-border enforcement cooperation is critical and needs to be improved. For example, many piracy websites use overseas servers and have applied for personal information protection from overseas domain registrars, which makes it effectively impossible for copyright holders to collect information and lodge a complaint with related enforcement agencies in China, which require such personal information. Even when rights holders can identify the infringers, China’s system has in the past created barriers to action by requiring the legalization of documentation to commence a civil action, a situation that is being closely monitored with China’s recent accession of the Apostille Convention. In the past, there have also been delays by the courts in formally accepting cases. More broadly, China should provide a full range of injunctive relief for

civil enforcement, including injunctions against intermediaries, and should ensure that courts enforce injunctions in a timely manner, including simple and expeditious orders of contempt for failure to comply. Injunctions should also be available against ISPs in copyright cases, including against access providers, requiring them to stop providing access to unlicensed copyrighted content that has been subject to a law enforcement action, but which remains available.

LEGAL REFORMS

- **Swiftly and effectively implement amendments to the Copyright Law, including by accelerating the formulation and promulgation of the new Regulations on Implementation of the Copyright Law (a draft for public comment was expected in late 2024), to ensure effective implementation relating to: protection of TPMs for access controls and copy controls; appropriately narrow exceptions to prohibitions on circumvention; and the effective exercise and management of the new broadcast and public performance rights in accordance with international best practices.**

Prior IIPA filings have documented in detail developments in the Chinese legal system for the protection of copyright, including copyright and criminal law reform efforts.⁸ These reform processes, including the ongoing implementation of the Phase One Agreement, provide important opportunities to update the legal regime in China for more effective copyright protection and enforcement. After years of IIPA and other stakeholders pressing for progress on amendments to the Copyright Law, in November 2020, the National People's Congress (NPC) passed amendments that entered into force in June 2021 but have not yet been implemented. IIPA encourages China to expedite the process to revise the Regulations on the Implementation of the Copyright Law to ensure proper implementation of the amendments, as discussed below.

IIPA is pleased that the amendments to the Copyright Law include rights of public performance and broadcasting for producers of sound recordings. This critical reform is vital for the future of the music industry in China, including both foreign and domestic rights holders, reflecting that these traditional “secondary uses” have become critical aspects of core revenue for record companies as the industry has transitioned from sale of products to licensing of uses. It is vital that China ensures effective implementation and application of these new performance rights, including the protection of foreign sound recordings, ensuring the effective exercise and management of these rights in accordance with international best practices and providing an adequate framework for tariffs that reflect the economic value of the use of the rights in trade. However, it is crucial to address outstanding ambiguities. For example, China still formally has reservations on Article 15 of the WPPT and should proactively commence proceedings to withdraw this reservation. Similarly, the newly amended Copyright Law has brought to the forefront the need for amendments to be made to the associated *Regulations on Copyright Collective Administration*, *Regulations for the Implementation of the Copyright Law* and *Regulations on the Protection of the Right of Communication through Information Networks*, to ensure the effective implementation of the law.

The Copyright Law amendments also include some positive reforms that will improve the enforcement environment in China, including increasing the maximum for statutory damages ten-fold and, upon *prima facie* evidence, shifting the burden of proof to the accused infringer to show the use was authorized by the rights holder or is otherwise permissible under the Copyright Law. However, while the government reports increased instances of punitive damages in IP cases generally, in copyright cases, damages remain largely non-deterrent, application of statutory damages can remain elusive, and some forms of injunctive relief remain ineffective particularly in “title-based” cases that focus on the infringement of a particular work involved in a case rather than the behavior of the infringing service. On damages, there can often be difficulty obtaining evidence to quantify the financial gain made by an infringer for administrative or criminal actions. In addition, the amendments elevate certain elements of the three-step test from the Berne Convention and the TRIPS Agreement into the law to appropriately confine exceptions and limitations. China

⁸ See previous years' reports on China at: <https://www.iipa.org/reports/reports-by-country/>.

should ensure all exceptions to and limitations on copyright protection in the Copyright Law are appropriately narrow in scope and otherwise consistent with the three-step test.

IIPA is encouraged that the amendments include protections against the circumvention of TPMs, including prohibitions against the act of circumvention as well as trafficking in circumvention devices or components. It is critical that China properly implements these amendments to ensure these protections are adequate and effective. For example, protection should apply to TPMs that control and manage authorized access to copyright works (“access controls”) and prohibition against circumvention should apply to both access controls and TPMs that protect rights (including against unauthorized copying) in those works (“copy controls”). As China is the world’s leading exporter of video game circumvention devices and software components, the law should prohibit the export of circumvention devices or components that drive significant amounts of online video game piracy around the world. Furthermore, certain exceptions—including for educational or scientific research, encryption research, and reverse engineering—appear overbroad (certainly broader than those found in U.S. law). Implementation of these exceptions should ensure they do not undercut the adequate and effective protection of TPMs or the exclusive rights of copyright owners. China should also ensure that circumvention devices or components, as well as more generally PDs, ISDs and even USB flash drives containing pirated content, are effectively removed from the channels of commerce, and that rights holders have standing to bring suit in cases in which the TPM was employed by a licensee platform. Lastly, China should clarify that criminal liability is available not only for circumvention of TPMs, but also for the manufacture, distribution, and exportation of circumvention devices and software components, PDs, and ISDs, and the trafficking of thereof.

Other positive aspects of the amendments include: requiring destruction or removal of the materials, tools, and equipment used to produce infringing copies from commercial channels without compensation; enabling “competent authorities” to investigate matters relating to the alleged illegal conduct, perform on-site inspections of the premises where the alleged illegal conduct took place, inspect and copy documents or materials related to suspected illegal acts, and seal or seize premises and articles involving suspected illegal acts; providing new presumptions of ownership; and adding a pre-injunction remedy to prevent further harm to rights holders.

- **Address shortcomings in China’s Copyright Law relating to the scope of the right of communication over information networks, safe harbors from liability for intermediaries, term of protection for sound recordings and other works, and in the Criminal Law to ensure that criminal penalties are available for all online piracy on a “commercial scale.”**

Despite these improvements, the Copyright Law as amended did not address several deficiencies in China’s legal framework, including matching the international standard of at least 70 years of protection for sound recordings and works, including audiovisual; introducing 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; improving available online liability rules and notice-and-takedown provisions; and aligning the scope of the making available to the public right with international standards by removing the “server test,” which requires that the act of making available occurs via copies stored in China.

First, China should further revise its legal framework to ensure adequate and effective enforcement against apps and websites that facilitate unauthorized access to copyrighted works stored on servers outside of China; and by clarifying the right of “communication over information networks” to reject the “server principle” and provide a clear legal basis under which piracy services may be held liable for IP infringements carried out by third parties using their services or networks. Furthermore, the adoption of the “server principle,” which requires that the act of making available occurs via copies stored in China, can hinder enforcement actions against unlicensed services operating outside China. In recent years, Chinese enforcement authorities, including the courts, appear to be moving away from the “server principle,” whereby they would act favorably against an infringer only when there was proof that the infringing materials were stored on a server in China. In particular, courts in Beijing, Shanghai, and elsewhere are no longer denying relief based on this principle, although it is still advantageous for rights holders to show a nexus between the pirate operator

and the pirate content stored on the operator's server. However, the problem remains that administrative enforcement authorities cite limited resources and the ability to investigate as a reason not to enforce as they are unable to collect needed evidence to take effective action.

The Copyright Law should be further updated to provide protection against unauthorized retransmissions of copyrighted content over the Internet (including live-streaming), and consistent with the requirements of the *Guidelines*, clarify the legal basis for 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. This is especially important in cases where the sites are operated outside of China or where the identities or locations of the website owners are unknown. Previously, a provision to provide such mechanisms had been removed from an earlier version of the Copyright Law Amendment (in 2012). In January 2021, the Cyberspace Administration of China (CAC) released the draft *Measures on Administration of Internet Information Services* (revised draft for public consultation) that appeared to stipulate a similar mechanism, although further clarifications were required to ensure that rights holders could request the relevant governmental agencies to require Internet access providers to prevent access to infringing websites (and other online services). However, there has been no further movement on the draft by the CAC or on the implementation of the 2019 *Guidelines* that included similar mechanisms.

The Copyright Law should also be amended to clarify that only passive and neutral intermediaries that do not contribute to infringement are eligible for the safe harbors from monetary liability, and that such intermediaries must fulfill certain conditions, including adoption and implementation of a repeat infringer policy, which would build upon the *Provisions by the Supreme People's Court on Several Issues Concerning the Application of Law in Hearing Civil Dispute Cases Involving Infringement of the Right of Communication through Information Network*. Further, it should be clarified that, upon obtaining knowledge of infringement (including through a notice) or otherwise becoming aware of circumstances from which infringement is apparent, intermediaries should promptly take steps to limit, stop, and prevent further infringement, including expeditious takedown of infringing content and other measures demonstrated to be effective in preventing or restraining infringement. Marketplaces should be required and all relevant intermediaries encouraged to institute a "know your business customer" (KYBC) policy to ensure they keep up to date and accurate information about their customers and to allow rights holders to obtain accurate information to protect their rights against direct infringers.

Finally, Chinese law still falls short of international norms and standards regarding the term of protection for sound recordings and other works, including audiovisual. A minimum term of at least 70 years from publication for the protection of sound recordings and works, including audiovisual, has become the international standard, yet China's Copyright Act still provides for only 50 years of protection.

China's 11th amendment to its Criminal Law was issued in December 2020 and entered into force in March 2021. Among other things, the reform included some positive changes to the provisions on criminal copyright infringement (Articles 217 and 218 of the Criminal Law), including increased criminal penalties for copyright infringement.⁹ In addition, the reforms expanded the scope of criminal liability to include the right of transmission over an information network, performers' rights, and the prohibition on circumvention of TPMs (although there is still no express prohibition against trafficking in circumvention devices, technologies, and services). Finally, "disseminating to the public through information network" was explicitly added as a prohibited act of criminal copyright infringement.

The Government of China should also adopt reforms that address shortcomings in China's Criminal Law that IIPA has identified in previous reports. In particular, China should meet its obligations in the WTO TRIPS Agreement

⁹ Criminal detentions are no longer applied to the crime of copyright infringement (Article 217) and the crime of selling infringing copies (Article 218). The minimum criminal punishments are fixed-term imprisonment, with the maximum sentence raised from seven years to ten years imprisonment for the crime of copyright infringement and from three years to five years imprisonment for the crime of selling infringing copies.

by revising the criminal threshold to ensure that criminal penalties are available for all online piracy on a “commercial scale.”¹⁰ The Government of China should also separately define criminal violations regarding trafficking in devices, technologies, or services to circumvent TPMs used by copyright owners to protect their works in the digital environment; and separately criminalize the manufacture and distribution of PDs that are exported for the primary purpose of infringing or facilitating infringement.

- **Fully implement the intellectual property rights enforcement commitments in the U.S.-China Phase One Agreement.**

IIPA welcomed the conclusion of the Phase One Agreement, signed by U.S. President Trump and Chinese Vice Premier Lui on January 15, 2020. In the agreement, China made several enforceable commitments that address certain concerns identified in these comments, particularly regarding intellectual property rights (IPR) enforcement. While implementation is ongoing, in August 2020, the State Council took an encouraging step by clarifying that, in accordance with Article 1.26 of the Phase One Agreement, transfers of administrative IP cases for criminal enforcement are required upon “reasonable suspicion” that the criminal thresholds have been met. The requirement that rights holders show that criminal thresholds have been met for a case to be transferred to criminal authorities has been a longstanding enforcement concern for IIPA members, and IIPA is hopeful that this new rule will be effectively applied by both transferring administrative authorities and receiving criminal authorities, although implementation by local law enforcement and public security authorities has so far been uneven. IIPA is also encouraged by recent measures enacted or proposed by the SPC and the NCAC to implement aspects of the Agreement that hopefully will improve the enforcement framework in China. IIPA urges China to follow through on its Phase One commitments and encourages the U.S. government to work with China to ensure full implementation.

China’s “e-commerce” law requires platform operators to take “necessary measures” against infringing goods or services and, importantly, the standard of knowledge for a platform operator to take action is that the platform “knows or should know” that the good is infringing. Unfortunately, Article 43 does not explicitly adopt effective practices for handling counter-notices, raising the concern that sellers of infringing products could avoid responsibility by merely objecting to rights holders’ notices of infringement. As IIPA reported previously, the new Civil Code and SPC’s Official Reply on Issues of Application of Laws for Disputes Related to Internet IP Infringement provide for improved takedown procedures that are consistent with Article 1.13 of the Phase One Agreement. It is critical that implementation of the e-commerce law is consistent with the Phase One Agreement, supports rights holders’ actions to prevent illegal trafficking of infringing goods on e-commerce platforms, and does not upset existing voluntary arrangements between rights holders and some e-commerce platforms where there is already good cooperation.

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

On several occasions throughout 2024, the Government of China discussed regulating artificial intelligence (AI), though no substantive legislative changes or proposals were introduced. On copyrights in particular, reports indicate that NCAC is in the process of drafting a decree that may introduce a text and data mining (TDM) exception. As China looks to possibly regulate AI, IIPA strongly encourages the Government of China 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

¹⁰ China should clarify that a single episode of a television program counts as one copy toward the threshold.

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."

- **Fully implement the Judicial Proposals on Enhancing IP Protection and Serving Promotion of High-Quality Development of Film Industry.**

In November 2023, the SPC released new *Judicial Proposals on Enhancing IP Protection and Serving Promotion of High-Quality Development of Film Industry* (Proposals). The Proposals, supported by multiple associations of the local film industry, call for the enhancement of IP protection for a specific industry (film). They include four key objectives for the film industry: (i) accelerate accomplishment of high-quality development of film industry under the rule of law, and advocate and execute industry practices that encourage innovation and creation; (ii) intensify copyright awareness, strictly implement the Copyright Law, improve protection of film copyright and copyright-related rights, including respecting the rights of screen writers, directors, cinematographers, lyricists, composers, and performers; (iii) utilize technical measures of content protection (for example, block chain and digital water marking) and innovate the license system to reduce infringement from the source; and (iv) actively and widely publicize IP protection during the process of disseminating films, for example, through industry forums and public service advertisements with the theme of anti-piracy and anti-camcording. The Government of China should appropriately implement the *Proposals*.

MARKET ACCESS

- **Abandon the slew of longstanding regulations and proposals that discriminate against U.S. producers and distributors of creative content.**

The piracy and enforcement concerns outlined above are exacerbated by China's pursuit of policies that have the effect of impeding foreign creators' access to the Chinese marketplace, thereby restricting the supply of legitimate products to Chinese consumers. China is still not in compliance with the WTO's ruling in the landmark market access case (DS 363) brought by the United States regarding many market access barriers in music, audiovisual products, and publications.¹¹ After the case concluded in 2009, China eased several market access restrictions,¹² but many core activities of copyright industries remain restricted or prohibited. For example, the Special Administrative Measures for Foreign Investment Access (the "Negative List"), revised in 2024, continues to prohibit, among other things, foreign investment in the "editing, publication and production of books, newspapers, periodicals, audio and video products, and electronic publications," and in "online publishing services, online audio and video program services." However, the newly revised 2024 Negative list continues to permit foreign investment in online music services, which remains a welcome and positive step. Rather than continue to pursue policies that impede access to its marketplace, China

¹¹ China—Measures Affecting Trading Rights And Distribution Services For Certain Publications And Audiovisual Entertainment Products, WT/DS363/AB/R, December 21, 2009, at [https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(%20wt/ds363/ab/r/*%20not%20rw*\)&Language=ENGLISH&Context=FomerScripitedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(%20wt/ds363/ab/r/*%20not%20rw*)&Language=ENGLISH&Context=FomerScripitedSearch&languageUIChanged=true#).

¹² China eased investment restrictions for some sectors in amendments to the Catalogue of Industries for Guiding Foreign Investment. In late 2013, the Shanghai Free Trade Zone (FTZ) was opened to foreign investment, allowing the introduction of game consoles into China for the first time, and easing restrictions on foreign audio and audiovisual product distribution (although confirmation that distribution of "music videos" is permissible, and that a foreign-invested entity established in the Shanghai FTZ may distribute music throughout China, would be helpful, as it remains unclear whether these activities are permitted). In 2015, China eliminated most restrictions on video game consoles, paving the way for video game companies to manufacture consoles in all of China, although manufacturers and publishers must still comply with strict regulations including those for pre-sale content review. China also agreed to allow foreign entities to choose their licensees for online music distribution, and to engage in content self-review of music for the first time. New incentives were also introduced for more film co-productions in China.

should meet its trade commitments and take steps to open its marketplace for the music, publishing, video game, and motion picture and television industries by eliminating the market access barriers discussed below.

- **Immediately and fully implement all the terms of the 2012 U.S.-China Film Agreement and fulfill its Phase One services purchasing obligations.**

Chinese companies are investing heavily in content and media, with greater numbers of co-productions and financing from China. IIPA urges China to meet its trade commitments and open its marketplace to U.S. producers instead of continuing down its current protectionist path. It is critical to send a strong message that these policies are unacceptable—particularly when China is the second largest film market in the world—and should be reversed. As discussed below, China should instead focus its attention on complete implementation of the 2012 U.S.-China Film Agreement and fulfill its Phase One services purchasing obligations, including IP licensing of audiovisual works, as well as other market-opening steps for the motion picture and television industries.

Hailed as a “breakthrough,” the Film Agreement promised to economically uplift U.S. and Chinese producers and distributors. Unfortunately, more than twelve years after its signing, China has failed to meet its obligations under the Film Agreement. The result of not implementing key provisions of the Film Agreement has been a steady further deterioration of U.S. producers’ ability to access China’s theatrical marketplace, as well as the broader marketplace for other types of distribution in China, such as via VOD and television (especially for independent producers). As part of the Film Agreement, China committed that in 2017 it would make a meaningful increase to compensation for revenue-sharing theatrical releases, as the current 25% U.S. share of revenue is far below comparable markets and the international norm. In practice, distributors are deducting ticket distribution fees before calculating the U.S. studio share, reducing the actual allocation to less than 25% of the box office.¹³ Furthermore, the official quota on revenue-sharing releases of 20-plus-14 (enhanced format) remains. However, review and additional compensation has never occurred, and China must be pressed to comply with its obligations. In addition, China has imposed artificial limits on market access for imported films, despite a large number of domestic productions (which was 792 in 2023),¹⁴ as well as around 77,000 theatrical screens in 2023.¹⁵ In the case of “flat fee films,” which are imported by private distributors outside of the box office revenue-sharing quota system, China has enforced restrictions, including an informal cap on the number of these films that can be imported. Furthermore, China has retained governmental control of key elements of distribution, severely limiting the ability of private Chinese distributors to import and distribute any foreign content.

These barriers virtually eliminated U.S. independent films from China’s theatrical marketplace, with the independently produced and distributed films’ share of the theatrical market in China drastically reduced and nearly blocked. Since 2012 the independents’ share of the market has decreased from 10% of U.S. films released in China to 2.6% at the end of 2019. In 2021, there were just nine independent theatrical releases in China, representing the lowest percentage of slots (1.8%) ever allocated for independent films recorded by the Independent Film and Television Alliance (IFTA). The situation through 2024 remains the same for the independent film and television industry. U.S. independent producers who rely on private distributors and the payment of minimum guaranteed or flat license fees to raise production financing and secure distribution have seen their licensing revenues plummet and, in many cases, stop altogether.

China further committed in the Film Agreement (and reconfirmed in commitments at the June 2015 U.S.–China Strategic and Economic Dialogue (S&ED)) to promote and license privately owned Chinese distributors to engage in national theatrical distribution of imported films without the involvement of any state-owned enterprise. This

¹³ This practice is inconsistent with global best practices, where cost of sales is not deducted from gross box office calculations, a point reinforced by the fact that for public reporting of “Gross Box Office” Chinese distributors still state the amount without netting out such fees. Online ticket sales platforms and related fees postdate the MOU and shifted the cost of ticket sales—which had not been deducted from Box Office calculations from cinemas to third parties/platforms.

¹⁴ Statista, Film industry in China - statistics & facts, May 22, 2024, available at <https://www.statista.com/statistics/260392/number-of-feature-films-produced-in-china/>.

¹⁵ According to Beacon Data, the actual running screens in 2023 is 77,323.

requirement has also not been implemented. The Chinese Film Administration (CFA) which replaced State Administration of Press, Publication, Radio, Film and TV (SAPPRFT) in 2018, still permits only one film importer, the China Film Group (CFG) and two distributors of foreign films: CFG and Huaxia Film Distribution Company Ltd. While China affirmed in the Agreement that any properly licensed Chinese enterprise may distribute imported films, CFA has yet to approve any new private Chinese distributors. CFG also determines the release dates and length of theatrical runs of foreign films, often restricting the ability of U.S. producers to obtain full commercial value of films.

IIPA recommends that China immediately act in a transparent and expedited manner on the following issues, which have been long delayed: (1) fully implement all the terms of the Film Agreement, including the requirement to enhance compensation in 2017 (such review has been delayed for almost seven years), liberalize the distribution market for private third party Chinese distributors, and finalize a new Memorandum of Understanding (MOU); (2) substantially increase U.S. producers' share of revenues for the box office revenue share films from the current 25% to a level consistent with international norms; (3) allow U.S. producers more control over release dates, address the problem of U.S. films being locked out from the prime release dates, and end the practice of "double booking" theatrical releases; (4) eliminate informal restrictions on the number of imported "flat fee" films so that independent producers have unimpeded access to the Chinese market; (5) further relax the quota for revenue-sharing films and VOD products for online video websites so filmmakers and audiovisual companies may have fair and equitable access to the rapidly growing marketplace for films and TV in China; (6) ensure U.S. producers receive timely responses to quota allocations and content review determinations, and effective access to ticketing system information to ensure proper reporting of revenues; (7) establish defined and prescribed content review time frames for theatrical and online distribution; increase the frequency of content review windows; remove the burden of resubmitting film and television programs that have already been approved; and establish a fast track system for content review under special circumstances; and (8) streamline the payment of deposits, guarantees, and royalties by local distributors to U.S. producers, and do not establish any regulation or policy that impedes the collection of license fees by American IP owners.

- **Reconsider measures prohibiting foreign involvement in online publishing activities, allow distribution of audiovisual content on online video platforms, and increase the number of approvals for foreign video games to match the number of domestic approved video games.**

As we have noted in prior reports, the 2016 Online Publishing Rules, which appear to expand the scope of longstanding restrictions on the involvement of foreign entities in online publishing activities, have a chilling effect on foreign investment in online publishing services where, prior to the rules, some latitude appeared to have been granted.¹⁶ Furthermore, when China revised its Negative List in September 2024, the country lifted certain restrictions, but foreign investment in the production and distribution of audiovisual products and "online publication services" remained prohibited.

In addition to existing investment barriers, China has introduced several alarming draft measures that, if implemented, would discriminate against U.S. producers and distributors of creative content. For example, the draft Radio and Television Bill released by the National Radio and Television Administration (NRTA) in March 2021 could tighten regulation standards for online audiovisual programs and restrict foreign producers from participating in radio and television activities, including online. In May 2016, the former SAPPRFT proposed policies that, if implemented, would provide state-owned media companies with voting control over leading online platforms for films and TV content. In June 2016, China published new content approval regulations for mobile video games that make it extremely difficult for foreign publishers of mobile games to access the Chinese market. While there has been an annual increase in the number of imported game licenses approved in China since 2022, the percentage of these imported games originally published by U.S. publishers or adapted from U.S. IP continues to decreased each year, with four out of 44 in 2022, five out of 58 in 2023, and six out of 75 as of late 2024. China should increase the number of approvals for foreign video

¹⁶ Among other things, these rules unfortunately restrict the distribution of foreign audiovisual content on online video platforms, even if the distributor has received a home entertainment permit from the former General Administration of Press and Publication (GAPP).

games to match the number of domestic approved video games and ensure games originally published by U.S. producers or adapted from U.S. IP have equal access to the Chinese market.

- **Refrain from extending China’s burdensome content review regime to books intended for other markets, lift content review procedures for imported physical sound recordings, and avoid instituting troublesome regulations for online games.**

Censorship of the U.S. creative industries by the Government of China not only blocks access into China, but also impacts the content brought to the worldwide marketplace. For example, China appears to apply its content review regime to books intended for other markets. Books merely being printed in China but otherwise intended for distribution in other markets appear subject to China’s burdensome content review regime. Even books that were previously printed in and exported from China without issue now appear subject to the more stringent application of the regime. Extending the reach of its burdensome content review regime to books merely being printed in the country but otherwise intended for distribution in other markets places an arbitrary and unjustified discriminatory burden on foreign publishers, who, for decades, have used printing partners in China, and is arguably a disguised restriction on international trade.

Additionally, sound recordings that are imported into China in a physical format are required to undergo a strict content censorship procedure, comply with a series of formalities, and receive approval before distribution in the market. These requirements should be lifted.

Finally, in December 2023, China’s National Press and Publication Administration (NPPA), the primary regulator for game publication, approval, and supervision, released for public comment a proposed bill entitled *Measures for the Administration of Online Games*. This draft provides a framework for the establishment of online game publishing and operating entities, management, and supervision of online games. It reflects the Chinese government’s heightened and detailed oversight of online games, emphasizing content compliance, protection of minors, and promotion of cultural values, with key provisions including: (1) extended license review period; (2) game license management; (3) game mechanics and monetization restrictions; (4) loot box controls; (5) beta testing requirements; (6) digital payment system requirements; (7) cultural content promotion; (8) enhanced penalty framework; (9) domestic server and storage requirements; and other requirements. While the video game industry actively supports the goals of online safety and digital wellness, these proposed regulations and burdensome licensing requirements by contract target the business models that video game companies have specifically developed to combat the piracy of downloaded games, such as free-to-play and in-game purchase models, and which can unfairly impact IP rights holders. It is imperative that this proposal not place an undue burden on the video game industry, including by disrupting efforts to prevent piracy and creating vacuums that can be filled with demand for pirated games.

- **Repeal additional impediments to China’s market for U.S. audiovisual content, including higher censorship standards, caps on online distribution of foreign films and TV dramas, burdensome documentation requirements, and investment restrictions.**

China continues to introduce additional impediments to its market for U.S. audiovisual content, limiting the U.S. creative industry’s ability to fully access and compete fairly and inhibiting its potential growth in this massive and fast-growing market. In June 2022, the NRTA issued a new system of administrative licensing for domestic online audiovisual works, essentially applying the same censorship rules and standards for offline (theatrical) and online (VOD) content. The issuance of the new administrative licensing requirement formalizes the obligation for online audiovisual works although the restrictive practice has been in place since 2019. Furthermore, imported films with public screening permits are now required to resubmit for online distribution approval which means a second content review and further delays. This reflects a further tightening of government oversight and the push for a higher censorship standard for the online content industry in China.

In 2014, the government imposed rules capping the online distribution of foreign films and TV dramas at 30% and requiring online distributors to register content, obtain permits, and submit content for review, resulting in extended delays and further uncertainty. Furthermore, because there are only two opportunities to submit content for registration and review per year, U.S. producers are unable to submit a full season of a television series when that season is current due to the nature of television production. These rules have substantially reduced the number of U.S. film and television programs licensed in China for online distribution and in practice further reduced the foreign content caps to less than 30%. Bans or caps on U.S. content in China create a vacuum of demand that can be filled by pirated content, which damages investment in the Chinese creative sector.

In September 2018, the NRTA proposed two draft regulations expanding the 30% cap for online distribution of foreign audiovisual content to broadcasting and applying the cap on a genre basis to film, TV, animation, documentaries, and “other” programs. While these regulations have not been officially promulgated, provisions to further tighten the content review process for imported content have been implemented, and IIPA is concerned that industry-wide application of the genre-based restrictions began in early 2020, in particular for animation, further exacerbating the uncertainty and uneven playing field faced by U.S. audiovisual companies.

The 2016 *Online Publishing Rules* clearly intended to promote domestic Chinese radio and television programs at the expense of foreign content have negatively impacted U.S. producers and appear to contravene China’s WTO obligations. A March 2016 Notice allowing refunds from the Film Development Fund to cinemas that report favorable annual box office receipts from the screening of Chinese films incentivizes cinemas to screen more Chinese domestic films, further disadvantaging the competitiveness of foreign films in the Chinese market. Another obstacle for U.S. producers in China is that private Chinese distributors, including VOD platforms, arbitrarily, without clear explanation, request from U.S. producers an excessive and particularly burdensome amount of legalized documentation regarding production and distribution to complete a license agreement or obtain government approvals that permit access to China’s online marketplace. These types of documentation requests (unique to China’s marketplace) cause uncertainty and additional expense that slow or kill negotiations for licensing films to China. However, China’s recent accession to the Apostille Convention on November 7, 2023, a welcomed development, is expected to ease burdens for rights holders who suffered from previous documentation requirements. However, the rollout of the Apostille Convention in China is being monitored closely given instances of inconsistent implementation described earlier regarding still present legalization requirements in certain types of enforcement actions.

In July 2023, the revised Anti-Espionage Law, first introduced in November 2014, came into effect. The revisions significantly broaden the scope of what constitutes “espionage” and give the relevant authorities new powers to investigate and prosecute suspected espionage activities. Many of these provisions were already present in other existing rules, such as the Anti-Espionage Law’s Implementing Rules, released in 2017 which dealt with enforcement procedures; and the Provisions on Anti-Espionage Security Precautions from 2021, which have now largely been copied in the revised Anti-Espionage Law. Still, the consolidation of these amendments into a single, powerful Anti-Espionage Law with broad applicability is significant. The most notable change is the broadened definition of “espionage,” which can now involve the collection, storage, or transfer of any information deemed to be relevant to national security interests, including “documents, data, materials, or items.” The definition was previously more limited to classified information and state secrets. The broadened definition potentially raises uncertainties even under friendly collaborations, including when foreign investment is permitted, such as in online music services. For example, Chinese companies may now be unwilling or cautious to share key financial or business-related information with potential foreign investors that would be considered necessary to establishing a joint partnership.

- **Adopt a voluntary, age-based classification system to help eliminate disparate treatment of U.S. content and ensure that China’s content review process is transparent, predictable, and expeditious.**

Chinese distributors have delayed or decreased licensing activity through multiple layers of restrictions under a non-transparent content review system, significantly delaying and limiting Chinese consumers’ ability to access the

most valuable current U.S. television content within a reasonable period of the U.S. release, which has created fertile ground for increased piracy. To help ensure the content review process is transparent, predictable, expeditious, and does not have a disparate impact on U.S. content, China should adopt a voluntary, age-based classification system or at least provide transparency as to the criteria used by content approval authorities and clear, predictable timelines. China should also shorten the time for content review to provide certainty of release, increase frequency of content review windows, remove the burden of resubmitting film and television programs that have already been approved, and establish a fast-track system for content review under special circumstances. Such a system will attract investment and boost China's potential as a regional film and television production hub.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

As noted above, China is still not in full compliance with the WTO's market access case (DS 363), and many of the market access barriers discussed above raise concerns under China's international obligations, including under the General Agreement on Trade in Services (GATS), TRIPS Agreement, and the Phase One Agreement (including Article 1.2 to ensure fair and equitable market access to persons that rely upon IP protection).¹⁷ In terms of copyright protection and enforcement, the deficiencies outlined above regarding criminal enforcement procedures (e.g., thresholds that are too high or unclear, uncertainties regarding increased penalties against repeat offenders) are inconsistent with enforcement obligations under TRIPS, including Articles 41, 42, and 61. Finally, China must follow through on commitments it has made in other bilateral engagements, including the Phase One Agreement and prior commitments, specifically addressing many of the issues discussed above, including full implementation of the U.S.-China Film Agreement, enhanced enforcement against PDs, improved enforcement against online piracy, and enhanced protection of academic journals, including strengthening library copyright protection.

¹⁷ For example, in the 2023 Report to Congress on China's WTO Compliance, USTR noted: "NRTA and other Chinese regulatory authorities have also taken actions to prevent the cross-border supply of online video services, which may implicate China's GATS commitments relating to video distribution." See page 63, Report available at [https://ustr.gov/sites/default/files/2023%20USTR%20Report%20on%20China's%20WTO%20Compliance%20\(Final\)%20\(USTR%20Website\).pdf](https://ustr.gov/sites/default/files/2023%20USTR%20Report%20on%20China's%20WTO%20Compliance%20(Final)%20(USTR%20Website).pdf) .

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 2025.¹

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.² 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.

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

² 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.

- 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 basis³ 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.⁴ 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

³ 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.

⁴ 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.⁵ 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*.⁶ 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;

⁵ 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)).

⁶ *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 2024.⁷ 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.*,⁸ 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

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

⁸ 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_uWUJe3Hg-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.⁹ 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.¹⁰ 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.¹¹ 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.¹² 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.¹³ Separate from the successful outcome, the Court

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

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

¹¹ 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>.

¹² 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.

¹³ See *Star India Pvt. Ltd v Live4wap.click & Ors.*, Delhi High Court, November 1, 2023, available at https://dhcappl.nic.in/dhcorderportal/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.¹⁴

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.¹⁵ 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.¹⁶ 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.¹⁷ As of November 2023, the MIB had authorized twelve officers in nine cities¹⁸ ("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

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.")

¹⁴ *Id.*

¹⁵ 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>.

¹⁶ 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.

¹⁷ 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.

¹⁸ 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.

INDONESIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Indonesia remain on the Priority Watch List in 2025. IIPA also requests suspension or withdrawal of Indonesia's Generalized System of Preferences (GSP) benefits, in whole or in part if, at the conclusion of the GSP investigation, the Government of Indonesia has not made adequate progress remedying the deficiencies identified below.¹

Executive Summary: Indonesia is an important growth market for the creative industries that is unfortunately seriously hampered by an outdated copyright legal framework and growing market access restrictions, which, combined, make it difficult for Indonesia to take effective and meaningful actions against today's modern piracy actors and operations. Online piracy and marketplaces for piracy devices (PDs) remain a serious concern, though government agencies' efforts to disable access to piracy sites were faster and more efficient last year, leading to some positive outcomes for rights holders. However, the failure to bring enforcement actions against commercial-scale online piracy services, including criminal prosecutions with deterrent penalties, remains the major enforcement hurdle. Enforcement concerns are amplified by a failure to update Indonesia's now over ten-year old Copyright Law, which did institute positive changes at the time it passed in 2014. This law should be updated in line with international commitments and best practices to ensure rights holders, government agencies, and the judiciary have the necessary tools to combat today's modern and commercial-scale pirates and to enhance Indonesia's ecosystem for creators and creative industries. Moreover, now may be a particularly timely opportunity to revise the Copyright Law, as the Indonesian Parliament ratified the Regional Comprehensive Economic Partnership (RCEP) in August 2022 and has formally requested to join the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) in September 2024. The Government of Indonesia has also made some troubling policy shifts regarding market access including maintaining in the Film Law a screen quota and dubbing restrictions for imported films released theatrically, and by considering proposals for problematic censorship and classification requirements for video-on-demand (VOD) services. Finally, IIPA remains concerned about Indonesia's moves toward imposing customs duties on electronic transmissions and related opposition to extending the WTO e-commerce moratorium.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Bring enforcement actions against commercial-scale digital piracy services and criminally prosecute, with deterrent penalties, the major piracy services operating in Indonesia.
- Continue and enhance enforcement actions under the Copyright Law and Regulation Nos. 14 and 26 of 2015 to disable access to piracy sites and domains.
- Combat illicit live streaming and unauthorized camcording piracy by taking appropriate criminal enforcement action, as well as enacting regulations or guidelines confirming that this activity is illegal.
- Monitor the marketplace and combat the proliferation of PDs (including illicit streaming devices (ISDs) and set-top boxes) and piracy apps.

Legal Reforms

- Ensure any revision of the Copyright Law is in line with international commitments and best practices.

Market Access

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

- Eliminate screen quotas and prohibitions on dubbing imported films.
- Reject content review and classification requirements for over-the-top (OTT)/VOD and avoid localization requirements.
- Improve regulations related to collective management and take steps to address royalty rate and licensing collections issues.
- Support an extension of the WTO e-commerce moratorium prohibiting customs duties on electronic transmissions and rescind Regulation No. 190/PMK.04/2022 requiring importers to file a customs declaration for any import of intangible goods through electronic transmission.
- Remove the local production requirement for Free-to-Air TV and pay-TV advertising.
- Exempt curated content services (including OTT/VOD content service providers) from the scope of Ministerial Regulation 5 (MR5).

ENFORCEMENT

Piracy in Indonesia inflicts severe losses on Indonesian creators, as well as U.S. book, motion picture and television, music, and video game industries. The Indonesian marketplace holds enormous potential for the legitimate commercial market, including for the online dissemination of copyright works, yet commercial-scale piracy stifles this opportunity. For the recorded music industry, stream ripping emerged as the major piracy threat, and both international and domestic language stream-ripping sites have provided Internet users with the bulk of illegal downloads. For example, the International Federation of the Phonographic Industry's (IFPI's) 2023 Music Consumer Study (MCS) found that Indonesia had the highest music piracy rates within the 26-country study, with stream ripping as the dominant method of piracy. More than three-quarters (78%) of respondents to the study from Indonesia said that they regularly pirated music, a rate substantially higher than the global average of 29%. Stream ripping remains the most popular form of music piracy, with websites such as *Y2Mate*, *SaveFrom* and *SSYouTube* being especially popular to Indonesian users. Unlicensed mobile apps used to stream rip and illicitly download music content were also a major issue in Indonesia, with *Vidmate* being installed on 18% of respondents' phones and *SnapTube* on 13%. In addition to stream ripping, there was also wide use of cyberlockers to obtain music content in Indonesia where 37% of respondents had used a cyberlocker in the previous month to pirate music. Based on *SimilarWeb* data, the most popular cyberlockers were *Mega.nz* (16.6m visits from Indonesia in Q2 2024) and *Krakenfiles.com* (8.4m visits from the country in the same time period). Indonesia was also responsible for more traffic to *Krakenfiles.com* than any other country in the world, contributing more than 35% of visits in Q2 2024. In 2023, Indonesia ranked sixth in the world for the number of connections by peers participating in the unauthorized file-sharing of Entertainment Software Association (ESA) member mobile video game titles on public peer-to-peer networks.

Indonesia is one of the most syndicated markets in the region when it comes to digital piracy. Many of the syndicates, such as *LK21* and *BioskopKeren*, have been around for many years and continue to operate despite consistent site blocking efforts. *LK21* is the most popular piracy syndicate in the region and has a domain hopping practice, making it particularly difficult to track. The illegal streaming site *Idlix* has also recently surged in popularity to become one of the most visited streaming sites in Indonesia. Levels of online piracy are unlikely to decrease unless the government takes meaningful enforcement action against the owners/operators behind these three syndicates. Indonesia is a major exporter of piracy as well. *Goojara.to*, and its associated active domains which are suspected to be operated out of Indonesia, received 620.2 million visits globally in 2024.

- **Bring enforcement actions against commercial-scale digital piracy services and criminally prosecute, with deterrent penalties, the major piracy services operating in Indonesia.**

Enforcement actions against commercial-scale piracy websites and services have been limited and have failed to noticeably reduce levels of online piracy or provide much-needed deterrence. Homegrown piracy syndicate sites and "brands" such as *LK21*, *BioskopKeren* and *Idlix* have harmed the creative industry ecosystem for years, and the audiovisual industry is now seeing new trends, such as the use of dedicated Internet protocol addresses that evade

domain name-based blocks, as well as the rapid growth in popularity of international repertoires such as anime and Korean and Chinese dramas (with Bahasa and English subtitles).² The motion picture and television industry and the recording industry report such sites engage in domain hopping, and even after administrative site-blocking actions are initiated by the creative industries and implemented by the government, the sites remain available through alternative domains and copycat sites. The Government of Indonesia should address this issue of domain hopping by allowing for faster disposition of blocking orders related to the “hopped” domains and copycat sites and domains. There also remains no clear remedy for rights holders against sellers who sell devices separately from the sale of IPTV subscriptions or sellers who find ways to distance themselves from the installation of compatible infringing apps.

Indonesia should also increase the capacity of its enforcement officials, who generally lack familiarity in investigating and handling digital forensic evidence and do not understand the ease with which pirates are able to use anonymizing software and infrastructure to evade detection. With rare exceptions,³ online piracy operators do not receive deterrent-level penalties. The government should criminally investigate operators of major online piracy services, such as *LK21*, *Idlix*, and *BioskopKeren*, and issue penalties strong enough to serve as a deterrent to others. In addition, the government should develop a comprehensive roadmap for addressing online piracy in consultation with both domestic and foreign copyright stakeholders. This should include a focus on improving collaboration between police, cybercrime units, and local and international rights holders, as well as implementing a government/industry anti-piracy consumer awareness campaign with the goal of encouraging consumers to migrate to legitimate offerings.

- **Continue and enhance enforcement actions under the Copyright Law and Regulation Nos. 14 and 26 of 2015 to disable access to piracy sites and domains.**

The government continued to make efforts in 2024 to improve actions under the Copyright Law and Regulation Nos. 14 and 26 of 2015 to disable access to piracy sites and domains, with faster outcomes leading to more timely and effective blocking orders. Access to thousands of notorious piracy site domains was disabled, representing once again a very welcome development this past year. However, problems remain. First, the *Direktorat Jenderal Kekayaan Intelektual* (Directorate General of Intellectual Property, DGIP), while generally demonstrating resolve against piracy by swiftly issuing orders to disable access to egregious piracy sites, may not always be subject to strict timelines which can cause delays at certain times of the year. Understaffing at DGIP is also a problem for cases coordinated through Interpol’s Stop Online Piracy initiative. Second, pirates have developed a multi-step redirection scheme whereby, either in order to circumvent orders, or to thwart intermediaries taking steps to reduce piracy (such as the use of demotion signals), pirate operators not only hop from domain to domain, but assign multiple domains (sometimes more than a dozen) which link to the same piracy location. As a result, actions to disable certain domains will not always be as effective as they should be since the pirate operator is constantly switching between multiple domains that are a part of the scheme. While DGIP is willing to block all the known redirection domains, which is helpful as long as the pirates’ list of domains in the scheme remains static, new dynamic hops must be presented in a separate application to DGIP. However, DGIP’s system can be improved by: (i) training personnel to manage these actions; (ii) hiring more personnel to handle the cases coordinated by Interpol; and (iii) making the actions to disable piracy sites dynamic which would allow “hopped” domains to be more easily stopped, and would mitigate the “multi-step redirection schemes” that can often hide the identity and location of commercial-scale pirates.

- **Combat illicit live streaming and unauthorized camcording piracy, by taking appropriate criminal enforcement action, as well as enacting regulations or guidelines confirming that this activity is illegal.**

Illicit live streaming continues to be a major concern in Indonesia. In addition to taking appropriate criminal enforcement action, the government should also issue clear guidelines and regulations on live-streaming piracy, including expressly outlawing these activities and prioritizing action against these illegal acts. Despite a reduction in

² Sites like these employ gambling advertising and sometimes pornography to lure users.

³ In December of 2023, cooperation between the DGIP, Korean Ministry of Culture, Sports, and Tourism (MCST) and the Korean national Police Agency (KNPA), led to the arrest of three suspects behind the TVDOL illegal IPTV service. While this was a welcome development, more needs to be done to combat online piracy.

known incidents of camcording, the government should also seek to strengthen enforcement against illicit camcording by: (i) fostering greater cooperation with cinema owners to fully uphold and enforce the Law; (ii) taking and supporting targeted enforcement actions; and (iii) where warranted, proceeding with prosecutions against those engaged in this damaging activity.⁴ The Explanatory Memorandum to the 2014 Copyright Law indicates that the unauthorized use of an audiovisual recording device in a movie theater (camcording) can be addressed under the reproduction right. Regulations should be introduced that provide a clear legal basis to prohibit camcording (as well as live streaming) in cinemas and strengthen enforcement remedies available. Moreover, the Government of Indonesia should implement a program to socialize the amended regulations, so they are widely accepted by the public.

- **Monitor the marketplace and combat the proliferation of PDs (including ISDs and set-top boxes) and piracy apps.**

Streaming devices that run infringing apps which enable access to live channels and VOD content are readily available in Indonesia via online marketplaces, including popular ISDs *UnblockTech*, *EVPAD*, *SVI Cloud* (all manufactured in China), and *SYBER TV*. This content may be pre-loaded prior to shipment or loaded by vendors upon import and prior to sale as an “after sale” service. Sellers of PDs often do not install the infringing apps and thus claim that the manufacture or sale of the devices themselves is not illegal. However, in a 2021 survey conducted under the auspices of the Asia-Pacific Economic Cooperation (APEC) Intellectual Property Enforcement Group, the Government of Indonesia expressed that Indonesian law may indeed prohibit the boxes.⁵ IIPA encourages the Indonesian government to take steps to crack down on piracy apps and device manufacturers or resellers who pre-load the devices with apps that facilitate infringement, as well as to take action against key distribution points for devices that are being used illegally. The *LokLok* piracy app remains a significant problem for the audiovisual industry. *LokLok* had garnered 13.621 million installs, with an average of 7.261 million monthly active users between January 2023 and August 2024. *LokLok* claims to operate as a user-generated content platform to evade takedown and delisting actions, however, it does not support video uploading and directly provides infringing content to its users. *LokLok* continues to evade enforcement measures in various jurisdictions by restricting availability of content based on region.

LEGAL REFORMS

- **Ensure any revision of the Copyright Law is in line with international commitments and best practices.**

Copyright law in Indonesia is governed by: the Law Concerning Copyright (Number 28 of 2014, the Copyright Law), which entered into force in 2014, replacing the prior 2002 law; and Regulation Nos. 14 and 26 of 2015, which sought to implement key provisions concerning online and digital forms of infringement, including provisions intended to implement Indonesia’s international obligations under the WTO TRIPS Agreement, the Berne Convention, the WIPO Copyright Treaty (WCT), and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties). DGIP has considered a partial revision of the Copyright Law, focusing on copyright ownership and collective management issues, as well as exceptions and limitations. While revision is welcome in principle, as it provides an opportunity to address a number of long-standing concerns of rights holders, the direction of planned reform is far from

⁴ Preferably, an express provision would have been added to the Explanatory Memorandum to the 2014 Copyright Law, defining the act of using (or attempting to use) an audiovisual recording device in cinemas to camcord, record, or transmit a film, in whole or in part, as a strict liability criminal offense. The Asia Pacific Economic Cooperation (APEC) Ministers and Leaders, including from Indonesia, agreed in 2011 on “Effective Practices for Addressing Unauthorized Camcording,” and the steps recommended therein should also be taken. These include: (1) educating the public about the problems posed to businesses and the consumer by unauthorized camcording; (2) working with the private sector to identify and prevent unauthorized camcording in cinemas; and (3) developing and implementing legal measures to effectively deter unauthorized camcording. See *Effective Practices for Addressing Unauthorized Camcording*, 2011/AMM/014app05, 23rd APEC Ministerial Meeting, Hawaii, United States, November 11, 2011.

⁵ In an Asia Pacific Economic Cooperation (APEC) initiative in 2021, Indonesia participated in an “Intellectual Property Experts Group” (IPEG) survey of laws and activities designed to obtain information about the domestic treatment of ISDs in APEC economies. The government indicated in that survey that it believes “the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs.” See *Report on Results of Survey Questionnaire on Domestic Treatment of Illicit Streaming Devices by APEC Economies Intellectual Property Experts Group*, March 2021, available at <https://www.apec.org/publications/2021/03/apec-report-on-domestic-treatment-of-isds> (noting that ISDs are a “serious problem” and noting relevant laws, including “Joint Ministerial Regulations Between Minister of Law and Human Rights and Minister of Communication and Informatics Number 14 Year 2015, Number 26 Year 2015 Regarding Implementing Closure of Content and /or Access Rights to Use Violations of Copyright and/or Related Rights in the Electronic System.”).

clear, and it remains to be seen whether potential revisions will result in enhanced or weakened copyright protections. Moreover, now may be a particularly timely opportunity to revise the Copyright Law as the Indonesian Parliament ratified the RCEP in August 2022 and formally requested to join the CPTPP in September 2024. IIPA believes the priority for the Indonesian government should be to remedy the concerns delineated below:

Internet Exception: The Copyright Law provides a broad exception under Article 43(d) for “making and disseminating copyright content through information and communication technology media that is non-commercial and/or non-profit in its effect on the author or related parties, or in which the author has expressed no objection to such making or disseminating.” Both parts of this provision set a terrible precedent and would act to discourage and severely undermine legitimate business models built on the rights of authors, rights holders, and related rights owners to control the manner and means in which they authorize the making and disseminating of content through information and communication technologies. This provision would conflict with Indonesia’s international obligations under TRIPS, the Berne Convention, the WIPO Internet Treaties. For these reasons, it should be deleted in its entirety.

Termination of Transfers of Rights: Article 18 and Article 30 of the Copyright Law provide that rights in musical works and musical performances that are transferred under sold flat agreements or indefinite transfers shall revert to the authors or performers after 25 years. Article 122 extends the effect of these rules retrospectively to all transfers before the entry into force of Articles 18 and 30. This reversion rule frustrates the freedom to contract and is an unlawful deprivation of property rights. It is also unclear how these provisions impact existing contracts, and this leads to legal and business uncertainty. Certainly, a curtailing of all contracts to a 25-year contract term would have a significant negative impact on investments in the Indonesian music industry, as investors have a shorter time frame to recoup their investments.

Clarification of the Making Available/Communication to the Public Right: Articles 23 and 24 of the Copyright Law give exclusive making available rights to performers and producers. This exclusive right is in line with the obligation under Article 14 of the WPPT. Article 27 of the Copyright Law provides an equitable remuneration right to producers and performers for broadcasting and communication to the public of sound recordings. However, communication to the public is defined in Article 1, paragraph 16 to include the act of making available. This is inconsistent with Articles 23 and 24. There is an obvious drafting error in the legislation because the making available right cannot be both an exclusive right (Articles 23 and 24) and an equitable remuneration right (Article 27). The making available right has to be an exclusive right for Indonesia to meet its obligations under the Article 14 of the WPPT. Specifically, the definition of “Communication to the public” in Article 1, paragraph 16 should be amended to exclude the act of making available.

Criminal Case Structure and Penalties Weakened: For criminal cases, the Copyright Law took steps backward from the 2002 law by making criminal cases complaint-based, rather than prosecuted on an *ex officio* basis; removing minimum mandatory statutory criminal penalties; and providing for non-deterrent fines, including for landlord criminal liability. In addition, Article 95 of the Copyright Law is highly unusual in that it appears to mandate “mediation” before a piracy case can be prosecuted. The purpose and operation of this provision in practice is unclear.

Exceptions and Limitations/Compulsory License: Article 44 of the Copyright Law contains a broad exception defining several different uses for a wide array of purposes as authorized uses, ranging from education to criticism to “security and maintenance of government.” On its face, the broad scope of the uses and purposes contained in this exception appears to go well beyond what is permissible under the WTO TRIPS Agreement, the Berne Convention, and the WIPO Internet Treaties, despite a well-intentioned, but ineffective, attempt to narrow the provision through inclusion of part of the Berne three-step test.⁶ The references in Subsections (1)(a) and (d) of the Copyright Law to the three-step test omit the limitations of “certain special cases” and uses that do “not conflict with a normal exploitation of the work by the copyright owner.” The two other subsections included in this exception do not contain

⁶ Berne Convention for the Protection of Literary and Artistic Works amended September 28, 1979, Article 9(2), available at https://www.wipo.int/wipolex/en/text/283698#P140_25350.

any of the safeguards required under the three-step test. IIPA recommends that the Indonesian government clarify the application of the full three-step test to each use and purpose contained in this exception through amendment of the provision itself or by implementing regulations. Furthermore, implementing regulations should provide guidance to help prospective users determine whether their use falls within the appropriate bounds of the three-step test. In addition, Article 84 of the Copyright Law includes a compulsory license provision that applies to “works” and is not expressly limited to any subject matter. It should be further clarified and narrowed to ensure it is consistent with obligations under the WTO TRIPS Agreement, the Berne Convention, and the WIPO Internet Treaties.

Rights Management Information (RMI) Violations: The law provides that RMI violations occur only when moral rights are affected (Articles 6 and 7 of the Copyright Law). The WIPO Internet Treaties clearly require “adequate and effective legal remedies against . . . acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of *any right covered by this Treaty [or the Berne Convention]*” (bracketed text in WCT only; emphasis added). The scope of the RMI provisions should be expanded accordingly.

Registration, Invalidity, and Recordation Requirement: While registration of copyright remains voluntary under the law, the substantive examination for voluntary registration will apparently address whether a work is “substantially similar” to another previously registered work as a ground for refusal. This substantive examination is intended to enable the authorities to review and invalidate false applications or registrations to address a concern about abuse of the voluntary copyright registration process. IIPA suggests introducing a more forceful deterrent, including fines and penalties, against anyone who knowingly files a false application or applies in bad faith. Additionally, the registration and recordation systems potentially violate the prohibition of formalities under the Berne Convention. Article 83 of the Copyright Law appears to impose a requirement to record licenses, with lack of recordation meaning a license “shall have no legal effect on third parties.” This provision appears to be a Berne-prohibited formality if, for example, lack of recordation was used to deny the exercise of copyright from a particular licensor or licensee. Implementing regulations should clarify that a failure to record transfers and other changes will not deny copyright protection to the registrant. Moreover, recordation is not feasible for industries and rights holders that control a large number of works.

Provisional Measures: Under Article 108 of the Copyright Law, preliminary (provisional) injunctions take too long to obtain. Under the Indonesian law, no legal remedies, such as preliminary injunctions, are available to the claimant before submitting the claim. In that respect, Indonesian law does not meet the standards of the WTO TRIPS Agreement (i.e., Articles 41 and 50), which require that countries must make available “fair and equitable” civil remedies and procedures to stop and prevent infringements, including provisional measures granted without hearing from the alleged infringer.

Statutory Damages: Indonesian copyright law does not provide statutory damages. In the case of copyright infringement, the copyright holder can claim a justifiable amount by way of compensation. Compensatory and punitive damages are available under the Civil Procedure Code. Judges, however, may grant damages based on only what the parties request in their claim, and judges are prohibited from granting damages that exceed what the parties previously requested. The successful party must prove losses with sufficient and actual evidence. Instead, statutory damages for copyright infringement should also be available.

Overly Restrictive Definition of Copyright “Piracy”: Article 1, Subsection 23 of the Copyright Law provides an overly restrictive definition of copyright piracy as “distribution” of unlawfully duplicated “goods” to “obtain economic benefits.” This definition is inconsistent with Article 61 of the WTO TRIPS Agreement because it is limited to goods and requires a showing of financial gain. The definition should be amended to expand the scope to include acts of online copyright infringement and to remove the requirement of financial gain.

Term Extension for Phonograms: Currently, under Article 63(1)(a) and (b) of the Copyright Law, the term of protection of economic rights of phonogram producers and performers is 50 years from fixation of the phonograms or performances. This is much shorter than the term of protection conferred by Article 58 on authors of certain works

such as musical, artistic, literary, dramatic, and architectural works, which is the life of the author plus 70 years. The Copyright Law should be amended to extend the term of protection of related rights to at least 70 years to meet the emerging international standard and be more in line with the authors' term of protection.

Strengthening the Organized Crime Statute: Because many operators of piracy websites are engaged in other criminal activities, copyright infringement should be included as a predicate crime for remedies under the Indonesian organized crime law, e.g., as grounds for broader criminal investigations, seizure, freezing of assets, and asset seizure, etc.

Online Intermediary Regulations: The Indonesian government should seek to improve transparency and accountability of online service providers and intermediaries. It should (i) limit safe harbor protection to passive and neutral intermediaries that do not contribute to infringing activity; (ii) implement measures demonstrated to be 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 Internet service providers (ISPs)) rather than leaving such decisions to the sole discretion of ISPs.

Additionally, in 2023, a set of "Draft Government Regulations on Music and Song Licensing" was released for consultation, and these Draft Regulations contained many provisions seeking to regulate the activities of Digital Service Providers (DSPs), including provisions on takedown response time, as well as provisions that require DSPs to obtain permissions from rights holders and phonogram producers and performers. IIPA urges the Indonesian government to take care to adhere closely and ensure consistency with the provisions of the Copyright Law in drafting this set of "Draft Government Regulations on Music and Song Licensing," as well as imposing an appropriate response time for the proposed notice and takedown system (in this case, "3x24 hours" is too long, and it should be an expeditious takedown), and finally to closely consult with rights holders as to the practical aspects of the Regulations.

MARKET ACCESS

- **Eliminate screen quotas and prohibitions on dubbing imported films.**

The Indonesian government has expressed its intention to amend the 2009 Film Law, which contains a 60% local screen quota and prohibits imported films from being dubbed into local language. In September 2019, without official notice or industry consultation, "Ministerial Regulation (MR34/2019) Concerning the Procedure for the Distribution, Exhibition, Export, and Import of Film" was issued. While these regulations have yet to be enforced, they maintain the 60% local screen quota and dubbing restrictions and add further limitations on screen time by a single distributor, importer, or producer to 50%. In recent years, domestic films have accounted for a growing and substantial share of the market and local films are seeing greater investment without the imposition of heavy-handed regulations. Moreover, these restrictions undercut Indonesia's laudable May 2016 decision to remove the film sector from its Negative Investment List. Indonesia should prioritize amending or rewriting the Film Law to remove such barriers and incorporate international best practices. On copyright ownership in films, in accordance with best international practices, the copyright should reside with the producer who arranged for the film to be made and is best positioned to exploit the film commercially, unless there is an agreement to the contrary. Indonesia should amend its Copyright Law to make this clear.

- **Reject content review and classification requirements for OTT/VOD and avoid localization requirements.**

In October 2015, the Indonesian Broadcasting Commission (*Komisi Penyiaran Indonesia*, KPI) notified platform operators regarding pre-censorship and classification requirements for programs on all TV channels. The KPI

suggested that non-compliance may violate the Broadcasting Ethics and Broadcast Program Standard, thus subjecting operators to fines and imprisonment. If implemented, these requirements would negatively impact the pay-TV industry by raising costs, creating new barriers to entry, and reducing consumer choice. Additionally, in the past few years, there has been growing pressure for the Ministry of Communications and Informatics (KOMINFO), the Indonesian Censorship Board (LSF), and KPI to broaden their mandates by applying similar strict censorship and classification requirements towards OTT/VOD providers, which would have the same negative impact as previously described.

For example, in June 2024, KPI and LSF proposed amendments to the Broadcasting Law which would expand the authority of KPI from TV channels to also include OTT/VOD. These recent amendments were proposed without consultation with appropriate Ministries such as KOMINFO, or any period of public consultation. Such requirements, if reintroduced under the new administration of President Prabowo Subianto, inaugurated on October 20, 2024, would ignore the current self-regulatory best practices already being adopted by OTT/VOD services, be a significant market entry barrier, and serve as a disincentive to bring creative industries to Indonesia.

Overall, IIPA remains generally concerned that additional revisions of the Broadcasting Law could seek to extend existing problematic content quotas, content censorship by KPI, and ownership restrictions to VOD services. Industry is also closely monitoring amendments to the Internet Transactions Law (ITE Law) which may potentially be barriers for VOD services.

- **Improve regulations related to collective management and take steps to address royalty rate and licensing collections issues.**

For the music industry, Indonesia's mandatory multi-layered collective licensing system remains problematic. The government-appointed national CMO's (LMKN) structure is top-heavy and has insufficient relevant experience. This creates unnecessary structural layers, increases the overall administrative costs, and slows down decision-making. Furthermore, rights holders have insufficient control of the licensing decisions including the setting of tariffs and, as a result, the tariffs are fixed, and the rates are extremely low. There is also uncertainty as to whether it is mandatory for all rights to be licensed through LMKN as the singular CMO for performance rights, and how other CMOs, such as *Wahana Musik Indonesia*, operate in relation to LMKN. In some cases, rights holders reported broadcasters have failed to even pay the government-set rate since 2016.

CMO regulations, including Implementing Regulations of Government No. 56 of 2021, "Government Regulation on the Management of Copyright Royalties of Songs and/or Music," should be amended such that entities falling within the definition are owned or controlled by their member rights holders as well as confirming the non-profit nature of the organization, which are essential characteristics of a CMO. The definitions of "Digital Intermediary Service Providers" or DSPs in Regulation 56/2021 also leave room for doubt as to which entities this CMO regulation applies to, and clarity would be appreciated. Further, CMO regulations should be introduced in accordance with international good practices and cover issues of transparency, accountability, and good governance. It is also essential that the tariffs set for the use of the collectively managed rights reflect the economic value of their use in trade.

Additionally, Article 3(1) of the Implementing Regulations of Government No. 56 of 2021 appears to downgrade the scope of the public performance right to a mere remuneration right paid through LMKN. This is exacerbated by Article 3(2) which sets out 14 types of commercial public services for which royalties are payable under Article 3(1) and Article 11 which provides for an overbroad exception for micro-entities, which in 2021 represented over 98% of all Indonesian enterprises.⁷ This "positive list" implementation and overbroad exception for a wide section of enterprises should be overhauled to instead provide an exclusive public performance right that is not limited to the list of venues in Article 3(2) or by the exception in Article 11. Further, consistent with international best practices, any CMO must be voluntary, transparent, and governed by rights holders, without interference by Indonesia's government.

⁷ "Micro, Small & Medium Enterprises in Indonesia: Backbone of the Indonesian Economy," Indonesian Investments, July 16, 2022, available at <https://www.indonesia-investments.com/finance/financial-columns/micro-small-medium-enterprises-in-indonesia-backbone-of-the-indonesian-economy/item9532>.

These challenges have made licensing for broadcast dysfunctional, with broadcasters refusing to pay the government approved rates, introduced as far back as 2016, for the use of musical works and sound recordings. As a result, collections for both radio and television broadcasting remain at zero for both recording rights and music publishing rights. Separately, music licensing in Indonesia is also seriously hampered due to the restricted list of businesses that are obliged to seek licenses for the use of music in their business premises. The restriction, which is a violation of the international copyright and related rights treaties, should be removed.

- **Support an extension of the WTO e-commerce moratorium prohibiting customs duties on electronic transmissions and rescind Regulation No. 190/PMK.04/2022 requiring importers to file a customs declaration for any import of intangible goods through electronic transmission.**

The Ministry of Finance issued a new regulation (Regulation No. 190/PMK.04/2022) requiring importers to file a customs declaration for any import of intangible goods through electronic transmission. This burdensome requirement severely disadvantages creative content seeking to enter the Indonesian market. In addition, by creating new tariff lines for digital products that are transmitted electronically, which includes the threat of imposing customs duties on those products, Indonesia has set a troubling precedent that raises serious concerns with respect to the potential expiry of the WTO e-commerce moratorium on customs duties for electronic transmissions at the next WTO Ministerial Conference in early 2026. Heightening this concern, the Government of Indonesia has continued to express reservations about permanently extending the e-commerce moratorium. Such duties would likely raise prices for consumers, place Indonesia out of step with regional and international best practices and stifle the growth of Indonesia's market for creative digital content and related services.

- **Remove the local production requirement for Free-to-Air TV and pay-TV advertising.**

Indonesia's Broadcasting Law (No. 32 of 2002) includes a requirement that any free-to-air TV and pay-TV advertising aimed at the local market must be locally produced. Although regulations issued in 2007 provided a series of exemptions, KPI's more recent statements regarding implementation raised concerns. Such a burdensome rule, if implemented, would likely result in consumers absorbing the additional associated costs. The timeline for revising the Broadcasting Law remains unclear, and it should be a priority for the new administration.

- **Exempt curated content services (including OTT/VOD content service providers) from the scope of Ministerial Regulation 5 (MR5).**

The Ministry of Communication and Information Technology (KOMINFO) issued Ministerial Regulation 5 (MR5), which came into effect in late 2020. MR5 requires domestic and foreign online service providers to register and comply with content takedown requests from authorities and grants law enforcement authorities access to electronic systems and data. In July 2022, KOMINFO temporarily blocked some online intermediary platforms for failing to comply with MR5. The blocks were subsequently lifted when the firms registered with KOMINFO under MR5. Such requirements have the potential to stifle business development, add a significant barrier to market entry, and are out-of-step with international best practices when it comes to the regulation of curated content services such as VOD service providers.

GENERALIZED SYSTEM OF PREFERENCES (GSP)

In January 2020, USTR, pursuant to the 2012 investigation, held a public hearing to review country practices in Indonesia regarding intellectual property rights (IPR) and market access issues and to determine whether Indonesia still qualifies for beneficiary status under the GSP. Under the statute, the President of the United States must consider, in determining whether a country should continue to be designated as a GSP beneficiary country, "the extent to which such country is providing adequate and effective protection of intellectual property rights," and "the extent to which

such country has assured the United States that it will provide equitable and reasonable access to the markets . . . of such country.”⁸ While the Indonesian government has made past progress towards meeting the GSP criteria, these efforts have stalled and regressed in some respects. IIPA urges the Government of Indonesia to make further progress to remedy the deficiencies outlined in this report to avoid suspension or withdrawal of Indonesia’s GSP benefits, in whole or in part.

⁸ 19 U.S.C. §§ 2462(c)(4) and (5).

MEXICO

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Mexico be placed on the Priority Watch List in 2025.¹

Executive Summary: Mexico's positive legislative improvements to the Copyright Law in 2020, as part of its obligations under the U.S.–Mexico–Canada Agreement (USMCA), are overshadowed by the past administration of former President López Obrador's failure to implement these commitments in any meaningful way, advance any effort to combat rampant physical and online piracy, provide financial, personnel, or educational resources for existing intellectual property (IP) enforcement agencies, or to provide broad political will to support the creative industries.

Instead, Mexico continues to face a systemic and long-standing lack of adequate application, enforcement, and respect of its current laws, regulations, and judicial bodies, affecting legal certainty and security in the business environment. For example, while IIPA commends the May 2024 decision by the Mexican Supreme Court to uphold the 2020 reforms after three lengthy and economically chilling constitutional challenges, including with respect to technological protection measures (TPMs) and notice and take down, the September 2024 passage of a constitutional amendment to overhaul Mexico's judiciary has only exacerbated longstanding concerns regarding the structure and daily operations of the judicial branch, leading in the short term to increased delays and uncertainty in the handling of ongoing and future copyright cases. The lack of the proper enforcement of existing laws and judicial uncertainty have significantly hampered the growth of Mexico's legitimate online marketplace, and instead, rampant piracy continues to grow undeterred. Criminal enforcement against pirates remains uncoordinated and generally weak, slowed by procedural and structural deficiencies, low prioritization, and a lack of adequate resources. It is therefore essential that the new administration of President Claudia Sheinbaum, and the recently appointed General Director of the *Instituto Mexicano de la Propiedad Industrial* (Mexican Institute of Industrial Property, IMPI), Mr. Santiago Nieto, follow through on their initial promises to address widespread piracy and counterfeiting with more strategic and stricter actions to combat and deter these crimes.² Furthermore, civil cases in Mexico are expensive and difficult for rights holders (especially small businesses) to undertake and are slowed by onerous procedural hurdles and insufficient remedies. The IP legal regime in Mexico is also still missing some of the basic tools to address online infringements, including cooperation among rights holders, website owners, and service providers. For example, the current law specifies only general liability instead of a clear principle of secondary liability for those inducing or promoting copyright infringement, which would incentivize Internet service providers (ISPs) to take preventive actions. Unfortunately, the legal reforms of 2020 did not fully address these enforcement deficiencies.

Obstacles also remain in Mexico's compliance with high-level international standards for the recognition and protection of IP rights (IPR), particularly those related to the digital environment and online enforcement procedures. For example, Mexico's implementation of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties) and the USMCA, including reforms to the Copyright Law and the Federal Criminal Code, is still endangered by a lack of implementing regulations. This lack of political will to meaningfully implement the USMCA IP provisions was magnified by the previous administration's successful passage of constitutional reforms in other areas. Additionally, the 2022 Cultural Heritage Law created even more significant legal uncertainty this year for a range of creative industries due primarily again to a lack of implementing regulations, and risks further undermining Mexico's IP regime.

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

² Cristina Protugues, *Piracy in Mexico, an urgent challenge: Santiago Nieto Castillo, director of IMPI*, *ContraRéplica*, October 15, 2024, available at <https://www.contrareplica.mx/nota-Pirateria-en-Mexico-un-desafio-urgente-Santiago-Nieto-Castillo-director-del-IMPI--2024141012>.

While Mexico remains an important destination for the U.S. creative industries, the above failures by the past administration also critically harm Mexico's domestic creative industries, which a 2021 WIPO report found accounted for over 10% of employment but just over 4% of GDP.³ While IIPA welcomes the new administration's initial positive signals, including having already seized over 200,000 illicit products in a seminal November 2024 raid,⁴ it remains uncertain whether these initial sentiments and actions can be sustainably implemented and provide lasting enforcement, legislative, and market access improvements after so many years of inaction coupled with legal and judicial uncertainty. It will also be critical for this new administration to work closely with industry representatives and rights holders from the creative industries to ensure any legislative or regulative revisions finally allow Mexico to fully implement its obligations under the USCA and international treaties and meet international best practices.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Empower Mexican IP agencies with the necessary political will and financial and human resources to tackle years of unaddressed rampant physical and online piracy.
- Remove burdensome barriers, requirements, and procedures that prevent effective IP enforcement.
- Develop and adopt a high-level national anti-piracy plan to target major online piracy and counterfeiting operations, which includes improving coordination between federal, state, and municipal enforcement activities.
- Provide training to improve IPR expertise in the judiciary.
- Improve enforcement against theatrical camcording.

Legal Reforms

- Publish the implementing regulations of the 2020 Copyright Law amendments and reject interpretations of those amendments that would impede the positive progress resulting from those changes.
- Amend the Copyright Law and related laws and publish related implementing regulations to address issues not resolved in the 2020 amendments.
- Provide incentives for ISPs to cooperate in enforcement against online copyright infringement, including applying the reform of the 2020 Copyright Law to provide secondary liability for copyright infringement.
- Clarify the scope of the Cultural Heritage Law, and all secondary legislation arising from the 2024 amendment to Article 2 of the Mexican Constitution, in a manner that brings greater legal certainty and includes consultations with rights holders.
- Reject amendments to the Copyright Law that would establish a remuneration system through a "Private Copy Levy" (PCL).
- Reject any interpretation of the Copyright Law that would interfere with exclusive rights, including introduction of a making available remuneration right for performers in addition to the already existing and sufficient exclusive right.

Market Access

- Reject policies proposing Local Content Quotas.
- Reject discriminatory investment obligations in the audiovisual industry.

ENFORCEMENT

- **Empower Mexican IP agencies with the necessary political will and financial and human resources to tackle years of unaddressed rampant physical and online piracy.**

³ https://www.wipo.int/export/sites/www/copyright/en/docs/performance/overview_results_2021.pdf. The report also states "Mexico has substantial underutilized opportunity to increase the share of its copyright industries in GDP to support its continuing shift into medium- to high-technology capital goods and bring its economic performance more in line with its North American neighbors."

⁴ *Authorities seize over 200,000 counterfeit Chinese products in Mexico City*, Mexico News Daily, November 29, 2024, available at <https://mexiconewsdaily.com/news/mexican-authorities-seize-counterfeit-chinese-products-in-mexico-city/>.

Physical piracy is widespread, and online piracy is increasing due to growing access to broadband, mobile phones, and smartphones in Mexico. The International Federation of the Phonographic Industry's (IFPI's) 2023 Music Consumer Study found the music piracy rate in Mexico was 50.7%, one of the highest in the world. The report also found that over 40% of Internet users aged 16 to 64 years reported using a stream-ripping website or mobile app to download pirated music in the previous month, with this figure increasing to 49.9% for those aged 16 to 24 years. Stream ripping, the most widespread source of music piracy in Mexico was popular with users on stream-ripping sites such as *ssyoutube.com* (18.8 million visits), *savefrom.net* (10 million visits) and *y2meta.app* (5.1 million visits) in Q2 2024 based on *SimilarWeb* data. The report also found stream-ripping mobile apps *Snaptube*, *TubeMate*, and *Descargador de MP3 Gratuito* were a key means for Mexican users to obtain illegal content and that 20% of respondents reported using a cyberlocker site to obtain pirated music in the same period.

Video game publishers continue to experience among the highest levels worldwide of e-commerce infringement in Mexico, notably of modded hardware and circumvention devices. In 2024, Mexico ranked 18th 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, and by the same metric, 4th in the world for unauthorized file-sharing of mobile games, and 7th in the world for illicit console-based games.

Mexican officials are admittedly aware of this longstanding and growing problem. Most recently, in October 2024, just days after swearing in as the new director of IMPI, Director Santiago Nieto Castillo stated that fighting piracy is a priority of the new administration under President Claudia Sheinbaum.⁵ Director Nieto noted that “[p]iracy is not only physical; in the digital sphere we see the illegal distribution of music, videos and artistic works,” “[p]iracy generates a parallel economy that affects Mexican businessmen and workers. It is essential that consumers understand that by buying pirated products they are contributing to a system that harms everyone,” and “piracy not only harms national companies that pay taxes and generate jobs but also impacts consumers.”⁶

While awareness of the challenges facing IMPI and other Mexican IP enforcement agencies to address rampant piracy in Mexico is a positive start, it will be difficult for the new administration to tackle the piracy problem that has only worsened in recent years under the former administration. The new administration will immediately face two key hurdles that drive piracy in Mexico, first that IP cases are traditionally considered as “less relevant” compared to other types of illegal conduct, and second, budget cuts to the following key federal agencies engaged in copyright enforcement in Mexico:

- IMPI – oversees administrative enforcement actions under the Industrial Property and Copyright Law;
- *Instituto Nacional del Derecho de Autor* (the National Copyright Institute, INDAUTOR) – registers copyrights and conducts mediation proceedings for aggrieved rights holders;
- Scientific Police (part of the Federal Police) of *Secretaría de Gobernación* (the Secretary of the Interior) – assists rights holders by providing information on illegal software websites and seizing the domain names of infringing sites; and
- *Unidad Especializada en Investigación de Delitos contra los Derechos de Autor y la Propiedad Industrial* (the Specialized Unit on Investigation of Crimes Committed Against Industrial Property and Copyright, UEIDDAPI) within *Fiscalía General de la República* (the Attorney General's Office, FGR) – responsible for federal criminal enforcement.

The lack of prioritization and budget cuts have directly led to sizable reductions or full curtailments in effective enforcement activities under the previous administration, particularly by the FGR. For example, one video game publisher reported a decline in counterfeit game product seizures from 35,315 products seized in 2022 down to only 3,045 in 2023, and 5,380 in 2024. This significant drop in seizures exists despite numerous IP trainings programs for

⁵ Cristina Protugues, *Piracy in Mexico, an urgent challenge: Santiago Nieto Castillo, director of IMPI*, *ContraRéplica*, October 15, 2024, available at <https://www.contrareplica.mx/nota-Pirateria-en-Mexico-un-desafio-urgente-Santiago-Nieto-Castillo-director-del-IMPI-2024141012>.

⁶ *Id.*

customs officials in the past two years. No police raids occurred from 2022 until November 2024, when the Ministry of Economy and IMPI led a first of its kind joint effort that seized over 200,000 illicit goods, the Izazaga 89 operation.⁷ This raid should be commended and repeated.

Further, FGR and UEIDDAPI were reluctant to prosecute IP crimes under the previous administration, and there have been very few criminal enforcement actions against piracy services or operators, both in the online and physical realms. This low prioritization is even more apparent regarding investigations into crimes of small quantities of illicit products such as piracy devices (PDs, also known as illicit streaming devices or ISDs), including mod chips, and circumvention devices, especially in the case of products entering through customs. These illegal devices are increasingly being offered in online marketplaces and through social media, but there have not been any detainments or seizures of such devices by customs. There also existed a general understanding in all previous administrations' government offices that few to no administrative actions would be taken against piracy operations. Also, within the UEIDDAPI stood a general order not to seek any search warrants for these types of cases. Notwithstanding the significant and commendable progress made by the Government of Mexico in its efforts to strengthen the country's IP legal framework under the 2020 Copyright Amendments to implement USMCA, there appeared to be no political will by the previous administration to in fact put the new framework into practice and prioritize and prosecute IP cases in Mexico.

IIPA strongly urges the new administration to follow through on their initial public statements about fighting Mexico's rampant piracy by ensuring that all relevant Mexican IP enforcement agencies have the political will to make the changes noted below, prioritize IP cases, and have the financial and personnel resources to fully implement their objectives and Mexico's new IP legal framework. While understanding it may take some months for the new administration to fully rollout and implement its new IP strategy, IIPA and its members are closely monitoring how the new administration will overcome years of inaction against piracy and finally show necessary support for the creative industries.

- **Remove burdensome barriers, requirements, and procedures that prevent effective IP enforcement.**

IIPA continues to recommend several detailed structural reforms and agency actions to improve enforcement that have been detailed in previous submissions.⁸

Administrative Enforcement Challenges

- **Formalities to Institute Administrative Actions:** On July 1, 2020, the new *Ley Federal de Protección a la Propiedad Industrial* (Federal Protection of Industrial Property Act) was enacted. The law entered into force in November 2020. As part of this new law, IMPI is now empowered to issue blocking orders against infringing sites which, in practice, is a clarification of the powers that IMPI previously exercised as part of its general duties. However, IMPI requires the petitioner to comply with an extreme – and sometimes impossible – burden of proof equivalent to providing certificates of copyright ownership of all the content available on the illegal sites to block that content. For example, some officials require proof of ownership for every individual piece of content that is provided by these illegal sites, even when it is evident that these sites solely promote and facilitate content piracy. Instead, the Government of Mexico should allow the initiation of administrative proceedings before IMPI to seek site blocking of websites that offer infringing content, without requiring the industry to prove copyright ownership for each individual creative work provided in the pirate websites. Instead, the burden should be calibrated, and IMPI should require the owner/operator of the infringing sites to produce evidence that they have authorization to make the copyright works in question available.

⁷ Authorities seize over 200,000 counterfeit Chinese products in Mexico City, Mexico News Daily.

⁸ See, e.g., IIPA 2019, 46-47, available at <https://iipa.org/files/uploads/2019/02/2019SPEC301MEXICO.pdf>; IIPA 2022, p. 68-69, available at <https://www.iipa.org/files/uploads/2022/01/2022-SPEC301-3.pdf>.

Civil Enforcement Challenges

- **Burdensome Procedures with Minimal Remedies:** In general, Mexico's three-tiered civil procedure system makes civil litigation overly complicated, time consuming, and costly for rights holders, even against obvious infringers. The Copyright Law allows rights holders to seek damages in civil courts even before an administrative infringement decision is issued (or becomes final), but the law does not provide for statutory damages (e.g., additional or pre-established damages), and the USMCA-related amendments implemented in 2020 did not address this deficiency. Rights holders can seek 40% of the gross sales revenues from infringing products as damage awards. The Government of Mexico should amend the Civil Code and improve the procedures of the courts to add pre-established remedies and allow the recovery of costs and attorney's fees; current law does not provide compensatory damages, including lost profits or sufficient monetary damages, nor costs or fees. Mexico needs to amend its Copyright Law to provide for "pre-established" and/or "additional damages" consistent with the USMCA Article 20.81.6 that are "an amount sufficient to constitute a deterrent to future infringements and to compensate fully the right holder for the harm" as set forth in Article 20.81.8.
- **Requirements to Prove Ownership:** There are burdensome steps to prove copyright ownership in lieu of presumptions of ownership (which, as noted, is an unfulfilled USMCA obligation).
- **Electronic Evidence:** Mexican law grants full validity to electronic documents and discovery, although some judges are unfamiliar with these rules.
- **Destruction of Evidence:** The Civil Code provides *ex parte* measures to avoid the destruction of evidence, but these provisions have never been fully implemented.

Criminal Enforcement Challenges

- **Ex Officio Authority:** Since Mexico transitioned to an adversarial justice system in 2008—despite the availability of *ex officio* action in the Criminal Code—prosecutors no longer prosecute criminal copyright cases without the filing of a complaint against an infringer by the rights holder. This change has resulted in prosecutorial delays of IP-related crimes, including at FGR.
- **Physical Copy Requirement:** A complicating element in combating piracy in Mexico is the cumbersome requirement (by FGR) that each copy of an infringing product must be accompanied in prosecution files by a physical copy of a legitimate original for comparative examination by experts (*peritos*). This requirement is followed as a general practice, even though the law does not explicitly require it. In one 2023 case involving 7,000 video game consoles preloaded with infringing games, the prosecutor terminated the investigation claiming the products did not show the publisher's trademarks and copyrighted works, despite evidence established at the time of seizure. This complicates online or digital matters that do not involve hard goods.
- **Requirement for Expert Testimony for Repeat Offences:** Prosecutors must understand that expert opinions are not required in every case to analyze genuine and counterfeit specimens. Under the existing system, when the comparison involves multiple copies of the same infringing game, music, or film, rights holders must submit an equal number of legitimate game, music, and film DVD copies to the experts for comparison. This results in delays and, in some cases, investigations have been dropped due to undertrained prosecutors, leading brand owners to re-introduce actions often against repeat offenders. These expert opinions or *peritos'* reports are a burdensome administrative requirement that take too long to complete, in addition to the fact that the *peritos* are insufficiently trained in digital issues, produce factually incorrect determinations, and are often reluctant to cooperate with investigations and prosecutions. Rights holders then

must appeal those decisions through a Control Judge, including having to hire a private expert to counter the *perito's* determination, adding to the expense and delay, which undermines effective enforcement.

- **Copyright Registration Documentation Requirements:** Although Article 5 of the Copyright Law refers to copyright registrations as only voluntary (“recognition of copyright and neighboring rights does not require registration”), in practice, the FGR and courts require registrations to commence a criminal case. This is an additional formalistic practice of Mexican authorities that is contrary to the main purpose of international commitments on IP recognition and protection. The USMCA (Article 20.79.1) requires Mexico to provide clear presumptions of ownership in civil, criminal, and administrative matters, based on the copyright notice appearing on the work, or on a screen, without the need for a mandatory and certified registration. Mexico needs to change its Copyright Law to ensure these presumptions of ownership apply to all works (it currently exists only for sound recordings), even after the 2020 amendments.
- **Commercial Scale Piracy:** In 2023, FGR and UEIDDAPI reverted to their previous criteria to reject complaints of IP infringements based on the lack of loss of profits or lack of commercial scale, affecting the initiation of – and creating more burdens to initiate – any criminal investigation against counterfeit and copyright piracy. As a result, criminal penalties have not been available in Mexico for commercial scale infringements without a direct economic benefit. The “direct economic benefit” for criminal cases is a difficult hurdle to overcome for a prosecutor willing to commence a case in a country already short on resources for such cases. Additionally, Mexican courts generally do not consider file sharing via online networks to be a serious legal violation; this is a continuing obstacle to effective criminal enforcement. Consistent with its WTO TRIPS Agreement obligations, Mexico should have “effective” criminal remedies, including “imprisonment and/or monetary fines,” available in cases of “willful ... copyright piracy on a commercial scale.”⁹ The Criminal Code, Copyright Law, and Federal Protection of Industrial Property Law need to be amended to delete “for profit” provisions and replace them with “acts carried out for commercial advantage or financial gain” and “significant acts not carried out for commercial advantage or financial gain that have a substantial impact on the interests of the copyright or related rights holder.” This change would allow the initiation of enforcement procedures in FGR and UEIDDAPI, and criminal penalties would be available in Mexico for commercial scale infringements absent proof of actual lost profits (in other words, without a direct economic benefit).
- **Destruction of Infringing Goods:** Enforcement agencies should adopt clear and consistent policies for the expeditious destruction of seized infringing goods. Another of the positive 2020 amendments (in the Protection of Industrial Property Law) gives IMPI the authority to order the destruction of infringing goods 15 days after a final court decision, which is faster than previous procedures. The copyright industries have also successfully utilized the *Ley Federal de Extinción de Dominio* (Federal Law for Property Forfeiture) in piracy cases, but materials seized in FGR enforcement operations continue to find their way back into the black market. Another recommendation is for *Procuraduría Federal del Consumidor* (Office of the Federal Prosecutor for the Consumer, PROFECO) to use its *ex officio* powers for consumer protection, and its resources against street market piracy.
- **Coordination with Rights Holders:** FGR had been reorganized under the previous administration and is closed to the general public, meaning that there have been no coordination meetings with rights holders or rights holder organizations, and such practices, which are common in other countries, are not allowed. The lack of communication with the private sector and the absence of any significant enforcement action by FGR against IPR violations have significantly worsened the piracy situation in the last year.
- **Forensic Standards:** FGR should improve the forensic standards for digital enforcement and eliminate the required experts and mandated registrations (as a practice, if not a legal requirement) for criminal cases.

⁹ See WTO TRIPS Agreement, Articles 41 and 61.

Customs Enforcement Challenges

- **Seizure of Illicit Goods:** Exacerbated by the lack of *ex officio* authority, FGR and UEIDDAPI have ceased executing border measures to detain containers of pirated goods, including those comprising counterfeit video game consoles, controllers, and merchandise bound for the local market. They also do not stop in-transit shipments and trans-shipments, resulting in a worsening situation for rights holders. For example, absent an official order from IMPI, customs authorities will not seize infringing products entering the country or detain them for more than a few hours, even where the material is clearly infringing. While IMPI has attempted to address this issue through expeditious communications with customs to seize infringing goods, the lack of action by customs authorities and FGR undermines the enforcement of IPR.
- **Leadership:** During the past administration, there were four changes to the head of Customs in less than four years— including the establishment of the *Agencia Nacional de Aduanas de México* (National Customs Agency of Mexico)—only to be followed by transferring Customs’ authority to the Ministry of the Navy for maritime customs matters and to the Ministry of National Defense for customs matters on land. These inconsistencies in leadership and transfers of power have created an unstable and uncertain customs enforcement regime that is nearly impossible for rights holders to effectively navigate to enforce their rights. Leadership stability and consistency is urgently needed in Mexico’s customs procedures and authorities. The aforementioned problems with Mexican customs authorities continue to be exacerbated by the presence and control of criminal organizations and cartels in Mexico.¹⁰

Judicial Enforcement Challenges

- **Judicial Reform:** In September 2024, the Mexican Congress enacted a structural reform to the judiciary branch promoted by President López Obrador. The key element of this reform is that justices, magistrates, and judges will now be elected by popular vote. The reform has generated significant debate in Mexico, especially since it is not clear how the new model will guarantee the independence and impartiality of the judiciary. The first election will be held on June 1, 2025, and the positions to be elected include all Supreme Court justices (9), as well as 486 magistrates and 386 judges. IIPA urges that this reform does not undermine the rule of law in Mexico and not affect basic rights of due process and access to justice in Mexico.
- **IP Expertise:** Training to improve IPR expertise among judges is an ongoing need—especially training on technology, digital distribution and piracy, and the use of circumvention technologies. Besides simply increasing training on these topics, Mexico could also create specialized IP judges and courts.
- **Non-Deterrent Penalties:** A continuing concern is the judiciary’s consistent failure to give deterrent sentences for IP cases. Instead, Mexico should consider mandatory sentencing regulations for criminal copyright cases or have the Supreme Court issue recommended guidelines to assist judges with the imposition of deterrent sentences and the award of damages.
- **Develop and adopt a high-level national anti-piracy plan to target major physical and online piracy operations, which includes improving coordination between federal, state, and municipal enforcement activities.**

The lack of coordination and capacity among IP enforcement bodies remains a major problem in Mexico, especially when tackling large scale piracy operations that may be located throughout the country. Mexico should therefore develop and adopt a high-level national anti-piracy plan to target major and commercial-scale physical and

¹⁰ Jonathan Nácar, *Corruption investigated in the FGR’s Anti-Piracy Prosecutor’s Office*, ejeCentral, August 12, 2024, available at <https://www.ejecentral.com.mx/category/nuestro-eje/indagan-corrupcion-en-fiscalia-antipirateria-de-la-fgr>.

online piracy operations and operators and to coordinate these enforcement operations with federal, state, and municipal officials. For coordination, this strategy should establish a centralized coordinator for copyright enforcement to improve the efficiency and effectiveness of each of these agencies. Through this coordinator, the Government of Mexico could coordinate municipal, state, and federal government criminal enforcement actions across Mexico's 32 states and 2,400+ municipal governments and help in many regions of the country where state and municipal government anti-piracy efforts are weak. This strategy should also include a national *ex officio* anti-piracy campaign with a consistent focus on major targets, emphasizing coordination of police and prosecutorial resources. For example, Mexico should replicate and expand the success of the Izazaga 89 operation from November 2024.

Further, this strategy should have a strong capacity building component to ensure Mexico's IP enforcement agencies have access to the necessary skills, techniques, and best practices to fight today's modern and evolving piracy operations. Some particularly important areas of capacity building should include specialized training on: (i) initiating effective enforcement procedures against sites offering illegal video game downloads and unauthorized digital goods (UDGs); (ii) search engine sites that provide links to enable the downloading of game content hosted on cyberlocker platforms; (iii) BitTorrent index sites; (iv) piracy and circumvention devices and ISDs, including media boxes, set-top boxes, or other devices that allow users, in combination with illegal software applications (apps), to stream, download, or otherwise access unauthorized content from the Internet, and; (v) devices imported into Mexico pre-loaded with the apps to infringe IPR, apps that are added as a complementary after-sale service, or apps that can easily be installed by the users to access infringing content. There should also be a capacity building component on developing new and enhanced guidelines for prosecuting IP crimes and training on technological solutions and methodologies for properly undertaking criminal investigations directed against online piracy.

Finally, the Government of Mexico should ensure this strategy promotes increasing international cooperation with U.S. prosecutorial and law enforcement authorities to facilitate exchanges of communication and cooperation in criminal investigations and enforcement proceedings in Mexico. Additionally, the collaboration with rights holders to better streamline IP cases should be prioritized in this strategy as it has already had a positive impact on IP enforcement in Mexico. For example, in 2024, the Motion Picture Association (MPA) successfully filed an infringement proceeding before IMPI against one of the largest sites distributing pirated audiovisual content to audiences in Mexico, *Gnula.nu* and *Gnulahd.nu*. As a result, IMPI issued an effective site-blocking order that was successfully implemented in general with support from a majority of the ISPs. Only one ISP filed an injunction to challenge the order, but the request for a provisional suspension was denied. IIPA hopes this type of collaboration can be mirrored by other IP enforcement agencies.

In another positive example demonstrating the importance of public-private collaboration, IMPI signed a Memorandum of Understanding (MOU) with ESA on August 18th, 2022, to enforce and protect video game IP. Under the auspices of the MOU and in accordance with the relevant laws and regulations, IMPI has conducted enforcement activities including infringement referrals, online inspection visits, and investigations, promoting the importance of IP to creative and innovative industries. Practical efforts to execute the MOU continued in 2024 including an ESA-led training with members of the IMPI enforcement team on issues specifically impacting the video game industry. Given the new administration at IMPI, it is crucial in 2025 to maintain the work under IMPI's existing MOUs, such as the one it concluded with ESA. It is also important to grow the partnerships between IMPI and other Mexican IP enforcement agencies with additional rights holders to ensure that Mexico continues to undertake administrative IP proceedings, as well as to enhance the removal of illegal content from digital platforms.

- **Improve enforcement against theatrical camcording.**

Criminal enforcement against illicit camcording is historically ineffective in Mexico for two reasons: (1) inadequate laws and (2) weak and infrequent enforcement of the existing laws. One of the 2020 amendments adopted to comply with the USMCA corrects the legal regime deficiency. New Article 424bis of the Criminal Code criminalizes camcording, and, in the only exception in the Code, deleted the for-profit motive as a prerequisite for criminal infringement, which had thwarted effective prosecutions of camcording. However, the new provision does require a

rights holder to file a claim. Until the 2020 change, the few camcording criminal convictions that had been successful were the result of prosecutions based on an array of crimes other than camcording. As reported in prior IIPA filings, in recent years, many MPA member films have been sourced from illicit camcords in Mexican theaters. Camcords have resurfaced as a piracy problem in Mexico upon theaters reopening post-pandemic, and it is hoped the new laws and improved enforcement will properly address this problem. The independent sector of the film and television industry (namely, the Independent Film & Television Alliance (IFTA)) is especially concerned about Internet piracy derived from camcording because of its harm to the legitimate online distribution platforms and services that provide revenue for financing the development of new creative works worldwide. IIPA suggests that the Government of Mexico organize capacity building programs between prosecutors and relevant agencies in Mexico that encourage improved enforcement against theatrical camcord piracy.

LEGAL REFORMS

- **Publish the implementing regulations of the 2020 Copyright Law amendments and reject interpretations of those amendments that would impede the positive progress resulting from these changes.**

Mexico amended its Copyright Law in 2020 to attempt to fully implement the WIPO Internet Treaties and meet its obligations under the USMCA. These amendments represented needed reforms to Mexico's Copyright Law and included: notice and take down, safe harbor, and related provisions; protection for TPMs and RMI; explicit making available right and right of communication to the public for works and recordings, as well as adaptation or transformation of the phonogram and rent of the original or copies of the phonogram; and sanctions for camcording, as well as against satellite and cable signal theft.

After the Copyright Law reform passed, three constitutional challenges were filed seeking to repeal key provisions of the amendments. These challenges caused several years of legal uncertainty and generated a chilling impact on practical implementation of the reforms because authorities were not willing to address cases based on a challenged law. In May 2024, over three years after the first challenge was filed, the Mexican Supreme Court upheld the 2020 reforms as constitutional. IIPA welcomes this development.

As mandated by the 2020 copyright reform, the Mexican government, and particularly INDAUTOR, were given 180 days to publish implementing regulations for the Copyright Law. However, after more than four years since enactment and more than 180 days since the Supreme Court's 2024 ruling, this obligation remains unfulfilled. The copyright sector is justifiably concerned by this delay because it indicates that the Secretary of Culture and INDAUTOR did not adequately prioritize this matter under the previous administration. IIPA urges the new administration and new leadership at INDAUTOR to promptly introduce the implementing regulations of the Copyright Act to prevent a breach of Article 20.88 of the USMCA.

- **Amend the Copyright Law and related laws and publish related implementing regulations to address issues not resolved in the 2020 amendments.**

While the passage of the 2020 Copyright Law amendment was a welcome development, more revisions are needed to the Copyright Law, as well as to the Industrial Property, Criminal, and Criminal Procedure Codes for Mexico. Further, related implementing regulations must be published, to meet Mexico's obligations in USMCA and international treaties and comply with other international best practices. Some key reforms that are needed, but were not achieved through the 2020 changes include:

- Establish explicit secondary liability for copyright infringement.
- Amend the Forfeiture Law to cover copyright infringements undertaken by organized crime syndicates.
- Add criminal provisions to enforce against the production or distribution of PDs, ISDs, or circumvention devices.

- Provide proper civil and criminal sanctions for all activities relating to the manufacturing of, or trafficking in, circumvention devices or technologies that circumvent TPMs. This is especially relevant in the importation of circumvention devices used in video games that are entering Mexico in small consignments and via courier packages.
 - Enhance penalties for repeat infringers.
 - *Provide ex-officio* authority for all IP enforcement agencies and the ability to detain containers with pirated goods that are in transit or being transshipped.
 - Severely restrict or eliminate exceptions to infringement for certain public performances where retransmission is not “for profit-making purposes” (Copyright Law, Article 150, transmissions of works) and “no direct economic benefit is sought” (Copyright Law, Article 151, neighboring rights). These exceptions are too broad, exceeding what treaties permit.
- **Provide incentives for ISPs to cooperate in enforcement against online copyright infringement, including applying the reform of the 2020 Copyright Law to provide secondary liability for copyright infringement.**

In a positive development, the 2020 Copyright Law required compliance with notices to remove infringing content, with measures to prevent infringing content from being uploaded again, as well as providing safe harbors for services and platforms that comply with the notices. The 2020 package of amendments adopted notice and takedown procedures, defined ISPs, and provided legal remedies and safe harbors to ISPs providing mere conduit, caching, and storage and information location tools, by limiting monetary damages—but not injunctive relief or administrative sanctions—for ISPs that respond properly and timely to notices (Copyright Act, new Article 114 *Octies*). The changes add specific provisional measures to order the suspension, stay down, blocking, or removal of content, and the cessation of acts that are infringing or unauthorized. The new provisions also require ISPs to have repeat infringer policies and counter-notification procedures (requiring rights holders to commence judicial, administrative, or criminal actions within 15 days of notification by an ISP). The Copyright Law also now compels an ISP receiving a notice of infringement to comply and there are administrative penalties (fines) for non-compliance with notices. However, Mexican law should also require an ISP with actual knowledge of an infringement or awareness of facts or circumstances from which infringement is apparent (so-called “red flag” knowledge), to take down material. ISPs also have the right to file an injunction against a takedown order by IMPI that could suspend the decision of authority and frustrate the takedown of the infringing content. Moreover, these amendments have not been in practice in Mexico’s legal regime because even though the Supreme Court confirmed the constitutionality of these provisions, the Mexican government has not issued implementing regulations to the Copyright Law.

The Mexican legal system also includes general liability principles contained in the Civil and Criminal Codes, but it does not include explicit secondary liability for copyright infringement for ISPs and similar parties in the Civil Code. The safe harbors imply that such potential secondary liability exists, but IIPA urges the Government of Mexico to make such liability explicit in its law. The USMCA (Article 20.88) requires Mexico to implement “legal incentives for Internet Service Providers to cooperate with copyright owners to deter the unauthorized storage and transmission of infringing materials or, in the alternative, to take other action to deter the unauthorized storage and transmission of copyrighted materials.” While notice and takedown and related provisions are a strong first step, ISPs need further encouragement to meaningfully cooperate with all rights holders (large and small) to deter the unauthorized storage, transmission, or making available of copyrighted materials. One suggestion is to designate one Mexican IP enforcement agency to take the lead on enhancing cooperation or facilitating communication with ISPs with the purpose to improve a notice and takedown system in Mexico.

Coordination between IP enforcement authorities is also important in this context, especially in view of recent rulings issued by District Courts that have granted protection to the ISPs from the government blocking orders. In these cases, the courts appear to be considering whether blocking an entire website is proportional to the violation of copyrights, weighing the right to information and net neutrality. This potential conflict between government agencies and the courts is adding uncertainty to whether ISPs will follow site blocking orders.

Finally, specific provisions in the Telecommunications Law prohibit ISPs from disclosing a customer's personal information to rights holders seeking civil recourse against alleged infringers (although Article 189 of the Telecommunications Law, as amended in 2014, does allow an ISP to cooperate with an order from any competent authority). Additionally, ISPs have been reluctant to include clauses in their subscriber agreements to permit termination of service contracts if subscribers infringe IPR. ISP contractual practices thus compound the difficulties of obtaining access to information necessary for seeking civil remedies. For file sharing, the two major ISPs (*Telmex Infinitum*, which has about 70% of the domestic broadband connections in Mexico, and *ALESTRA*) have, to date, been reluctant to take any actions. As such, the collaboration between ISP, IP enforcement agencies, and rights holders remains crucial to addressing Mexico's piracy challenges.

- **Clarify the scope of the Cultural Heritage Law, and all secondary legislation arising from the 2024 amendment to Article 2 of the Mexican Constitution in a manner that brings greater legal certainty and includes consultations with rights holders.**

On January 17, 2022, the “Federal Law for the Protection of the Cultural Heritage of Indigenous and Afro-Mexican Peoples and Communities” (the Cultural Heritage Law) was published in the Federal Official Gazette and entered into force the following day.¹¹ The law's implementing regulations should have been issued within 180 days of its publication. However, INDAUTOR asserts that the law can be enforced even in the absence of implementing regulations. The law aims to register, classify, and document the traditional cultural expressions (TCEs) of indigenous communities, while also broadening their scope of protection, acknowledging their economic rights, and introducing an enforcement scheme. Although some of its objectives are aligned with WIPO's stance on the protection of indigenous peoples' traditional knowledge and TCEs, the law creates legal uncertainty for a range of creative industries, given the absence of guidelines for the granting of authorization, the lack of clarity as to which communities are associated with a particular expression, and the fact that some expressions could be removed from the public domain.

The law lists a catalog of administrative infringements that are unclear and ambiguous and establishes fines that range from US\$2,240.00 to US\$224,000.00. The law also establishes criminal penalties for the improper use and exploitation of the elements of cultural heritage of indigenous and Afro-Mexican communities or peoples, and for the cultural appropriation of elements of the cultural heritage of indigenous communities or peoples. Criminal penalties range from two to ten years of imprisonment and double if the conduct results in “cultural ethnocide.” Additionally, Mexico's Human Rights Commission filed a claim of unconstitutionality against the 2022 Cultural Heritage Law, citing policymakers' lack of consultation with indigenous communities during the law's formulation, and the excessive nature of the penalties. The case is pending review at the Supreme Court. Nonetheless, due to the 2024 amendment of the judicial power, the matter has been deferred, and it is unlikely that its unconstitutionality will be settled in the near future.

In September 2024, the Senate approved the presidential constitutional amendment to Article 2 on Indigenous Communities, which establishes TCE protection as these communities' right and expressly establishes that indigenous people hold collective copyright over their TCEs. Consequently, both federal and local governments must create a legal framework for protecting and promoting this right. Secondary regulation will be critical for the implementation of this reform. This constitutional reform, coupled with the 2022 Cultural Heritage Law, increases legal uncertainty in Mexico regarding audiovisual investments. The U.S. government should encourage Mexico to implement this initiative with transparency, broad stakeholder engagement, and adherence to good regulatory practices and USMCA commitments. Additionally, several initiatives were presented in the Mexican Congress in 2024 to support a more extensive protection of cultural heritage and TCEs. IIPA urges U.S. and Mexican authorities to monitor these initiatives to ensure they do not result in further restrictions that might also conflict with USMCA obligations.

¹¹ *Ley Federal de Protección al Patrimonio Cultural de los Pueblos Indígenas y Afromexicanos*, January 17, 2022, available at <https://www.diputados.gob.mx/LeyesBiblio/ref/lfpccpcia.htm>.

- **Reject amendments to the Copyright Law that would establish a remuneration system through a PCL.**

The Government of Mexico should reject proposed amendments of the Copyright Law that would establish a remuneration system through a PCL. Such amendments would require manufacturers and importers of equipment, devices, and technological goods to pay a fixed “compensatory remuneration” for the supposed copying, storing, compacting and/or reproduction of protected works that could occur in the future. This initiative will normalize copyright infringement, offering a blank check to consumers of devices for the unrestricted copying of content, on the assumption that the relevant manufacturer or distributor has already “prepaid” for the reproduction of protected works.

- **Reject any interpretation of the Copyright Law that would interfere with exclusive rights, including the introduction of a making available remuneration right for performers in addition to the already existing and sufficient exclusive right.**

The Government of Mexico should reject any interpretation of the Copyright Law that would interfere with the exclusive rights granted by the law and those required by international treaties. The introduction of a making available remuneration right for performers in addition to the already existing and sufficient exclusive right would be one such example, and IIPA urges the Government of Mexico not to introduce such a measure.

MARKET ACCESS

- **Reject policies proposing Local Content Quotas.**

On a regular basis, Mexican lawmakers and policymakers propose protectionist policies, such as the imposition of local content quotas in both theatrical and streaming, over-the-top (OTT) windows, limiting the number of screens in which a given movie can be exhibited, or regulating the dubbing of films regardless of the market preferences. If adopted, such measures would severely limit the exhibition of U.S. films in Mexico and would potentially contravene Mexico’s USMCA national treatment provision and market access commitments. Instead, Mexican policymakers should encourage open markets, investments, and collaborations that would result in job creation, knowledge transfer, and the internationalization of the alignment of local industry with international best practices for the benefit of both Mexican and U.S. industries.

- **Reject discriminatory investment obligations in the audiovisual industry.**

In recent months, there have been legislative efforts aiming to establish performance requirements to investments in the form of a financial contribution in favor of the Mexican audiovisual industry. If adopted, such measures would be discriminatory and harmful to the audiovisual services platforms that operate within Mexico and may be contrary to USMCA national treatment provision and market access commitments. Mexican policymakers should reject any such attempt to impose investment obligations.

RUSSIAN FEDERATION

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that the Russian Federation remain on the Priority Watch List in 2025.¹

Executive Summary: This submission continues to be provided against the backdrop of Russia's invasion of Ukraine in February 2022 (nearly entering its fourth year as of this submission), the attendant sanctions against Russia by the United States and its allies, the suspension of operations in Russia by U.S. and many foreign companies, and the continued trend by the Government of Russia to ignore the intellectual property rights (IPR) of companies that have withdrawn from the market because of the invasion. The Government of Russia continues to intentionally weaken intellectual property (IP) protections—including through proposals being considered in late 2024—and threatens to codify a compulsory licensing scheme that permits exploitation of a copyrighted work if a partner from an “unfriendly state” (including the United States) partially or completely unilaterally repudiated an existing license agreement with a Russian entity on grounds not related to the violation of such contract by a licensee. Russia's blatant and unabashed stance that U.S. IP will no longer benefit from protection or enforcement within its borders continues to be an unprecedented rejection of international norms that governs the global digital marketplace for copyright works. Russia should abandon these punitive proposals and instead focus on improving criminal, civil, and administrative enforcement, particularly against organized criminal syndicates and large-scale unlicensed services; addressing long-standing problems with collective management of music rights; preventing the camcording of motion pictures; and preventing or disrupting the proliferation of illegal screenings of films in Russian theaters. Persuading the current Russian administration to reverse discriminatory IP laws or to enhance measures against piracy remains difficult. We have outlined the necessary steps below with the expectation that Russia will return to international trade norms.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Increase the number and effectiveness of criminal copyright digital piracy cases, especially deterrent criminal actions directed against organized criminal syndicates.
- Improve administrative enforcement against large-scale unlicensed services, including by imposing deterrent-level penalties.
- Improve civil enforcement, including by amending the Civil Code or other relevant laws to address the issue of “domain hopping.”
- Prevent or disrupt the unauthorized screenings of motion pictures in cinemas.

Legal Reforms

- Continue to resist efforts to implement state-sanctioned IP theft regardless of existing license agreements, which is having serious, long-term implications for Russia's economy and creative ecosystem.
- Ensure recent legal reform proposals do not worsen copyright protection and enforcement.
- Reject proposed legislation that would allow esports event organizers to profit from copyright-protected video game content without authorization from rights holders.
- Convert the memorandum of understanding (MOU) between Internet service providers (ISPs) and rights holders into law with broader applicability and sanctions for non-compliance and enforce the addendum to the MOU.

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

- Implement regulations on the operation of collective management organizations (CMOs) that confirm that rights holders, whether local or foreign, have the legal and practical ability to determine how to exercise their rights.
- Amend the Administrative Code and Criminal Code to prevent theatrical camcording.
- Amend the Civil Code, Part IV, to incentivize ISPs to cooperate with rights holders to effectively address online piracy.
- Amend the Civil Code and Criminal Code to provide adequate protection for technological protection measures (TPMs).

Market Access

- Remove market access restrictions negatively impacting the U.S. creative industries.

ENFORCEMENT

- **Increase the number and effectiveness of criminal copyright digital piracy cases, especially deterrent criminal actions directed against organized criminal syndicates.**

The Government of Russia has unfulfilled commitments to take such action against digital piracy under the 2006 U.S.-Russia Bilateral WTO Market Access Agreement Side Letter on Intellectual Property Rights (2006 IPR Side Letter). In the 2006 IPR Side Letter, Russia agreed to combat the growing threat of Internet piracy “with the objective of shutting down websites that permit illegal distribution of content protected by copyright or related rights” (and especially for websites registered in Russia’s .ru domain name, or whose servers are situated in Russia), and “to investigate and prosecute companies that illegally distribute objects of copyright or related rights on the Internet.” When Russia joined the WTO in 2012, as part of its WTO accession, Russia pledged that it would “continue to take actions against the operation of websites with servers located in the Russian Federation that promote illegal distribution of content protected by copyright or related rights, such as phonograms (sound recordings), and investigate and prosecute companies that illegally distribute objects of copyright or related rights on the Internet.”² Also in 2012, Russia agreed it would take “enforcement actions targeting piracy over the Internet” and more specifically it would, *inter alia*:

Take measures in order to disrupt the functioning of websites that facilitate criminal copyright infringement, and provide for takedown of infringing content: ...Take actions against the creators and administrators of websites through which intellectual property crimes are committed ...Conduct meaningful consultations with rights holders to target and to take action against high-priority infringing websites.³

The Government of Russia should fully and properly implement these obligations.

Russia remains host to several illicit sites that cater to English-speaking audiences, negatively impacting markets worldwide. The lack of explicit liability provisions for hosting providers creates a supportive environment for infringing services to use the infrastructure in Russia. Infringement on Russian social media and hosting platforms such as *vKontakte* (VK), *Odnoklassniki* (OK), and *DDoS-Guard*, as well as dealing with registrars such as *Reg.ru*, *Beget*, and *RU-CENTER* remains a significant concern for rights holders.

Examples of the types of large-scale online piracy problems that persist are evident in the annual Notorious Markets List, and in IIPA’s past filings with the U.S. government. The U.S. government included seven Russian online sites on the 2024 Notorious Markets List, including *Sci-Hub*, *Lib-Gen* (and its related sites), *Rapidgator*, and *DDoS-*

² WTO Working Party Report (paragraph 1339).

³ U.S.-Russia Intellectual Property Rights (IPR) Action Plan (2012).

Guard.⁴ All of the aforementioned online markets were nominated by IIPA and its members for listing on USTR's Notorious Markets list.

The motion picture and television industry is particularly concerned about VK, which is one of the most popular sites in the world and the most popular social network in Russia. VK, along with OK, are infringement hubs whose impact extends well beyond Russia. Users of VK and OK can illegally distribute thousands of unlicensed motion picture files (even though VK negotiated licenses a few years ago with some of the music companies for its use of music). Previously, VK had demonstrated improvements in their responsiveness to takedown notices and limiting access to third-party apps. However, dozens of groups dedicated to movie and TV piracy with millions of users have been illegally uploading and sharing infringing content on VK for several years, despite multiple removal requests from rights holders. The publishing industry (particularly trade book publishing) is similarly affected, with significant e-book piracy on the site. Although the site responds to notifications of infringement, piracy remains unabated given the ease with which the site's users can continuously upload and make available pirated e-books and audiobooks. VK has historically been one of the main platforms for promoting video game piracy sites and marketplaces. Before the invasion, Russian social networks had improved their responsiveness to take-down notices from the video game industry, removing infringing material including cheats and other unauthorized digital goods (UDGs). Today, video game piracy remains a problem in Russia that is feared to fuel piracy in other markets.

The video game industry historically has experienced overall very weak compliance in Russia with takedown notices regarding links to pages with infringing content via forums, cyberlockers, and direct download sites, and very quick reposting of materials that are taken down. BitTorrent sites are significant sources in Russia for downloading illegal copies of video games, with no abatement in recent years. In 2024, Russia ranked number one 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, Russia ranked first in the world for unauthorized file-sharing of PC-based games, and for console-based games.

The most prominent forms of music piracy in Russia remain web downloads, BitTorrent, and stream ripping. The most popular BitTorrent site (and the most popular piracy site of any kind) in Russia is *rutracker.org* (which received over 227.5 million visits from Russia in from September 2023 to August 2024, a 6% increase in popularity over the last two years). Visits to the site remain high as Russian users have learned how to circumvent the block imposed on the site by authorities enabling them to easily access the large amounts of both English and Russian content available on the site, including enormous quantities of discographies for many music artists. The continued popularity of the site is demonstrated in its position as the 6th most visited site of any kind in Russia from September 2023 to July 2024.

From September 2023 through August 2024, *SaveFrom.net* continued to be the most popular stream-ripping site in Russia, receiving roughly 1.59 billion visits globally and 134.4 million visits from Russia according to *SimilarWeb*. Over the same period, *Y2Mate.mx* received 28.56 million visits from Russia; *Save4k.com* (now *Save4k.org*) received 15.02 million visits from Russia; *SSYouTube.com* received 5.7 million visits from Russia; and Russian-language MP3 download site *Zaycev.net*, which offers popular music content to download or stream, was visited 70.28 million times from Russia.

Russia also remains home to many services supporting large-scale infringing websites, including web-based and P2P downloading and streaming sites, linking sites, stream-ripping sites, BitTorrent sites, and cyberlockers that operate globally. For example, *Newalbumreleases.net* is a popular linking site that has a large library of newly released popular music available and is often the first site to feature links to newly leaked pre-release music content. *Songswave.com* (formerly *music-bazaar.com*) and *mp3va.com* are sites that have the look and feel of legal music sites like *Amazon* or *iTunes* but sell music content as downloads at a considerable discount, with all the revenue accruing

⁴ See USTR, "2024 Review of Notorious Markets for Counterfeiting and Piracy," available at [https://ustr.gov/sites/default/files/2024%20Review%20of%20Notorious%20Markets%20of%20Counterfeiting%20and%20Piracy%20\(final\).pdf](https://ustr.gov/sites/default/files/2024%20Review%20of%20Notorious%20Markets%20of%20Counterfeiting%20and%20Piracy%20(final).pdf) (2024 NML). The 2024 NML also included three physical markets in Russia, all of which are on the list for the prevalence of counterfeit materials.

to site operators and none actually reaching artists or record labels. These sites undermine the sale of licensed music on legitimate platforms and remain targets for action.

Most concerning to book and journal publishers are the online book and journal piracy websites operating out of Russia. *Sci-Hub.se* (also *Sci-Hub.ru* and *Sci-Hub.st*) continues to be the most problematic piracy site for professional and scholarly journal publishers. Infringing journal articles pirated by the site's operator are likewise available on a network of sites collaborating under the "Library Genesis Project" collection of piracy sites. *Sci-Hub*⁵ claims its servers hold some 88 million copyright-protected journal articles, as well as millions of books found on *Lib-Gen*, *Z-Library*,⁶ and numerous other mirror sites.⁷

In October 2018, publishers successfully sought an injunction to block the sites' primary domain in Russia. In 2019, a permanent block was issued against *Libgen.org*, while a permanent injunction against several *Sci-Hub* mirrors in Russia took effect in 2020. It remains the unfortunate case that despite the seizure of some 244 *Z-Library*-related domains by the U.S. Department of Justice in November 2022—and the arrest of the alleged Russian operators in Argentina⁸—*Z-Library* operators continue infringe. Despite a further seizure of several alternative *Z-Library* domains (such as *singlelogin.click*) in November 2023, with assistance from enforcement authorities in Europe, various domains remain live, such as *zlibrary.to*.

In addition to these large-scale book and journal piracy platforms, Russian Internet users also use P2P file-sharing services. An AAP member has registered 6.1 million P2P downloads of pirated copies of its books by Internet users in Russia since May 2021, with 2.9 million of those downloads by Internet users in Moscow. Finally, publishers have identified dozens of pirate platforms (among them *Vdoc.pub*, *torrentdownload.info*, *pixel-brush.ru*, *VK*, *prizrak.ws*, *libramar.net*, and *torrentdownloads.me*) hosted in Russia that either host pirated books or link to pirated content. *DDOS-Guard* also plays a prominent role in hosting at least seven highly popular book piracy platforms.

The copyright industries continue to report high levels of piracy and declining levels of criminal enforcement, continuing a trend of the past several years. Currently, criminal cases for online piracy do not reach courts due to outdated provisions of the Criminal Code that are hard to enforce for online infringements, specifically, the "value of the crime" definition that sets the threshold for liability. Official statistics of the Ministry of Interior demonstrate a continuous decrease in the number of registered copyright-related crimes, dropping from 423 cases in 2020 to 317 cases in 2021 (a 22% decrease) and zero copyright infringement cases in 2022. The Ministry stopped publishing these statistics since the invasion.

Prior to the invasion changes to criminal procedures that placed copyright infringement cases into the category of serious crimes had enabled Russian law enforcement agencies to conduct thorough and comprehensive investigations against owners and operators of piratical operations, although significant challenges still exist. Since the invasion, nearly all criminal prosecutions and procedures related to fighting piracy have been suspended. More information about deficiencies in Russia's anti-piracy enforcement before the invasion can be found in previous IIPA reports.

⁵ Sci-Hub is an adjudged pirate entity, with two Association of American Publishers (AAP) members having secured judgments against the site and its operator in 2017 and 2015 in two U.S. courts. These judgments resulted in injunctions requiring U.S. domain name registries to suspend the site's U.S. administered domains. In October 2018, publishers successfully sought an injunction to block the sites' primary domain in Russia. In 2019, a permanent block was issued against *Libgen.org*, while a permanent injunction against several *Sci-Hub* mirrors in Russia took effect in 2020.

⁶ In November 2022, *Z-Library* domains were seized by the Department of Justice, and the network of some 244 sites taken offline. The alleged operators, two Russian nationals, were also arrested in Argentina and await extradition. See U.S. Attorney's Office, Eastern District of New York Press Release, *Two Russian Nationals Charged with Running Massive E-Book Piracy Website*, November 16, 2022, available at <https://www.justice.gov/usao-edny/pr/two-russian-nationals-charged-running-massive-e-book-piracy-website>.

⁷ *Sci-Hub* provides access to nearly all scholarly literature. See <https://www.insidehighered.com/news/2020/01/17/universities-ignore-growing-concern-over-sci-hub-cyber-risk>.

⁸ See supra note 6.

- **Improve administrative enforcement against large-scale unlicensed services, including by imposing deterrent-level penalties.**

In addition to criminal enforcement, the relevant administrative agencies should target large illegal distribution enterprises, such as the large-scale unlicensed services responsible for most of the illegal distribution of music and film in Russia. The Administrative Code (Article 7.12) provides a range of fines for infringement by natural persons (1,500 to 2000 rubles, US\$20 to US\$27), the owners or managers of legal entities (10,000 to 20,000 rubles, US\$133 to US\$266), and legal entities themselves (30,000 to 40,000 rubles, US\$400 to US\$533) and permits the confiscation and destruction of pirated products. The police or agencies file administrative cases, but the courts of general jurisdiction levy fines. Imposing significant administrative fines on legal entities would have a deterrent effect, especially in instances when criminal cases are terminated for failing to meet the high evidentiary burdens. Unfortunately, current administrative procedures are inadequate because of the very low level of fines imposed, as well as the inability to reach commercial enterprises that distribute infringing content. Moreover, enforcement under the Administrative Code has been ineffective due to the lack of enforcement actions. In 2021, there were 676 cases under this article, in which only 449 cases included fines for a total of 5,129,000 rubles (approx. US\$70,000).

- **Improve civil enforcement, including by amending the Civil Code or other relevant laws to address the issue of “domain hopping.”**

While civil judicial and administrative remedies had started to improve before the invasion (with legal reforms in 2013, 2014, 2017, and 2020), the ability for U.S. rights holders to bring civil action in Russia has completely ceased since the invasion.⁹ Before the invasion, civil injunctive relief mechanisms allowed rights holders to enjoin notoriously infringing sites, but critical gaps remained. These include the lack of relevant laws targeted at online piracy, “domain hopping” of pirate sites that occurs after the Moscow City Court issued an initial content-removal order, and the liability of hosting providers. Current regulations were designed in the offline environment, and some provisions are difficult to apply to diversified online piracy, particularly regarding timelines, evidence fixation, and damages calculation.

Moreover, pirates have found tools to navigate around the content protection tools provided in recent legal reforms. Part of the problem lies in how *Yandex*, the major search engine in Russia, indexes sites. Neither internal *Yandex* policy nor laws oblige *Yandex* to improve search and retrieval algorithms to reduce the number of pirate sites and links to infringing content. *Yandex* algorithms instantly or even automatically include updated mirror sites. Another tactic is to use an empty site with a relevant domain name for search engine results, which redirects to a site with infringing content. Significant changes and improvements in the piracy situation will require adoption of anti-piracy laws and policies that are relevant to the current issues affecting the creative industries.

In addition, court practice related to title-specific civil injunctions has worsened. The Moscow City Court, under the influence of the first appellate court, changed its approach to decisions in title-specific civil injunction cases. Previously, the court prohibited a site from using the title on the site in general. Now, the court prohibits the use of the title on only the page on which it was captured. Thus, any change of the URL allows the site to avoid enforcement under the court decision.

- **Prevent or disrupt the unauthorized screenings of motion pictures in cinemas.**

Before the invasion, Russia was the source of many feature films being illegally copied in theaters and migrating online. Piracy operators obtain their source materials for infringing copies by camcording films at local Russian theaters or soliciting third parties to camcord films in disparate locations, and then upload these copies onto the Internet and sell illegal hard copies. Russia remains the home to some of the world’s most prolific criminal release groups of motion pictures with substantial operations outside of Russia, organized by Russian expatriates.

⁹ Prior IIPA filings have detailed the 2013, 2014, 2017, and 2020 legal reforms, which implemented ISP liability and safe harbors and injunctive relief against infringing content online. See, e.g., IIPA 2022 at 79-80.

After Russia's invasion, the U.S. film, broadcast, and streaming industries, along with many other industries, suspended operations in Russia. Unfortunately, third-party operators have recently begun organizing illegal screenings of U.S. films in theaters throughout Russia. At first, the theaters did not advertise the screenings openly, referring to them as "private club" events. However, by August 2023, most of the theater chains included such screenings in their schedules and started promoting them along with the legal exhibitions, such as *Barbie*, *Blue Beetle*, and *Oppenheimer*. In 2024, most cinemas still openly show unlicensed content. The content shown at these illegal screenings are sourced from pirated Digital Cinema Packages (DCP), allegedly created from legitimate copies supplied to exhibitors in the region, that are illegally distributed online. Moreover, there is evidence of camcording occurring at these illegal screenings, compounding the harm.

LEGAL REFORMS

- **Continue to resist efforts to implement state-sanctioned IP theft, which is having serious, long-term implications for Russia's economy and creative ecosystem.**

In mid-April 2022, Russia began drafting legislation that, if enacted, would drastically undermine exclusive rights. This unprecedented bill would allow a Russian licensee of a copyrighted work to apply to the court for a compulsory license to exploit a copyrighted work if a partner from an "unfriendly state" (including the United States) partially or completely unilaterally repudiated the license agreement on grounds not related to the violation of such a contract by the licensee. As U.S. industries have suspended operations in Russia in the wake of Russia's invasion of Ukraine, such a bill, in effect, would legalize piracy of copyrighted materials owned by U.S. rights holders, in clear violation of Russia's WTO obligations—essentially amounting to state-sanctioned IP theft. On August 19, 2022, the first version of the draft was submitted to the State Duma. However, after the pushback from a local industry association, the sponsor of the bill stated the bill would be withdrawn and an alternative version would be drafted. A new draft law with similar provisions was submitted to the State Duma in July 2024, with a preliminary hearing date set for December 2024. The draft text still proposes to violate Russia's obligations under international treaties, including the Berne Convention.

- **Ensure recent legal reform proposals do not worsen copyright protection and enforcement.**

Since its invasion of Ukraine, Russia has introduced several troubling legal reforms that negatively impact the copyright industries. For example, on May 27, 2022, the Russian President issued Decree #322 regarding the payment of remuneration to foreign rights holders from "unfriendly" countries (i.e., the countries that imposed sanctions against Russia in response to its invasion of Ukraine). The Decree orders that Russian persons (including the Russian authorities, organizations, companies, and residents) make payments for the use of IP to foreign rights holders in rubles to a special O-type bank account opened in the name of the foreign rights holder. Russian entities have no obligation to make payments to foreign rights holders until the rights holder agrees to the new method and rights holders may not transfer funds from O-type bank accounts outside of Russia without government permission. The Decree restricts the rights holders subject to the Decree from receiving license payments other than through governmental approval.

In 2024, the Russian President signed into law amendments to the Criminal Code that further increased the threshold for criminal liability for copyright infringement – the threshold is now five times higher than it was prior to the amendment. Initiation of a criminal investigation is more difficult as a result and still impossible for U.S. rights holders.

In July 2024, a law amending Part IV of the Civil Code was adopted. The bill established a procedure for the use of orphan works, including the creation of a database for orphan works and the appointment of a collective management organization to manage rights for such works. The amendments limit the possible uses of the orphan works as follows: reproduction and distribution of the copies, making them available to the public, and creation of derivative works. The remuneration rates are subject to determination by the government. If the potential licensee is

unable to identify the copyright holder, the licensee would have the right to apply to the CMO authorized by the Ministry of Culture with a statement of intent to use the corresponding copyrighted work. The Ministry of Culture would determine the necessary and sufficient measures to be taken by a potential licensee to identify the rights holder before applying to the CMO. The authorized CMO must place an announcement about the rights holder's search on its official website. If the rights holder is not identified within 30 days, the CMO will record information about the copyrighted work in the database, including the measures taken to find the rights holder, after which the CMO will have the right to grant the right to use the work on the terms of a non-exclusive license. The CMO will deposit the remuneration in a dedicated account until the rights holder submits a payment request. Although the amendments contain a provision securing the rights holder's right to terminate the license agreement concluded by the CMO and recover damages if the CMO fails to take proper measures to identify the rights holder, the procedure for determination of fees and rights holders' search creates unnecessary state involvement in rights management, raising concerns that rights holders' copyright rights will be undermined. It is important that the Government of Russia ensures that adequate due diligence obligations are introduced to establish that a work or sound recording be considered orphan. Given the geopolitical situation, record companies that are no longer present in the Russian market are concerned that said due diligence requirements may be scoped in a way that would make it easy for their catalogues to be considered orphan. As a consequence, said catalogues would be misrepresented by local CMOs.

Additional problematic developments include plans to introduce forms of compulsory licensing in relation to copyright and related rights (with or without remuneration); mechanisms to extend the terms of license agreements automatically and without authorization of the licensor when they are from territories that have applied sanctions against Russia; significant limits to the availability of damages for copyright infringements, and suspensions of certain intellectual property rights which, if adopted in relation to copyright and related rights, would result in a significant step backwards, a worrying precedent in terms of IP protection, and a clear breach of international treaties. These examples display IIPA and its members' major overarching concerns in the Civil Code: (a) a lack of clarity on numerous provisions, especially on exceptions and limitations; and (b) administrative law principles throughout the Civil Code that likely cannot be enforced by civil or criminal procedures.

- **Reject proposed legislation that would allow esports event organizers to profit from copyright-protected video game content without authorization from rights holders.**

Russian lawmakers recently proposed legislation that would allow esports tournament organizers to profit from video game content without obtaining licensing agreements directly from video game publishers. The bill contemplates the creation of a public-law company (PLC), which would replace the role of rights holders to manage licensing fees associated with the use of games in esports tournaments, interfering with the exclusive right of publishers to maintain brand integrity and to exercise rights to their protected works.

- **Convert the MOU between ISPs and rights holders into law with broader applicability and sanctions for non-compliance and enforce the addendum to the MOU.**

Although the civil law reforms had improved enforcement by the courts before the invasion, absent these court orders, most ISPs and website operators still did not comply with takedown notices; instead, they merely forward notices to users without taking down infringing material. Often, as a delaying tactic, the Russian websites insisted on proof of copyright ownership before even considering compliance with takedown requests. The advertising agencies and payment processors that financially support infringing sites continue to resist cooperation with the copyright industries.

The only alternative has been the voluntary Memorandum of Understanding (MOU), signed in November 2018 and extended until May 2024, between some ISPs and certain local rights holders regarding delisting of infringing sites from search engines. In August 2023, the parties to the MOU agreed to extend it to music and literary works and simplified the approval procedure for the new members, eliminating the requirement to apply via a non-commercial

organization for certain rights holders. The candidates for membership must still obtain approval by most of the existing members; however, they can now apply directly if they own a catalog of at least 100 works.

In June 2021, legislation was proposed in the Duma to convert the ISP-rights holder MOU into legislation. The Duma was to consider the bill in February 2022 but has not taken any action. The legislation should provide sanctions for non-compliance with takedown notices and should be applicable to all platforms and search engines and all copyrighted works. An addendum to the MOU, MOU 2.0, was signed in December 2021, but is subject to the adoption of the legislation and has not been enforced. MOU 2.0 provides for several new measures to stop search engines from providing easy access to infringing services. New measures include removal of repeat offender sites from search results, removal of sites displaying over one hundred links to infringing content from search results, and measures to defeat “domain gluing.”¹⁰

- **Implement regulations on the operation of CMOs that confirm that rights holders have the legal and practical ability to determine how to exercise their rights.**

The long-standing problems concerning the collective management of music rights in Russia needs to be addressed properly.

After years of missed deadlines, Russia adopted new legislation in 2017 (in force, May 2018) that did not address key relevant issues and created even more problems. The new collective management system denies transparency to rights holders and good governance consistent with international norms, as well as best practices for CMOs as required by Russia’s WTO accession obligations. The 2017 law amended the Civil Code and the Administrative Code to revise the make-up and activities of CMOs. One obvious failure of the 2017 law regarding transparency is that it does not allow rights holders to see how much money their CMO collects or distribute to their members. Moreover, in terms of a lack of good governance, the law does not allow rights holders to control their CMOs.

The so-called “fiscal control improvements” in the new law, including regular audit reports, will not improve accountability because the audit obligations are for reports only to the government for taxation purposes, not to rights holders. The new law creates “supervisory boards” for each of the various authors’ CMOs (the Russian Authors Society, the Russian Union of Right Holders, and the All-Russian Intellectual Property Organization) consisting of members of each CMO, but also including government representatives and “user” group representatives. This structure does not allow rights holders to be involved in the selection and management of the organizations that purport to manage their rights. Proper management would allow for a supervisory board of rights holders to oversee the internal management of the CMO and would include international rights holders with local representatives on the board. Instead, partial control of CMOs by the Government of Russia deprives rights holders of their ability to control the licensing and collection of monies for their works and recordings and is resulting in less, not more, money flowing to authors and producers and certainly less money than should be collected for a market the size of Russia.

To develop properly functioning music broadcasting and public performance payment systems via collective management, the Government of Russia should re-visit the 2017 law to ensure that rights holders are able to control and manage their own CMOs or can effectively opt out of collective management. This change would result in fair representation characterized by direct representation of rights holders on the board in a manner that is proportionate to relevant market share and reflects commercial realities, with no conflicts of interest in the governance structures. Many models for proper governance of CMOs exist, including WIPO best practices, international rights holder group best practices, as well as U.S. and European Union (EU) existing practices. Instead, the existing regulations and state accreditations have institutionalized a system that is neither transparent, nor well governed with accountability for authors, record labels, and performers, who have no other option except for the state CMOs.

- **Amend the Administrative Code and Criminal Code to prevent theatrical camcording.**

¹⁰ Domain gluing” is a process used by operators of infringing services allowing them to return to the same search ranking from which they were removed by “gluing” pages together.

In August 2021, the Government of Russia adopted a Decree establishing the rules for film exhibition in theatres that cover the rights and obligations of both exhibitors and viewers. The Decree replaced the older document from 1994 and extended the exhibitors' rights to remove from the screening room viewers who disregard the exhibition rules, including those who attempt to record the film illicitly. While the Decree provides an explicit framework to address viewers who illicitly attempt to record a film in the theater, it does not resolve the issue of lack of liability for camcording.

To adequately address the camcording problem requires changes in the Russian legal framework, as well as dedicating sufficient resources and government willpower to engage in effective enforcement. Owing to the complex burden of proof procedure that the Administrative Code requires for copyright infringements, law enforcement is reluctant to investigate camcording incidents. Separate provisions addressing illegal recording in theaters and tailored to that specific form of infringement, could enhance enforcement. The Government of Russia should amend the Administrative Code to add liability for camcording to the general liability provisions on copyright infringements (Article 7.12) and to provide criminal law penalties as well. In 2020, the Government of Russia prepared changes to a new Administrative Code to address camcording, but the timing for revising the Code is unclear. The new rules, if adopted, would explicitly prohibit video or audio recordings of films in theaters and would allow theater owners to act to stop any such recordings, including removing the offending party from a theater. The proposed new law would also add administrative sanctions for camcording. While this is a step in the right direction, unfortunately, no proposals exist to amend the Criminal Code or to add any criminal sanctions for camcording pursuant to Russia's WTO and bilateral obligations. In addition to these needed legal reforms, IIPA recommends that the Government of Russia properly resource enforcement actions and undertake more effective enforcement against illegal camcording of motion pictures.

- **Amend the Civil Code, Part IV, to incentivize ISPs to cooperate with rights holders to effectively address online piracy.**

IIPA and its members continue to note one ISP-related major overarching concern in the Civil Code: the absence of clear liability rules for online websites and services that induce or encourage infringement, as well as the applicability of safe harbors for such services. Even after the recent amendments, the law does not define ISPs and the various services they provide, nor does it link liability and safe harbors in a manner that will incentivize cooperation with rights holders to effectively address Internet piracy. Lastly, Russia's law does not define secondary liability. The law should be clarified regarding the liability of online infringing websites and services, including that those safe harbors should apply to only passive and neutral intermediaries that do not contribute to infringing activities. Further, it is critical that Russia amend its regime to allow for civil injunctive relief that is quick and effective and applicable to all works.

- **Amend the Civil Code and Criminal Code to provide adequate protection for technological protection measures (TPMs).**

Article 1299 of the Civil Code prohibits the commercial distribution (i.e., trafficking) in circumvention devices and services that circumvent TPMs. The law should be amended to expand liability to the commercial trafficking in all variety of circumvention devices (including software) and services. In addition, commercial trafficking in circumvention devices, including by importation, should be criminalized. IIPA also recommends amending Article 1252(5) of the Civil Code, which currently includes remedies for the seizure and destruction of materials and equipment used in infringements, by deleting the exception for the sale of materials by the state for "income" and by making corresponding changes in the respective procedural codes.

MARKET ACCESS

- **Remove market access restrictions negatively impacting the U.S. creative industries.**

While U.S. industries have largely suspended operations in Russia since the invasion, significant market access barriers remain, including a discriminatory Value-Added Tax (VAT); foreign ownership restrictions in broadcasters, mass media entities, and OTT services; and an advertising ban on pay-TV. In 2022, in response to invasion-related sanctions imposed on Russia, the Russian government adopted several restrictive measures targeting foreign investors from unfriendly jurisdictions. The measures include an obligation for the foreign shareholders of the Russian joint-stock and limited liability companies to obtain governmental approval for any deals involving their shares.

In addition to these barriers, the video game industry also faces significant market access issues in Russia. For example, Russia imposes customs duties on the royalty value of some imported audiovisual materials, including some video games, rather than solely on the value of the physical carrier medium, contrary to standard international practice. Furthermore, on June 17, 2021, the State Duma adopted a law mandating foreign Information Technology (IT) companies with a daily audience over 500 thousand users to open a branch, a representative office, or an authorized legal entity in Russia, which has negatively affected the video game industry.

SOUTH AFRICA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that USTR place South Africa on the Priority Watch List in 2025.¹ IIPA further recommends that through the ongoing Generalized System of Preferences (GSP) review, the U.S. government continue to indicate that the Copyright Amendment Bill (CAB) and the Performers' Protection Amendment Bill (PPAB) that were referred to the Constitutional Court are fatally flawed and to work with the South African government to remedy the deficiencies in South Africa's legal and enforcement regimes, including by redrafting the bills to address the serious concerns detailed below and in IIPA's previous submissions. If, at the conclusion of the review, South Africa has not made requisite improvements, the U.S. government should suspend or withdraw GSP benefits to South Africa, in whole or in part.

Executive Summary: South Africa's current copyright protection and enforcement framework fails to meet the challenges of the digital age. New technologies are providing South Africa's consumers with increasing access to legitimate creative content and exciting opportunities for the growth of the copyright industries and all creators. Unfortunately, South Africa's inadequate response to persistent piracy enabled by these same technologies is undercutting this burgeoning market. As an important emerging market and a dominant economy in Sub-Saharan Africa that other countries in the region may seek to emulate, the stakes for copyright reform are very high. South Africa is uniquely positioned to demonstrate how a modern copyright regime can contribute to the growth of creative industries in an era of rapid digital and mobile expansion throughout the country and the region. IIPA is encouraged that South Africa's government has stated its commitment to protecting intellectual property (IP) and its desire to bring its laws into compliance with international treaties and commitments. However, IIPA remains seriously concerned about the bills—the CAB and the PPAB—that South Africa's re-elected President Ramaphosa recently referred to the Constitutional Court. These bills remain inconsistent with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties) and, if enacted, would also violate South Africa's obligations under the WTO TRIPS Agreement and the Berne Convention, potentially violate South Africa's Constitution and Bill of Rights, and move South Africa even further away from international treaty obligations and best practices. As such, considering the importance of modernizing South Africa's copyright legal framework and the degree of concern raised by the creative industries with the bills over the years, IIPA recommends that the U.S. government continue to emphasize that the bills should be entirely redrafted, in close consultation with rights holders, to enable South Africa's accession to the WIPO Internet Treaties, meet its international obligations, ensure compliance with best practices, and promote an environment favorable to investment. The bills that were referred to the Constitutional Court fail to meet these standards and would have several unintended and harmful consequences, including to threaten and hamper the growth of and investment in the creative economy in South Africa and weaken South Africa's market for creative content, both for U.S. exports and the local creative sector.

PRIORITY ACTIONS REQUESTED IN 2025

Legal Reforms

- Ratify and fully implement the WIPO Internet Treaties.
- Should the Constitutional Court declare the CAB and the PPAB unconstitutional, Parliament should withdraw and redraft the bills to ensure compliance with South Africa's Bill of Rights and Constitution and with international treaty obligations and best practices, informed by an independent economic impact assessment study as required by

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

the government's Socio-Economic Impact Assessment System (SEIAS) guidelines, and in consultation with rights holders.

- Increase the term of protection for works and sound recordings from 50 years to at least 70 years, in line with the international standard.

Market Access

- Remove market access restrictions that negatively impact the U.S. creative industries.

Enforcement

- Improve enforcement against online piracy, including by providing effective mechanisms and statutory remedies to address services that infringe domestic and foreign content, including mechanisms that 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.

LEGAL REFORMS

- **Ratify and fully implement the WIPO Internet Treaties.**

Significant reforms are needed to South Africa's Copyright Act and Performers' Protection Act to bring the country's laws into compliance with international agreements, including the WTO TRIPS Agreement and the WIPO Internet Treaties.² As previously reported, in 2019 the South African Parliament adopted the first major revision of the country's copyright and related laws in decades.³ While the intent of South Africa's copyright reform process was to bring the country's laws into compliance with international agreements, the bills that ultimately passed fell far short of international norms for the protection of copyrighted works in the digital era. Moreover, the copyright reform process failed to consider whether the proposed changes would be compliant with South Africa's Constitution and international obligations. Further, as part of its required SEIAS process, the government did not publish an updated SEIAS report to adequately measure the economic impact of the bills on South Africa's creative sector. The absence of an updated SEIAS report leaves a critical gap in assessing the full economic impact of the bills on South Africa's creative sector. The lack of an updated assessment means that the government has not adequately evaluated how the proposed reforms would affect stakeholders within the creative industries, including producers, performers, and other rights holders. This failure to properly assess the economic implications raises concerns about the overall effectiveness and sustainability of the reforms, particularly in addressing the unique challenges posed by the digital era. As such, a comprehensive and updated SEIAS report is crucial to ensure that the legislative changes are aligned with the interests of South Africa's creative economy and its international commitments

- **Should the Constitutional Court declare the CAB and PPAB unconstitutional, Parliament should withdraw and redraft the bills to ensure compliance with South Africa's Bill of Rights and Constitution and with international treaty obligations and best practices, informed by an independent economic impact assessment study as required by the government's SEIAS guidelines, and in consultation with rights holders.**

In June 2020, South Africa's President referred the CAB and the PPAB back to the National Assembly based on reservations regarding the bills' compliance with South Africa's Constitution and its international commitments. After making minor revisions to the bills without addressing the major concerns, Parliament adopted the revised legislation in February 2024. In October 2024 President Ramaphosa referred the bills to the Constitutional Court to determine their constitutionality, stating that the legislation does not fully accommodate his previous reservations regarding CAB

² South Africa's Cabinet has approved the country's accession to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the "WIPO Internet Treaties"), and the Beijing Treaty.

³ See IIPA's 2020 Special 301 Report on South Africa, <https://www.iipa.org/files/uploads/2020/02/2020SPEC301SOUTHAFRICA.pdf> at 76.

Sections 6A, 7A, 8A, 12A to 12D, 19B and 19C and related provisions in the PPAB to the extent that they incorporate these CAB provisions. Subsequently, the President also filed an affidavit supporting the grounds for his referral stating that his reservations concerning arbitrary deprivation of property and alignment with South Africa's international law treaty obligations are legitimate and justified reasons for his decision to refer the bills to the Constitutional Court. The President was restricted in his final assessment to provisions that he raised concerns about in 2020 when he rejected the bills and sent them back to Parliament to be reconsidered. The President's referral is made only in respect to the "impugned provisions" of the CAB (and by implication the PPAB) – Sections 6A, 7A, 8A, 12A to 12D, 19B and 19C of the CAB.⁴ The scope of the referral includes most of the new copyright exceptions and limitations, including an expanded fair use provision, and also encompasses concerns regarding the retrospectivity of new statutory royalty and remuneration entitlements for authors and performers (including audiovisual works). The Constitutional Court's hearing on the President's referral of the bills is scheduled to take place on February 19 and 20, 2025.

The bills contain many other concerning proposals that are not addressed in the President's referral, and which are not backed up by any updated economic impact assessments nor supported by independent legal opinions regarding compliance with relevant treaties and South Africa's Bill of Rights. As discussed below, this includes problematic provisions that would unduly restrict contractual freedoms (such as a contract override clause that indiscriminately applies to all copyright contracts and prevents waivers of any rights granted in the Act or afforded under exceptions), the 25-year limitation on all assignments of literary and musical works (which would render it practically impossible for producers to consolidate all rights in music and film productions), and inadequate legal protections for Technological Protection Measures (TPMs). Moreover, the bills do not include any provisions that would enable or support rights holders' actions against infringing services operated by non-domestic entities (such as content infringing website operators that locate their servers and assets in other jurisdictions while targeting South African audiences and consumers), and they contain numerous provisions that are inconsistent with the WIPO Internet Treaties and the Berne Convention. In sum, the bills do not serve to evolve South Africa's Copyright Law to address the challenges posed by the digital age; instead, the legislation does the opposite, focusing on an approach towards copyright that would further weaken rights holders' ability to protect and effectively commercialize their works in the online environment.

Enactment of the bills in their current form would place South Africa out of compliance with international norms, the obligations of the WTO TRIPS Agreement, the WIPO Internet Treaties, and the Berne Convention, as well as the eligibility criteria of both the GSP and the African Growth and Opportunity Act (AGOA) regarding IP.⁵ It is critical that should the Constitutional Court declare the bills unconstitutional, South Africa's Parliament withdraw the bills and completely redraft them, in close consultation with rights holders and supported by an updated economic impact study, to ensure compliance with international treaties and to promote an environment favorable to investment. While it does not appear that Parliament commissioned an independent legal opinion on the bills in their current form, the most comprehensive legal analysis of the bills to date, co-authored by practicing copyright lawyers who are members of the Copyright Committee of the South African Institute of Intellectual Property Law (SAIIPL), concluded that the bills require significant amendments before they would pass constitutional muster and meet the requirements of international treaties.⁶ At a time when South Africa's economy is struggling with unprecedented levels of unemployment, the stakes are extremely high for the Parliament to redraft these bills to avoid destabilizing the creative industries and to support

⁴ The impugned provisions include: CAB Section 6A: *Equitable remuneration or share in royalties regarding literary or musical works*; Section 7A: *Equitable remuneration or share in royalties regarding visual artistic works*; Section 8A: *Equitable remuneration or share in royalties regarding audiovisual works*; Sections 12A to 12D: *General exceptions from copyright protection*; Section 19B: *General exceptions regarding protection of computer programs*; Section 19C: *General exceptions regarding protection of copyright work for libraries, archives, museums and galleries*; and related provisions in the PPAB to the extent that they incorporate these CAB provisions.

⁵ See IIPA's comments and post-hearing brief on South Africa's Generalized System of Preferences (GSP) eligibility in the 2019 annual GSP review, available at <http://www.iipa.org/files/uploads/2020/01/2020-01-17-IIPA-South-Africa-GSP-Review-Written-Comments-and-Notice-of-Intent-to-Testify.pdf> and <https://www.iipa.org/files/uploads/2020/03/SOUTH-AFRICA-IIPA-GSP-Post-Hearing-Brief.pdf>; and IIPA's comments on the 2024 African Growth and Opportunity Act (AGOA) Eligibility Review, available at <https://www.iipa.org/files/uploads/2023/07/2023.07.05-FINAL-IIPA-Comments-on-2024-AGOA-Eligibility-Review.pdf>.

⁶ See Myburgh et al, *Copyright Reform or Reframe?*, available at https://juta.co.za/uploads/Copyright_Reform_or_Reframe/.

a thriving copyright sector, which contributes significantly to economic and job growth in the country, and which has potential for substantial growth under the proper conditions.⁷

The bills that were referred to the Constitutional Court contain many provisions that lack clarity, risk major negative disruption of the creative industries, and pose significant harm to the creators they purport to protect. Major issues of immediate and primary concern to the copyright industries, which are maintained in the current versions of the bills, despite numerous submissions from local stakeholders, are the following:

- The bills would severely restrict the contractual freedom of authors, performers, and other rights holders, which is a key factor for the healthy growth of the entire creative sector. These restrictions would fundamentally impair the value of copyrighted materials by depriving rights holders of the ability to freely license and otherwise derive value from their copyrighted works, performances, and sound recordings. For example, as explained below, both the CAB and the PPAB limit certain assignments of rights to a maximum of 25 years, and both bills provide ministerial powers to set standard contractual terms for contracts covering seemingly any transfer or use of rights.
- The bills would create an overbroad amalgamation of copyright exceptions that includes an expansive “fair use” rubric (not in line with the U.S. doctrine) appended to a large number of extremely open-ended new exceptions and limitations to copyright protection (on top of the existing “fair dealing” provision), resulting in an unclear thicket of exceptions and limitations.
- The bills would unjustly interfere with and over-regulate the relationship between creative parties, including by introducing statutory royalty and remuneration entitlements and onerous reporting obligations coupled with disproportionate penalties for non-compliance, all of which would undermine producers’ ability to finance content, undermine the digital marketplace, and introduce legal risks for the legitimate use of audiovisual works and sound recordings by rights holders and their licensees. Instead, the bills should provide a flexible and robust legal framework for the protection of creative content and investment in production, enabling private parties to freely negotiate the terms of their relationships and the exploitation of copyrighted works and sound recordings.
- The bills would not provide adequate legal remedies for rights holders to take effective action to enforce their rights against infringers and to combat piracy, especially in the online environment, thus thwarting the development of legitimate markets for copyrighted works and sound recordings.
- The bills’ provisions on TPMs are inadequate, falling short of the requirements of the WIPO Internet Treaties, and the overly broad exceptions to prohibitions on the circumvention of such measures would further impinge on the ability of legitimate markets for copyrighted materials to further develop.

These provisions are inconsistent with South Africa’s international obligations, for example, by far exceeding the scope of exceptions and limitations permitted under the WTO TRIPS Agreement (Article 13) and the Berne Convention (Article 9). Moreover, aspects of both bills are incompatible with the WIPO Internet Treaties. The provisions are also inconsistent with other established international legal norms and commercial practices, posing a significant risk to investments in South Africa.

⁷ According to a study commissioned by the Department of Trade and Industry (the DTI) in 2010 using data from 2008, the South African copyright-based industries contributed 4.11% to gross domestic product (GDP) and 4.08% to employment. See WIPO, Economic Contributions of Copyright Based Industries in South Africa, available at <https://tind.wipo.int/record/28292?ln=en&v=pdf>.

Beyond their individual failings, the two bills suffer from fundamental systemic failings that are not amenable to discrete fixes, nor correction through implementing regulations.⁸ Without a fundamental course correction of its copyright reform process, South Africa will be taking a step backward in its effort to strengthen copyright incentives and align its laws with international standards and practices. South Africa would be better served by providing clear and unencumbered rights (subject only to targeted and clearly delineated exceptions and limitations that are justified by a clear evidentiary basis and comply with the three-step test), without unreasonable restrictions on contractual freedoms, to allow the creative communities to increase investment in the South African economy to meet the growing demand for creative works of all kinds, in all formats, at all price points. This is particularly important in light of the President's clear objective to improve levels of domestic and foreign direct investment, as well as the imperative to improve the lives and legacies of South Africa's own artists and creators.

It is important to note that the CAB and PPAB are extremely broad-reaching pieces of legislation. IIPA's comments in this filing are not exhaustive, but instead highlight some of the major concerns for the U.S. copyright industries. It should also be noted that the bills, when read together, are incoherent. For example, Clause 3 of the PPAB purports to introduce a new Section 3B into the Performers' Protection Act that would set out the nature of copyright in sound recordings, which would be already enumerated in the Copyright Act, as amended by the CAB. Also, Clause 9 of the CAB would introduce new rights and entitlements for performers under a new Section 8A in the Copyright Act, which should exclusively be dealt with under the Performers' Protection Act. Thus, in addition to the very significant flaws in the bills described below, from a technical perspective, the bills are inadequate and risk introducing widespread uncertainty into South African law.

1. *Unjustified Interference into Contractual Freedom*

Several provisions in the CAB and the PPAB constitute unjustified interference into private contractual relations. As such, these provisions restrict how private parties can collaborate to facilitate the public's access to copyrighted works, threatening well-established market practices that underpin domestic and foreign investment in artists and creative content, including books, films, sound recordings, musical works, music videos, and video games.

A. Limitation on term of assignments: Clause 25 of the CAB (which proposes to amend Section 22(3) of the Copyright Act) and Clause 3 of the PPAB (which proposes to introduce a new Section 3A(3)(c) into the Performers' Protection Act) would limit the term of assignments for literary and musical works and performers' rights in sound recordings, respectively, to a maximum term of 25 years from the date of assignment, and in the case of performers' rights in sound recordings, provide for automatic reversion of rights to the performer after that period. These provisions raise serious concerns by proposing to limit the term of contracts between performers and copyright owners to a maximum term of 25 years, which would detrimentally disrupt the well-established practices of the recording industry in South Africa for the creation and use of sound recordings. These provisions would also risk serious harm to the recording industry, performers, and other creators in South Africa, because a major incentive for investment would be removed as the term of assignment of recordings would effectively be halved from 50 years to 25 years. These provisions have their origin in an incorrect application of a recommendation made by the Copyright Review Commission that South Africa's Copyright Act should be amended to include a reversion right for composers of musical works that is modelled on the relevant provisions of the U.S. Copyright Act.⁹

⁸ Regulations cannot cure fundamental problems with the bills because a basic legal principle adhered to in South Africa is that regulations must be confined to the limits of the law itself and cannot fundamentally alter primary legislation. See *Executive Council, Western Cape Legislature and Others v President of the Republic of South Africa and Others* 1995 (4) SA 877 (CC) (holding by the South Africa Constitutional Court that while "detailed provisions" are necessary to implement laws, "[t]here is, however, a difference between delegating authority to make subordinate legislation within the framework of a statute under which the delegation is made, and assigning plenary legislative power to another body. . ."). Furthermore, the number of provisions in the bills that require future regulation are very limited and do not relate to the vast majority of the problematic issues raised by IIPA in this and previous submissions.

⁹ See Copyright Review Commission Report (2011), ¶15.1.9, p. 102, available at https://www.gov.za/sites/default/files/gcis_document/201409/crc-report.pdf. While there is a provision in U.S. law on termination of transfers, that provision contains key differences that mitigate the harms that would be introduced by the South Africa proposal. First, the South African provision broadly applies to all literary and musical works and sound recordings and is automatic. Under U.S. law, by contrast, termination rights do not apply to works made for hire; as a result, many works, including most audiovisual works (with potentially dozens or hundreds of contributing "authors"), or similar multiple-contributor works (sound recordings, video games, etc.) cannot be terminated. This gives certainty to the producers of

In effect, these provisions would make it impossible to clear rights in many works, including audiovisual works, and sound recordings after 25 years, rendering this content unusable, with no one able to receive any revenues from such works and sound recordings. For example, sound recordings typically involve performances from a large number of performers. The copyright owner of a sound recording (i.e., the record company) will often have a long-term relationship with the featured artist but is far less likely to have such a relationship with, for example, a performer who entered into a one-off agreement to provide the backing vocals or other musical performances in the sound recording. Under the PPAB, each such performer would have rights that, according to Section 3A, would be transferred to the copyright owner (the record company in most cases) to enable the copyright owner to license the use of the sound recording by third parties. Yet Section 3A provides that the record company would cease to have those rights after 25 years, meaning that the record company would need to seek out thousands of performers (with whom, in the case of session or “backing” musicians, the company often has no long-term relationships) to obtain their mutual consent to an extension of the 25-year term. The inability to locate just one session musician involved in a sound recording would render the sound recording unusable, ending the revenues that come to record companies, performers, authors, or publishers from the exploitation of that recording. That cannot be the intent of this legislation.

The 25-year limitation is described in the CAB’s memorandum of objects as a “right of reversion,” but a reversion right is substantially different from a fixed time limit on all assignments of copyright in literary and musical works. Proposed Section 22(3) in the CAB is therefore fundamentally flawed. While the Copyright Review Commission in 2011 proposed a right of reversion to be considered in certain special cases in the music industry, very sophisticated legal mechanisms are required to address bespoke situations where such reversions may be needed to address highly specific market failures. Without any economic impact assessment, legal study, or other assessment of the perceived industry problem that Section 22(3) seeks to address in the first place, the enactment of a general limitation of all assignment terms would certainly result in a series of negative, unintended, and completely avoidable consequences. For example, in the film and television industries, the 25-year limitation on assignments of literary works (which would include film and television scripts) and musical works (which would include musical scores for films and television shows) would render it practically impossible for producers to consolidate all rights for the life of copyright at the onset of new productions. This would harm the ability of producers to secure financing for new productions, as well as the commercial value of any content produced in South Africa, because undisturbed commercialization could be guaranteed only for a limited period of 25 years—just half the period of time for commercialization guaranteed under South Africa’s current law and only a third of the period of time for commercialization guaranteed in the United States.

Section 3A would have a broader negative effect on performers. Introducing new artists to the market and promoting their careers require large upfront investment from record companies, with no certainty of when, if ever, the investment will be recouped. Limiting the term of agreements between record companies and artists would increase the economic risk even further and would likely reduce the revenues available to invest in new talent. The provision should be removed to avoid the serious harm that it risks causing to all participants in the South African music industry. Audiovisual works may inadvertently fall within the ambit of Section 3A of the PPAB, which states that any performer whose performance is fixed in a sound recording will benefit from the reversion of performers’ rights. Accordingly, performers who “make an audible sound” in an audiovisual work or contribute to a voice-over in an animated work may be able to claim that they should also benefit from the reversion of rights under Section 3A of the PPAB. This provision would increase legal uncertainty and introduce a disincentive against film companies’ acquiring literary and musical properties for adaptation into film and TV shows. As such, Section 3A would ultimately inhibit financing of film projects and would jeopardize film production in South Africa.

B. Sweeping ministerial powers to set contractual terms: Clause 35 of the CAB (which proposes to amend Section 39 of the Copyright Act) and the Clause of the PPAB proposing to insert a new Section 3A(3)(a) into

those works of their ability to exploit the works without clearances from the numerous contributors. Second, termination under U.S. law is subject to notice (up to ten years prior to termination) and exceptions, allowing derivative works to continue to be exploited. The South African bill has neither of these provisions. Third, the U.S. termination right applies only where the grant was made by the original author, not by successors or assignees. The South African proposal includes no such limitation; it is broadly applicable to all literary and musical works and sound recordings.

the Performers' Protection Act create ministerial powers to prescribe "standard elements" that must be included in any form of agreement covering authors' and performers' rights. Furthermore, the proposals would impose unwarranted contractual formalities on all contractual partners. These provisions are not only unjustified but are seemingly premised on a lack of understanding of the myriad contractual relationships that underpin the creation of copyright content, which often comprises many different rights from various parties, and which are licensed for use by third parties in a variety of ways. Empowering ministers to impose contractual terms risks imposing a degree of rigidity into the South African creative economy that will stifle investment and innovation. It would also introduce the unnecessary legal risk of impermissibly delegating executive legislative authority to the Minister by permitting the Minister to unilaterally determine the manner in which trade and investment in South Africa's creative sectors can occur. Parliament should determine if future legislative amendments are deemed necessary to address any properly assessed and clearly determined market failure.

For example, these provisions would unfortunately restrict the flexibility in transfer agreements between sound recording performers and producers. That flexibility is needed to address the varying relationships between performers and copyright owners. The relationship and contractual agreement between the featured artist and the copyright owner will differ substantially from that between a performer appearing as a one-off session musician and the copyright owner. Neither performers nor copyright owners would benefit from prescribed contracts, which would inevitably fail to meet the differing needs of performers depending on their respective roles in a sound recording. There is simply no evidence of a market failure that would justify this extensive interference into contractual relations.

C. Mandating the mode of remuneration for audiovisual performers: The CAB includes a proposal under Clause 9 to insert a new set of provisions into the Copyright Act under Section 8A to regulate the remuneration terms of private contractual agreements between performers and copyright owners. Even though it proposes a significant interference into private contractual arrangements, to the particular detriment of certain performers, the substantive provisions of Section 8A were not subjected to any economic impact assessment nor published and fully opened for public consultation, which may have constitutional implications.¹⁰ The new statutory royalty entitlement was initially cast to be unwaivable and to also have application to "contracts of the past" despite subsequent assignments of performers rights and copyrights. The retrospectivity provisions in Sections 6A-8A have since been found to bring about arbitrary deprivations of property rights, and although Parliament removed it after the President's referral back in 2020, the President referred these provisions to the Constitutional Court for adjudication because the new statutory royalty entitlements arguably could still be interpreted to have retrospective effect. The result is a proposal that would substantially undermine the economics and commercial practices concerning the production of audiovisual works. While Section 8A may be intended to provide appropriate remuneration to performers (royalties or equitable remuneration), in practice, the proposal would undermine the feasibility of productions and cause substantial harm to performers.

Section 8A, combined with the contract override provision in Section 39B(1) (proposed for insertion into the Copyright in Clause 36 of the CAB) discussed below, prescribed a compulsory statutory royalty remuneration mode that practically removed the possibility of lump-sum payments.¹¹ Rather than benefitting performers, this provision would have in fact resulted in many performers, who otherwise would have received remuneration from performing in an audiovisual work, receiving little or nothing from the exploitations of the work. This is because many creative projects are loss-making for the producer. Under the initially proposed Section 8A, performers would no longer have been able to enjoy being paid a lump sum immediately in return for their one-off performances and would instead have had to wait to be remunerated on a royalty basis, which would happen only if the work in question actually succeeded in generating revenues. The current commercial practices avoid that outcome by paying performers on a lump-sum basis,

¹⁰ Section 8A was not included in the text of the first draft of the CAB that was the subject of the August 2017 public hearings. Instead, it was written into the text of the bill after the public hearings by the Portfolio Committee under the previous Parliament, without being subjected to an economic impact assessment or full public consultation, which has constitutional implications. This fundamental procedural irregularity was raised by numerous stakeholders during August 2021 public hearings.

¹¹ Section 8A, on its face, states that performers have a statutory right to royalties or equitable remuneration. Combined with the contractual override provision of Section 39B(1), this statutory right to royalties is not waivable, even in instances in which the performers concerned might prefer an alternative remuneration model.

irrespective of whether the works in which they perform succeed. Audiovisual works are comprised of performances by lead/featured performers and extra/non-featured performers. Lead/featured artists are remunerated in accordance with the terms they have negotiated with the producer, and these terms almost invariably are on a lump-sum basis. Extra/non-featured performers, in particular, are remunerated by way of lump-sum payments given their minor roles. As proposed, Section 8A risked a direct negative impact on investments in South African productions and a reduction in the number of South African “background” performers engaged to perform in audiovisual works. Furthermore, for certain modes of distribution, such as subscription video-on-demand (VOD), where revenue is received in return for access to an entire catalogue of works, it is not possible to allocate specific revenue to specific works. Therefore, the possibility of paying a share of any such revenue to any stakeholders in individual works (performers or otherwise) is not feasible.

Under Section 76, as a result of the Parliamentary process that followed the President’s 2020 referral of the bills back to Parliament, the National Council of Provinces (following inputs made by the nine provincial legislatures) proposed that Section 8A be amended to allow contracting parties for performers to choose between a royalty right or “equitable remuneration” (which could include lump sum payments). This proposal was adopted by the National Assembly and taken up in the CAB.

While “extras” were subsequently excluded from the statutory royalty entitlement under Section 8A to clarify that film extras would not benefit from royalty entitlements, the manner in which the bills exclude extras is flawed. The PPAB excludes all “extras, ancillary participants or incidental participants” from the definition of “performer.” This would result in excluding these performers not only from the application of the CAB’s Section 8A, but also from the protections. This means that all extras, ancillary participants or incidental participants in productions, including film and television and music productions, would no longer have any of the performers’ rights (or moral rights which are to be introduced for performers by the PPAB) they currently enjoy under the Performers’ Protection Act, which should not be the intent of the legislation. Also, it has not been clarified or properly considered which categories and sub-categories of performers would be impacted upon by this carve-out of rights, and it could very well impact many types of performers who are not film extras, including film and television stunt persons, backup singers, and session musicians. This flawed provision illustrates the problem of legislating for performers’ rights under the CAB, instead of exclusively dealing with this aspect in the PPAB.

The penalty clauses introduced by Sections 8A(6) and 9A(4) of the CAB may also have constitutional implications due to the disproportionate nature of the penalties prescribed for the failure of rights holders and licensed users of audiovisual works and sound recordings to submit timely reports to all performers featured in such works and sound recordings regarding each commercial activity relating to the use of such works. Criminal liability and fines of a minimum of 10% of a company’s annual turn-over are prescribed for a failure to comply with the new reporting obligations. Such fines are wildly inconsistent with the fines (which are not specified) that individuals who infringe on these provisions may incur. By unnecessarily raising the legal risk of doing business in South Africa, these penalties could discourage investment in new content production projects. The manner of reporting to all performers is not prescribed in the CAB, and no impact assessment was performed to determine whether this proposal would even be practically feasible or capable of being operationalized without undue risk of liability arising for parties who make legitimate and licensed commercial uses of audiovisual works and sound recordings in South Africa.

D. Prohibition on contractual override: The risks posed by the CAB are further compounded by the prohibition on contractual override in Section 39B(1), which prohibits any contractual terms that deviate from the provisions of the bill or waive any rights provided by the bill, thereby removing the possibility for parties to determine their own contractual arrangements in a manner that avoids the harm caused by certain provisions of the bill. The provision also presents a significant risk of compelling contractual parties to follow rigid standardized contractual terms, thereby inhibiting a competitive and innovative marketplace, and requiring terms that may be overly onerous and disadvantageous to the contractual parties in light of the specific circumstances. IIPA is not aware of any substantive contract override provision that has blanket application across all copyright contracts and rights of copyright in the copyright laws of any country in the world. Not only does the contractual override provision apply to all rights of

copyright, but it would also apply to all copyright exceptions and limitations, which would entrench the effect of deprivation of rights of the overly broad new exceptions in the CAB and present serious challenges for the negotiation of settlement agreements in infringement cases in which one of the parties relies on a copyright exception.

2. *Inadequate Protection of Performers' Rights*

South Africa's intention to ratify the WIPO Internet Treaties is welcome, and full implementation would represent a significant step towards establishing an appropriate legal framework. Regrettably, several provisions in the bills, including the level of protection afforded to certain performers' rights, are incompatible with the treaties.

Clause 4 of the PPAB proposes to amend Section 5 of the Performers' Protection Act, which sets out the rights granted to performers. In the PPAB, performers' rights are also enumerated under Section 3. The amendments to Section 5 are therefore, in part, duplicative of Section 3. More importantly, though, Section 5(1)(b) downgrades the performers' exclusive rights of distribution and rental to mere remuneration rights, a proposal that would be incompatible with WPPT (and the WIPO Beijing Treaty), which do not permit these rights to be diminished to the level of mere remuneration rights. Furthermore, providing mere remuneration rights with respect to distribution and rental, subject to rate setting by the Tribunal (Section 5(3)(b)), would prejudicially devalue these performers' rights. Experience in South Africa, and internationally, shows that Tribunal-set remuneration falls well below the commercial value of the rights licensed.

Section 5(1)(b) would also substantially and detrimentally disrupt the sale and rental of sound recordings and audiovisual works, because one set of rights would be subject to private negotiation (the producers' rights), and the performers' rights would ultimately be subject to Tribunal rate setting. The consequence would be a transfer of value from those who create and invest in recorded performances to the licensees of those performances, the latter likely ending up paying less, resulting in reduced revenues for producers to invest in South African performers.

3. *Fair Use*

The CAB drastically expands the exceptions and limitations to copyright protection in South Africa's law. The broad exceptions, which are extended to have application in the PPAB (without any impact assessment on how this would impact the rights of performers), will create a disproportionate imbalance against creators and producers of copyright-protected works and undermine the predictability needed to support a robust marketplace for copyrighted works. Additionally, the proposed exceptions appear to far exceed the scope of exceptions and limitations permitted under South Africa's international obligations, namely under Article 13 of the WTO TRIPS Agreement (and Article 9 of the Berne Convention and the corresponding provisions in the WIPO Internet Treaties).

While the proposed "fair use" provision may resemble certain aspects of the fair use statute in U.S. law, it is inaccurate to contend, as some have suggested, that South Africa is proposing to adopt the U.S. fair use doctrine. South Africa's proposed broader fair use provision, along with the other proposed exceptions and limitations to copyright protection, are blatantly inconsistent with the three-step test, which is the internationally recognized standard that confines the scope of copyright exceptions and limitations.¹² The fair use provision, which is supported and entrenched further by the contract override provision (Section 39B(1)), is inconsistent with the three-step test for the following reasons:

- First, South Africa lacks the rich body of case law that, in the United States, helps to mitigate the inherent uncertainty of the scope or applicability of the fair use exception. Without the foundation of a well-developed body of case law, South Africa's untested, broad fair use provision would result only in uncertainty for both rights holders and users on the parameters of permissible uses (since U.S. fair use is determined on a fact-intensive, case-by-case basis, informed by legal precedents developed in jurisprudence stretching back for

¹² See, e.g., Article 13 of the TRIPS Agreement and Article 9 of the Berne Convention.

more than a century).¹³ Compounding this shortcoming is that high legal fees and protracted timeframes for cases in South Africa will deter and undermine efforts by rights holders to access the courts in hopes of more clearly establishing the parameters of this broad exception. The International Center for Law & Economics, analyzing whether the United States should require trading partners to adopt U.S.-style fair use, concluded that “the wholesale importation of ‘fair use’ into other jurisdictions without appropriate restraints may not result in a simple extension of the restrained and clearly elaborated fair use principles that exist in the U.S., but rather, something completely different, possibly even a system untethered from economics and established legal precedents.”¹⁴

- Second, the South African proposal includes language broader than the U.S. fair use statute, which further heightens the uncertainty discussed above, and the risk that an unacceptably wide range of uses in South Africa will be considered “fair” and non-infringing. For example, the proposal includes several additional access and use purposes that are absent from the U.S. fair use statute. These include: “personal use, including the use of a lawful copy of the work at a different time or with a different device”; “education”; “illustration, parody, satire, caricature, cartoon, tribute, homage or pastiche”; “preservation of and access to the collections of libraries, archives and museums”; and “ensuring proper performance of public administration.” Extending fair use to such undefined access and use purposes that are not included in the U.S. statute adds to the uncertainty of how South Africa’s judges will apply fair use, and the risk that they will apply the fair use doctrine well beyond the scope of its application in the United States.¹⁵ In addition, unlike the U.S. fair use statute, the South Africa proposal states that the “the purpose and character of the use” should include consideration of whether “such use serves a purpose different from that of the work affected.”¹⁶ The South Africa proposal also includes an affirmative requirement to consider “all relevant factors,” which is not in the U.S. statute. Further, the CAB calls on judges to narrowly consider the “substitution effect” rather than the overall “effect” of the use on the potential market for the copyright protected work, as called for under the U.S. fair use statute. Even if a particular use of a copyrighted work would not amount to a direct “substitution” of the work in its current market, such use could still have a detrimental impact on the potential markets for a rights holder. Moreover, this departure from the language in U.S. law was not subjected to any impact or legal assessment. It is unknown how South African judges would interpret these provisions, which heightens the risk that a broader range of uses in South Africa will be considered “fair” than those permitted under U.S. law. Therefore, rather than proposing to adopt a U.S.-style “fair use,” South Africa has proposed a new copyright exception, borrowing certain statutory language from the United States, while adding new and broader language, and without the corpus of U.S. jurisprudence that is integral to defining the scope of U.S. fair use and its interpretation.

¹³ While some have suggested that South Africa could look to case law in the United States, or elsewhere, South African judges are not bound by the decisions of U.S. courts, and such decisions carry virtually no legal weight in South Africa. It is very unlikely that South African courts would, or even could, wholesale adopt U.S. precedents, especially considering South Africa’s very different and unique legal history. In addition, while a handful of countries have recently enacted fair use provisions, IIPA is not aware of any significant case law that has been developed under the fair use statutes in any of these countries. South Africa’s existing jurisprudence on fair dealing will also not be helpful because the fair use proposal is much broader than the fair dealing provisions in the current law and, therefore, whatever case law exists interpreting the existing, narrower fair dealing provisions would have very little relevance.

¹⁴ See Geoffrey A. Manne and Julian Morris, International Center for Law & Economics, *Dangerous Exception: The Detrimental Effects of Including ‘Fair Use’ Copyright Exceptions in Free Trade Agreements*, (2015), p. 15, available at http://laweconcenter.org/images/articles/dangerous_exception_final.pdf.

¹⁵ Many of these additional access and use purposes in the South African proposal are in fact broader than exceptions permitted under U.S. law. For example, regarding the “personal use” language, there is no general “personal use” exception in U.S. law and “format shifting” is not always held to be a fair use. In addition, the “preservation of and access to the collections of libraries, archives and museums” is not a fair use in the United States. Rather, Section 108 of the Copyright Act establishes specific instances and limits pursuant to which libraries and archives may make copies of works for preservation purposes. It is unclear what “ensuring proper performance of public administration” encompasses, but nothing in the Copyright Act or U.S. case law establishes such use to be a fair use.

¹⁶ Requiring South African judges to consider whether “such use serves a purpose different from that of the work affected” would broaden the U.S. judge-made notion of “transformative use.” The Supreme Court has defined “transformative use” as one that “adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message.” See *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994). South Africa’s provision would establish a lower bar for the permissibility of a use than U.S. law because it appears to require that a use merely serve a “different” rather than a “transformative” purpose. See *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, 598 U. S. 508, 511 (2023) (clarifying that “*Campbell* cannot be read to mean that §107(1) weighs in favor of any use that adds some new expression, meaning, or message. Otherwise, ‘transformative use’ would swallow the copyright owner’s exclusive right to prepare derivative works. . . .”).

- Third, in addition to the new expansive “fair use” exception, the legislation also retains South Africa’s existing “fair dealing” system, while expanding the impact of fair dealing exceptions by effectively removing the limiting standard of “fair practice.” It also introduces several extremely broad new exceptions and limitations to copyright protection, all of which have the potential to adversely impact the legitimate market for educational texts, sound recordings, locally distributed works, and online works in general. A 2017 study by PricewaterhouseCoopers looked at the impact of these broad exceptions on the South African publishing industry and predicted “significant negative consequences” would result from the adoption of the proposed fair use provision and the other broad exceptions.¹⁷ Taken alone, the “fair use” and the “fair dealing” aspects of the proposed bill are each too broad. Taken together, the proposed “hybrid” model creates an unprecedented mash-up of exceptions and limitations that will deny copyright owners the exclusive rights and fundamental protections that enable licensing of their copyrighted works and sound recordings, and, because the provision is drafted so unclearly, will also deny users certainty regarding which uses of a work are permissible without a license.

As detailed above, the proposed fair use provision is overly broad (significantly broader than the U.S. fair use doctrine) and its scope and application are uncertain due to the lack of supporting case law, new and broader language, and the “hybrid” combination with the existing fair dealing system. As a result, the proposed provision is not limited to “certain special cases,” and there is a substantial risk that it would be applied in a manner that conflicts with the normal exploitation of a work or unreasonably prejudices the legitimate interests of the rights holder. Thus, the provision clearly falls outside the limits of the three-step test. If the proposed legislation is enacted, South Africa’s legal framework for exceptions and limitations to copyright protection would violate South Africa’s international obligations, would be inconsistent with international treaties it has stated an intent to join, and would further erode the already inadequate level of copyright protection in the country.

In addition, the uncertainty that will be caused by the proposed hybrid model is particularly problematic in South Africa, because its legal system lacks statutory and punitive damages, which rights holders in the United States rely on to deter and remedy infringement, and enforcement in South Africa has been historically inadequate.¹⁸ In South Africa, civil damages may be claimed for copyright infringement only after a rights holder meets a statutory requirement to first prove that an infringer had “guilty knowledge” of infringement. As a result, in most instances damages would be claimable for infringing acts committed by a defendant only after a court has determined that the defendant cannot rely on the fair use defense. As a result, bad actors in South Africa would be undeterred from taking advantage of the uncertainty created by these exceptions to infringe copyrights. A copyright system that consists of open-ended and unclear exceptions, weak affirmative rights, and non-deterrent enforcement is the archetype for inadequate and ineffective protection of IP rights.

Finally, the risks posed by the fair use provision, and the other unclear and very broad exceptions discussed below, are further compounded by the prohibition on contractual override in Section 39B(1) (discussed above), which renders unenforceable any contractual term that prevents or restricts a use of a work or sound recording that would not infringe copyright under the Copyright Act (as amended by the CAB).

¹⁷ See PricewaterhouseCoopers, *The expected impact of the ‘fair use’ provisions and exceptions for education in the Copyright Amendment Bill on the South African publishing industry*, July 2017, available at <https://publishsa.co.za/pwc-report-the-expected-impact-of-the-fair-use-provisions-and-exceptions-for-education-in-the-copyright-amendment-bill-on-the-south-african-publishing-industry/>. The study notes that a 33% weighted average decline in sales would likely occur, with concomitant reductions in GDP and VAT and corporate tax revenue collections. Some 89% of publishers surveyed noted that the CAB, if adopted in its current form, would negatively impact their operations, likely resulting in retrenchments and possible business closures.

¹⁸ Section 24(3) of South Africa’s Copyright Law, which states that courts may “award such additional damages as the court may deem fit,” does not provide for statutory or punitive damages. Statutory damages allow plaintiffs to recover damages without showing proof of harm to the rights holder or gain to the infringer. In contrast, the “additional damages” provision of 24(3) permits a judge to take into account the flagrancy of the infringement and the benefit to the infringer, but rights holders must still prove the harm and the gain to the infringer. Regarding punitive damages, IIPA is not aware of a case in which these “additional damages” have been actually quantified and awarded, and there is nothing in South Africa’s law or practice to suggest that the purpose of the “additional damages” provision is to punish or deter infringement. In addition, criminal damages in South Africa are ineffective for deterring infringement due to limited criminal prosecutions, the high burden of proving and collecting damages, and the higher burden of proof in criminal cases (which would be exacerbated by the new vague and open-ended exceptions in the copyright reform proposal).

4. *Exceptions and Limitations*

In addition to the proposed introduction of “fair use” into South African law, the following new or expanded statutory exceptions contained in the CAB are likewise of concern, and many clearly exceed the bounds of the longstanding international standard confining exceptions and limitations to copyright, the three-step test:

A. Sections 12B(1)(h) and 12B(2) allow individuals to make copies for “personal uses.” These broad exceptions in effect allow for private copying without any remuneration for rights holders, which is out of step with international norms (a similar proposal was challenged successfully in the United Kingdom where the High Court quashed a private copying exception that did not compensate rights holders for the harm the exception would cause). Such private copying exceptions are typically accompanied by a remuneration (or “levy”) system by which rights holders are compensated for the private copying of their works. Section 12B(2)(c) also permits copying in an “electronic storage medium,” which is highly unusual and risks undermining existing licensing practices for digital content services. This exception violates the three-step test, because it is not limited to “certain special cases” and does not include any requirement to consider whether such copying would conflict with a normal exploitation of the work or unreasonably prejudice the legitimate interests of the rights holder.

B. Section 12B(1)(e) grants an exception for making translations for the purpose of “giving or receiving instruction.” The scope of this proposed exception could be interpreted too broadly, particularly as it allows for communication to the public, albeit for non-commercial purposes. Though the bill attempts to limit the scope by defining its purpose, it would undermine the author’s translation rights, which warrant just compensation and which South Africa is required to protect under the Berne Convention and the WTO TRIPS Agreement.¹⁹ Enactment of this exception would therefore disrupt the significant market for authors’ and publishers’ translation rights. As a result, this exception falls outside the bounds of the three-step test, because it fails to account for the need to avoid conflict with a normal exploitation of the work or unreasonably prejudicing the legitimate interests of the rights holder.

C. Section 12C provides an exception for temporary reproduction of a work “to enable the transmission of the work in a network between third parties by an intermediary or any other lawful use of work; or . . . to adapt the work to allow use on different technological devices . . . as long as there is no commercial significance to these acts.” This provision also allows copying for reformatting, where such copies are an integral and essential part of a technical process if the purpose of those copies or adaptations is to enable a transmission. Such language could hinder efforts to work with online intermediaries to stop piracy. If any such exception is to be included, IIPA recommends that the word “lawful” be replaced by “authorized,” so that this provision meets its principal objective (ensuring that incidental copies made in the course of a licensed use does not give rise to separate liability) without frustrating enforcement efforts where the “incidental” reproduction within the jurisdiction of South Africa is the only justiciable act in a claim against an unauthorized transmission.

D. Section 12B(1)(a) provides a broad and circular exception for quotation, permitting use of any quotation provided that “the extent thereof shall not exceed the extent reasonably justified by the purpose,” but without enumerating the permitted purposes such as, for example, criticism and review, and without limiting the use to avoid conflict with the normal exploitation of the work or unreasonable prejudice to the legitimate interest of the rights holder. The result is an exception that appears to permit quotations in virtually all instances, which risks causing substantial harm to rights holders and renders the proposed exception incompatible with the internationally recognized three-step test for copyright exceptions and limitations. Without clear limits to the extent and purpose of a quotation, the exception fails to meet the three-step test limitation of “certain special cases” and would potentially lead to a conflict with the normal exploitation of the work and unreasonably prejudice the legitimate interest of the rights holder.

E. Section 12D permits the copying of works, recordings, and broadcasts for educational purposes with very few limitations. Section 12D(7)(a) on open access for “scientific or other contribution[s]” is overreaching and will

¹⁹ See Berne Convention Article 8, and WTO TRIPS Agreement Article 9, incorporating the Berne Convention, Article 8.

likely undermine the rights of authors and publishers and deny authors academic freedom. Section 12D(4)(c) specifically authorizes the copying of entire textbooks under certain conditions, even textbooks that are available for authorized purchase or licensing, if the price is deemed not to be “reasonably related to that normally charged in the Republic for comparable works.” The likely impact of these provisions on normal exploitation of works for educational markets would far exceed what is permitted under international standards. Permitting copying of entire textbooks that are available for authorized purchase or licensing clearly is not confined to certain special cases. Such unauthorized uses would also clearly conflict with publishers’ normal exploitation of the work and unreasonably prejudice their legitimate interest.

F. Section 12B(1)(b) introduces an unreasonably broad so-called “ephemeral exception” for the reproduction of sound recordings by a broadcaster. To ensure that this exception is properly confined by the three-step test, reasonable limits should be introduced including: (i) the time limit must be such that it limits the copies made to truly “ephemeral” copies (e.g., copies may not be kept for longer than thirty (30) days); (ii) copies must not be used for transmission more than three (3) times; and (iii) the exception should not allow broadcasters to use it to create permanent databases of copyright works for use in their broadcast activities.

G. Section 19D provides general exceptions to copyright for all persons with disabilities, which is not limited to disabilities that relate to the ability to read books, even though this exception was drafted to enable South Africa’s accession to the Marrakesh VIP Treaty. This provision would benefit from tighter drafting. While South Africa is not a signatory to the Marrakesh VIP Treaty, it would be prudent to bring provisions designed to facilitate access for visually impaired persons in line with the Treaty by narrowing their scope to provide reasonable access to published literary works by persons who are blind or visually disabled or otherwise print disabled.

5. Exclusive Rights of “Communication to the Public” and “Making Available”

The CAB would add Section 9(f) to the Copyright Act, confirming that sound recording producers have the exclusive making available right set out in WPPT, Article 14. This provision is a positive clarification, as this right underpins the digital music industry. However, the wording of proposed Section 9(e) regarding sound recording producers’ exclusive right of communication to the public omits an express reference to “public performance,” as provided for in the WPPT definition of “communication to the public,” which explicitly “includes making the sounds or representations of sounds fixed in a phonogram audible to the public.” To avoid ambiguity in the legal framework, IIPA submits that the new Section 9(e) should expressly refer to public performance. (Existing Section 9(e) in the Copyright Act provides sound recording producers with an exclusive right of communication to the public.)

Furthermore, the meaning of proposed Section 9A(aA) (and equivalent provisions in relation to exploitation of other categories of works, and in the PPAB with respect to performers’ rights) is not clear. While it is understood that these provisions are intended to ensure accurate reporting of authorized uses of works, to the extent they could be interpreted as providing a legal license for such uses, they would be wholly incompatible with the WIPO Internet Treaties, while undermining the economic feasibility of South African creative industries. These provisions should therefore be clarified to avoid any such confusion.

6. Technological Protection Measures (TPMs)

TPMs are vital tools for the copyright-based sectors in the digital era, enabling creators and rights holders to offer consumers their desired content, at the time and in the manner of their choosing, while also empowering rights holders to explore new sectors opened up by current and emerging technologies. It is welcome that the CAB introduces provisions (and the PPAB incorporates them by reference) on TPMs. Unfortunately, these provisions are completely inadequate, and therefore fall short of the requirement of Article 18 of WPPT and Article 11 of the WCT that contracting parties provide “adequate legal protection and effective legal remedies against the circumvention of effective technological measures.”

This issue is of paramount importance when considering the central role of digital distribution to the current and future economics of the creative industries. While the recorded music industry in South Africa is now predominantly a digital industry, piracy remains a serious obstacle to continued growth in this area. The introduction of adequate provisions on TPMs is therefore essential to protect against piracy and enable the development of new business models. Moreover, many film and television producers are seeking to respond to consumer demand by establishing online platforms to provide content to consumers or licensing film and television programming to online services. TPMs are essential to the functionality of these platforms and to the licensing of this high-value content. Furthermore, video game publishers, device makers, and online platforms rely on TPMs to safeguard the content played on platforms from illegal copying and distribution. Protecting the integrity of the video game ecosystem from infringing activities is necessary to ensure that consumers can enjoy rich and immersive video game experiences. Anti-circumvention provisions are instrumental in safeguarding the highly creative works produced by the video game industry across all platforms.

First, the definition of “technological protection measure” in Section 1(j) is problematic because it refers to technologies that prevent or restrict infringement, as opposed to technologies that are designed to have that effect or that control access to copies of works. The plain reading of this definition would be that a TPM that is circumvented is therefore not one that prevents or restricts infringement (because it has not achieved that aim), and therefore the circumvention of it is not an infringement. The provision should be clarified to ensure that a protected TPM is one that effectively protects a right of a copyright owner in a work, or effectively controls access to a work. Furthermore, paragraph (b) of the definition should be removed; that a TPM may prevent access to a work for non-infringing purposes should not have the effect of removing its status as a TPM. As it stands, paragraph (b) of the definition would be open to abuse and would provide a charter for hacking TPMs. In this respect, see also IIPA’s comments below with respect to Section 28P(1)(a).

Second, IIPA also recommends that the definition of “technological protection measure circumvention device or service” be amended to include devices or services that (a) are manufactured, promoted, advertised, marketed, or sold for the purpose of circumvention of, or (b) have only a limited commercially significant purpose or use other than to circumvent TPMs. This would ensure that the definition encompasses a broader range of harmful TPM circumvention devices and services, consistent with best international practices.

Finally, the exceptions in Section 28P regarding prohibited conduct with respect to TPMs (in Section 28O) are inadequately defined, therefore rendering them incompatible with international norms and substantially reducing the effectiveness of the protections afforded by Section 28O. Under Section 28P(1)(a), it would be extremely burdensome, if not impossible, for rights holders to establish that the use of a TPM circumvention device or service by a user was not to perform an act permitted by an exception.²⁰ Additionally, a provider of an unlawful circumvention technology (e.g., device or service) could rely on Section 28P(1)(b) to claim it is acting lawfully merely by showing that the technology can be used to access a work to perform a permitted act. There is a substantial risk that this provision would be abused by those providing circumvention technologies for unlawful purposes. Furthermore, Section 28P(2) would be subject to abuse by enabling a user to engage the services of a third party for assistance to overcome or circumvent TPMs when the user holds the subjective view that the use is lawful under an exception, even if that is not the case.

7. Penalties for Infringement

The revised CAB amends Section 27 to include (5A), (5B), and 5(C) to provide liability for online infringement and violations of protections for TPMs and copyright management information. This is in keeping with Article 18 and Article 19 of the WPPT, which require adequate legal protection and effective legal remedies against the circumvention of effective technological measures and infringement of electronic rights management information. However, (5B)(a)(i) should be amended to clarify that the offering and other dealing with circumvention devices or services are already

²⁰ In this regard, see the discussion above regarding the proposed “fair use” and other unclear and overly broad exceptions proposed in the bills, which would compound this problem.

illegal, without the need to show that the illegal device is subsequently used to infringe copyright. The current wording, “knows that the device or service will, or is likely to be used” to infringe copyright in a work protected by an effective TPM, sets the bar for liability so high that it would render the entire provision ineffective. Moreover, given the scope and scale of the problem of online piracy, which remains a persistent and growing threat to the creative industries, there is a serious need for more mechanisms to combat infringement and further remedies for rights holders. Under current law, it is practically impossible for rights holders in South Africa to enforce their rights against non-domestic infringers and content pirates who locate infringing services in other countries while targeting South African audiences and consumers. Unfortunately, the CAB does not address this need in any meaningful way. As discussed below, South Africa should provide in its legal system mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders’ applications to appropriate authorities.

IIPA also reiterates its recommendations to introduce additional enforcement provisions that are effective in the digital age and protect the online marketplace, such as: (1) ensuring online platforms do not make or allow unauthorized use of copyrighted works on their platforms; (2) preventing the unauthorized distribution of electronic formats of copyrighted works; (3) alleviating the burden of proof on claimants with respect to technical allegations in claims that are not in dispute; and (4) providing for appropriate and adequate damages for online infringement. Specific recommendations are discussed below in the section on enforcement improvements.

8. Intellectual Property Tribunal

Proposed amended Sections 29, 29A through 29H in the CAB would establish an Intellectual Property Tribunal to replace the existing Copyright Tribunal. The Tribunal’s purpose would purportedly be to assist the public in the transition to the new copyright regime by resolving disputes and settling the law, particularly in relation to the proposed “fair use” and other exceptions. This assumes that the Tribunal will be staffed with qualified professionals, adequately resourced, and accessible to the parties it is intended to serve, though none of these things is required by the bill, nor do the proposed provisions sufficiently delineate the Tribunal’s scope. Indeed, the CAB adds a Schedule 2 to Section 22(3), which would allow any person to apply to the Tribunal for a license to make a translation of a work, including a broadcast, or to reproduce and publish out of print editions for “instructional activities,” with few limitations. To the extent that a revitalized Tribunal is to be considered, it would best serve the South African market with a much more limited mission, confined to copyright matters related to collective licensing. Further, it should be clarified that rights holders may elect to bring claims to the Tribunal *or to the Courts*, and that the Tribunal shall hear and determine matters referred to it expeditiously.

Another significant concern with these provisions is the lack of benchmarks for how the Intellectual Property Tribunal should determine royalties in the event of a dispute between a collective licensing body and a user. It is imperative that the legislation specify that rates should be determined with reference to the economic value to the user of the rights in trade and the economic value of the service provided by the collective licensing body. Licensing rates should reflect the price that would be agreed in a free-market transaction based on a willing buyer and a willing seller standard. If creators are not rewarded at market-related rates, even the best copyright regime in the world will not achieve its objectives.

9. Collective Management of Rights

IIPA is concerned by proposed Section 22B in the CAB, which may be understood to preclude a collective management organization (CMO) representing, for example, both copyright owners and performers. Such an interpretation could prohibit the existing collaboration between performers and producers in the SAMPRO CMO, which administers “needletime” rights on behalf of both recording artists and record labels. This interpretation would be inconsistent with industry standards and contrary to the interests of those rights holders, the users (licensees), and the public at large. Joint sound recording producer and performer organizations operate in some 40 territories. By working together on the licensing of rights, performers and producers save costs, increasing the proportion of revenues returned

to them. This also reduces transaction costs to users, who can take a license from one CMO that covers both performers' and producers' rights. The provision should be clarified.

As a general point, and as referred to in Section 8 above, it is also vital that any rates set by the Tribunal for performance rights (including needletime) reflect the economic value of the use of recorded music in trade. This would be consistent with international good practice (i.e., the "willing buyer willing seller" standard applied by the U.S. Copyright Royalty Board), which seeks to ensure that rights holders are remunerated adequately for the high value of recorded music.

10. *State Intervention in Private Investments and the Public Domain*

The CAB contains concerning provisions that revert rights to the government in situations that could discourage investment, while unnecessarily diminishing the public domain. Section 5 empowers the Minister to designate "local organizations" to be vested with all rights of copyright in works made under the direction or control of such organizations. This could result in designated local organizations, that may include state-owned enterprises, being vested with full rights of copyright in works of South African authors without agreement between the parties to this effect. The CAB further proposes to amend Section 22(1) to provide that "copyright owned by, vested in or under the custody of the state may not be assigned." This departure of the standard rules of engagement as established for copyright transfers in the Copyright Act may have constitutional implications and result in arbitrary and unjustifiable deprivations of property rights and unwarranted restrictions on the freedom to trade.

11. *Certain Definitions Incompatible with International Treaties*

The definitions of "producer" and "reproduction" in Section 1 of the PPAB are inconsistent with corresponding definitions in the international treaties including the WPPT.

- The definition of "producer" should be clarified to ensure that it covers both natural and legal persons as provided for in Article 2(d) of the WPPT.
- The definition of "reproduction" should be clarified to confirm that it means the copying of the whole or a part of an audiovisual fixation or sound recording, consistent with Article 11 of the WPPT.

While the definition of "broadcast" was removed from the current version of the PPAB, it is important that any definition in South African law does not extend beyond wireless transmissions to include transmissions "by wire," which is incompatible with the definition of "broadcast" in international treaties including the WPPT (as well as the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations). "Broadcast" is defined in the WPPT as limited to "transmission by wireless means."

- **Increase the term of protection for works and sound recordings from 50 years to at least 70 years, in line with the international standard.**

At present, sound recordings receive a term of protection of only 50 years from the year in which the recording was first published, and for literary, musical, and artistic works, the term of protection is 50 years from the author's death or 50 years from publication if first published after the author's death. The CAB should be revised to extend the term of protection for copyrighted works and sound recordings to at least 70 years, in line with the international standard. This will provide greater incentives for the production of copyrighted works and sound recordings, and also provide producers with a stronger incentive to invest in the local recording industry, spurring economic growth, as well as tax revenues, and enabling producers to continue offering works and recordings to local consumers in updated and restored formats as those formats are developed.

MARKET ACCESS

- **Remove market access restrictions that negatively impact the U.S. creative industries.**

Broadcast Quota: In 2014, the Independent Communications Authority of South Africa (ICASA) began the “Review of Regulation on South African Local Content: Television and Radio” and published local program quotas for licensed broadcasters of television content in March 2016. In May 2020, ICASA published a new regulation, fully exempting “television broadcasting service licensees” from compliance with the local television content quotas during the National State of Disaster (NSD) and allowing a three-month grace period from the end of the NSD. Non-domestic media service providers licensing content to local broadcasters are exempt from the program quotas and, in 2018, ICASA clarified that this exemption also applies to non-domestic, over-the-top (OTT) services. In 2021, ICASA reinstated local content quotas for television. IIPA recommends removing these quotas to ensure that businesses have the freedom to determine content programming according to their business models and relevant consumer demands.

“Must Provide” Requirements: In April 2019, ICASA published its draft findings on the “Inquiry into Subscription Television Broadcasting Services” and proposed a new licensing regime that would severely impact the contractual freedoms of rights holders to license their content in South Africa, thereby undermining their exclusive rights. Unfortunately, the report’s methodology, and therefore its conclusions, are flawed because ICASA failed to consider the impact of OTT media services on the market, nor did it consult with rights holders on who the proposed measures would affect. ICASA proposes a new licensing regime that would severely impact the contractual freedoms of rights holders to license their content, undermining their exclusive rights. IIPA encourages the U.S. government to engage with the South African government to ensure that any regulatory interventions into the pay-TV market are informed by international best practices and current market realities and preserve the contractual freedoms of all parties concerned, while developing a legislative and regulatory framework that promotes investment and growth.

Video-on-Demand (VOD) Quotas: For several years, the Department of Communications and Digital Technologies (DCDT) has considered how to adapt South Africa’s content regulatory framework to the online marketplace. The DCDT has issued a couple of Draft White Papers (DWP), the most recent in July 2023, that, among other things, recommends the imposition of local content quotas (up to 30% of the catalogue). The DCDT also envisions expanding the regulatory powers of ICASA to regulate On-Demand Content Services (OCS) and OTT services within the same regulatory framework as traditional broadcasters, to level the playing field. This creates the threat of competing regulatory oversight between the Films and Publication Board, which was also recently tasked to regulate OCS and ICASA. The DWP also recommends imposing a 2% turnover tax on digital platforms that would be payable into a fund dedicated to producing more local and original South African content. The DWP helpfully recommends a streamlined process for removal of infringing content and site blocking. Finalization of the DWP was postponed to the next legislature to account for South Africa’s general elections, which took place in May 2024, and it is estimated that the Final White Paper could be published in early 2025.

Online Value-Added Tax (VAT): South Africa currently levies a 15% VAT on the online selling of content, including films and television programming. As of April 2019, income on B2B services provided to South African businesses by foreign providers is also subject to VAT.

Digital Services Tax (DST): In July 2023 South Africa published a Draft White Paper on Audio and Audiovisual Media Services and Online Content Safety that proposed a unilateral DST. The measure would impose a 2% turnover tax on digital platforms operating in the audiovisual sector or a levy to fund the production of South African audiovisual content. Such a unilateral DST conflicts with the Organization for Economic Cooperation and Development (OECD) multilateral tax convention.

ENFORCEMENT

- **Improve enforcement against online piracy, including by providing effective mechanisms and statutory remedies to address services that infringe domestic and foreign content, including 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.**

Creative sectors in South Africa are growing but face the challenge of competition from illegal services. Improved infrastructure and accessibility to broadband Internet has changed the landscape of copyright piracy in South Africa over the last decade. Physical piracy (e.g., sale of pirated CDs and DVDs) remains prevalent, but the dominant concern in South Africa is rapidly increasing piracy in the digital environment.

Although South African consumers have increasing options available to stream legitimate creative content, online piracy continues to grow in South Africa. Growth in bandwidth speeds, coupled with lax controls over corporate and university bandwidth abuse drive this piracy. Statistics recently released by software security and media technology company Irdeto show that Internet users in five major African territories (South Africa, Kenya, Nigeria, Ghana, and Tanzania) made a total of approximately 17.4 million visits to the top ten identified piracy sites on the Internet.²¹ Of the African countries that were tracked during this survey, South African Internet users made the second-most visits to the top ten tracked pirated sites (around 5 million, almost double that of Nigeria and Ghana, and only trailing Kenya where seven million users accessed these sites).²² A more recent study by Irdeto in 2024 revealed that the problem is escalating, with an estimated 5.4 million illegal downloads or streams taking place daily in South Africa.²³

South Africa also has one of the highest rates of music piracy worldwide. According to IFPI's 2023 Music Consumer Study (MCS), 61% of all Internet users had pirated music in the previous month using a variety of unlicensed methods. Stream ripping was the major music piracy threat: 58% of all Internet users and 71% of users between 25-34 pirated music through stream-ripping sites. Such findings are also supported by SimilarWeb data, according to which the stream-ripping site *Y2Mate.com* received 4.5 million visits from South Africa in Q2 2024 and *SaveFrom.net* received 3.9 million visits from South Africa in Q2 2024. Local piracy sites—such as *Tubidy*, which is openly operated from South Africa—were also popular. The site is accessible through a variety of domains such as *tubidy.cool* and *tubidy.fun* and received more than 20 million visits from South Africa in Q2 2024 based on SimilarWeb data. Nearly all visits to the site were from mobile devices.

The MCS also found that 23% of users stated they had downloaded pirated music from BitTorrent sites in the prior month from sites such as *1337x* (2.3 million visits from South Africa in Q2 2024 based on SimilarWeb data) and *TorrentGalaxy.to* (2.9 million visits from South Africa in Q2 2024 based on SimilarWeb data), and 22% had downloaded from cyberlockers using sites such as *Mega*. 'Blog' style sites that make available music for download without authorization are used in South Africa as well as in the region more broadly.

Easy access to film and television content before their local releases through international torrent, linking, and cyberlocker sites also fuels online piracy in the country. As South Africa lacks effective injunctive relief for rights holders, especially against foreign defendants who do not own assets in South Africa against which judgements can be executed and South African courts' jurisdiction can be confirmed to hear infringement matters, consumer access to these infringing sites continues unabated.²⁴ To combat online piracy, South Africa needs a legal framework that enables

²¹ See Benjamin Emuk, ChimpReports, *Piracy Hits African Creative Industries as Millions Find Illegal Content Online*, <https://chimpreports.com/piracy-hits-african-creative-industries-as-millions-find-illegal-content-online/>.

²² Id.

²³ See Leading the charge against digital piracy – MultiChoice's fight to protect the creative industry, available at

<https://mybroadband.co.za/news/industrynews/566095-leading-the-charge-against-digital-piracy-multichoices-fight-to-protect-the-creative-industry.html>.

²⁴ While South Africa's current law allows for an "interdict" (or injunction) under certain circumstances, in practice, this remedy is limited and extremely difficult to obtain. Lower courts have jurisdiction to grant an interdict, but only if the "value of the relief sought in the matter" does not exceed a limit of ZAR400,000 (~US\$30,000) or if the actual economic harm that the injunction is sought to prevent or restrain can be projected under that limit. It is also often difficult in IP cases to establish the required showings of "urgency" and "irreparable harm resulting if the order is not granted." Compounding this problem, judges in South Africa have

rights holders to address unauthorized use in all ways, and, as discussed below, the Government of South Africa should increase consumer education and awareness programs and improve enforcement.

Online Enforcement: South Africa's enforcement framework is not up to the challenge of its counterfeiting and piracy problems. Border enforcement is inadequate because of a lack of manpower and lack of *ex officio* authority, which places a burden on the rights holder to file a complaint and institute costly proceedings to ensure that goods are seized and ultimately destroyed. Civil enforcement is not a practical option, because a High Court application or action currently takes two to three years to be heard, costs are high, and damages are low because, as noted above, South Africa lacks statutory damages or punitive damages and proving actual damages, and the amount of economic harm is notoriously difficult in copyright cases. Criminal enforcement suffers from a lack of specialized prosecutors and judges equipped to handle IP cases.

A particular problem for South Africa is infringing services that are impossible to locate or are hosted outside of the country, which undermine the legitimate online marketplace. South Africa should provide in its legal system 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. Government agencies and courts in over 50 countries—including Australia, Belgium, Brazil, Denmark, France, India, Ireland, Italy, Peru, Portugal, Singapore, South Korea, Spain, Sweden, the United Kingdom, and the United States—employ or have made legally available injunctive relief or administrative orders to compel ISPs to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities. The European Union (EU) has addressed this problem through Article 8.3 of the EU Copyright Directive, which is the basis for injunctive relief against intermediaries to disable access to infringing content or websites. Rights holders welcome and encourage DCDT's ongoing, collaborative, and constructive engagement with stakeholders on the Draft White Paper on Audio and Audiovisual Media Services and Online Content Safety: A New Vision for South Africa (July 2023).²⁵ The DCDT expressly recognized in the Second Draft White Paper (DWP) the need for effective legal protections to combat the scourge of online piracy, and in particular made the explicit recommendation for "the inclusion of the provisions for a streamlined and fast track process for removal and site blocking by ISPs upon notification by verified rights holders" that includes "search engine operators in the scope of site blocking."²⁶

South Africa has a specialized unit tasked with financial crimes and counterfeiting (known as the "HAWKS" unit), but it does not appear to be adequately resourced or have a suitable remit to take effective action against digital piracy. There is also a need for ongoing training and education for South Africa's police and customs officials to improve the process for detention and seizure of counterfeit and pirated goods. In particular, law enforcement officials should better understand the arduous procedures and timelines in the Counterfeit Goods Act (which prohibits rights holders from getting involved in many of the required actions), including that non-compliance will result in the release of counterfeit and pirated goods back to the suspected infringer. The Electronic Communications and Transactions Act (ECTA), read with the Copyright Act, is the law that rights holders rely upon for title, site, and link takedowns. The lack of cybercrime inspectors continues to limit the full potential of this law. To facilitate a healthy online ecosystem, South Africa should appoint cybercrime inspectors and develop a cybercrime security hub recognizing copyright as one of its priorities.

The enactment of the Films and Publications Amendment Act, No. 11 of 2019, which extends application of the Films and Publications Act to online distributors of publications, films, and video games, could be a positive step for enforcement, because it establishes an Enforcement Committee for investigating and adjudicating cases of non-

little to no experience in IP infringement cases, further diminishing the utility of this remedy. As a result, in practice, the interdict remedy is not effective for rights holders in South Africa. Moreover, the proposed copyright reform legislation will further diminish the utility of this remedy because the ambiguous and overbroad exceptions could make it more difficult to establish a *prima facie* case of infringement on which to base an interdict order.

²⁵ See Draft White Paper on Audio and Audiovisual Media Services and Online Content Safety: A New Vision for South Africa (July 2023) available at <https://www.dcdt.gov.za/documents/legislations/policies/file/261-government-gazette-no-1934-of-2023-draft-white-paper-on-audio-and-audiovisual-media-services-and-online-content-safety-a-new-vision-for-south-africa-2023.html?start=20>.

²⁶ See *id.* at 23.

compliance with any provision of the Act. South Africa's government should fully implement and operationalize the Act to improve enforcement against online piracy.

IIPA is hopeful that the implementation of the Cybercrimes Act (CBA) No. 19 of 2020 will increase awareness and stricter enforcement of piracy issues, although it has not yet yielded enforcement improvements. The CBA focuses on cyber-related crimes, including copyright infringement through peer-to-peer networks. While the CBA provides for new criminal offenses relating to cybercrimes (which includes the unlawful access of or interference with data) and provides for the criminal prosecution of certain offenses even where the offender is based outside of South Africa's borders, the Act has not been fully operationalized yet. While there appears to be an interest within the Department to combat content piracy, no concrete actions have been taken yet. The Government of South Africa should establish effective and well-resourced cybercrime investigative and enforcement units that can work together with private sector stakeholders to identify and institute criminal proceedings against online infringers under the CBA.

Piracy Devices (PDs) and Apps: Set-top boxes and memory sticks pre-loaded with infringing content or apps continue to grow in popularity in South Africa. Consumers use these devices to bypass subscription services or to consume unauthorized copyrighted content such as music, movies, TV series, or sporting events. These devices are most commonly sold to South African consumers online. Some companies develop devices pre-loaded with infringing music content for use in various stores, pubs, and taverns. Many examples of enforcement and consumer education programs that are effective in other markets could be replicated in South Africa. It is critical for South Africa to gain more understanding of these approaches and to work proactively with experts from the applicable creative industry sectors to localize and implement similar programs.

Infringing mobile apps are also a concern—stream-ripping and MP3 download apps are prevalent on the mainstream app stores and MP3 download apps receive a particularly significant number of downloads from South Africa. According to IFPI's MCS, unlicensed mobile apps used for music piracy increased from 2023, with the unlicensed app *Vidmate* the most popular. It was used by 17% of those in South Africa who participated in the survey.

Parallel Imports: The Copyright Law does not protect against parallel imports. As a result, the motion picture industry has sought protection under the Film and Publications Act. The lack of protection against parallel imports raises concerns and interferes with rights holders' ability to license and protect their IP rights.

Capacity Building: The Interpol Intellectual Property Crime Conference held in 2019 in Cape Town provided local law enforcement with information on best practices and resources for combatting IP theft, including access to the Interpol Intellectual Property Investigators Crime College (IPIC). Law enforcement should take advantage of these initiatives, including the IPIC training courses to assist with local and regional training of new and existing units. In April 2022, a creative industry stakeholder collaboration resulted in the launch of the "Partners Against Piracy" (PAP) initiative with a focus on combating the scourge of online content piracy and fostering improved private and public sector cooperation on this issue. In August 2024, the Companies and Intellectual Property Commission (CIPC), which is under the DTIC, co-hosted an in-person anti-piracy workshop and dinner with the Swiss Federal Institute of Intellectual Property. WIPO also participated and presented a project plan for strategies and tools to address online content piracy and copyright infringements. The objective is to provide tools to fight online piracy in South Africa and the next steps would include the development of training materials, the establishment of a national project team and a roll-out term of around 3-years, mainly focused on raising consumer awareness around the scourge of piracy.

GENERALIZED SYSTEM OF PREFERENCES (GSP)

In November 2019, USTR opened an investigation, including holding a public hearing in January 2020, to review country practices in South Africa regarding IP rights and market access issues, and to determine whether South Africa still qualifies for beneficiary status under the GSP. Under the statute, the President of the United States must consider, in making GSP beneficiary determinations, "the extent to which such country is providing adequate and

effective protection of intellectual property rights,” and “the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets . . . of such country.” IIPA requests that through the ongoing GSP review, the U.S. government continue to send a clear message that the CAB and PPAB that were referred to the Constitutional Court are fatally flawed, and work with the South African government to remedy the deficiencies in South Africa’s legal and enforcement regimes, including by redrafting the bills to address the serious concerns detailed above and in IIPA’s previous submissions. If, at the conclusion of the review, the Government of South Africa has not made the requisite improvements, IIPA requests that the U.S. government suspend or withdraw GSP benefits to South Africa, in whole or in part.

VIETNAM

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Vietnam should be elevated to the Priority Watch List in 2025.¹

Executive Summary: An important emerging market in Southeast Asia for the creative industries, Vietnam's market for creative works remains severely stunted due to worsening piracy and debilitating market access barriers. Vietnam has become a leading exporter of piracy services both in the region and around the world, and Vietnamese operators have been associated with some of the world's most pervasive piracy websites, causing significant damage to both the local and international marketplaces. IIPA applauds Vietnam's enforcement authorities for tracking and dismantling *Fmovies*, one of the world's largest streaming piracy sites, and achieving the first criminal copyright convictions under the Vietnamese criminal code in the *Bestbuy IPTV* and the *BiluTV* cases, but two important issues remain. First, greater clarity, transparency, and predictability in the criminal process, particularly regarding monetary and evidential thresholds and enforcement timelines, are necessary for the criminal referral process to be reliably extended to additional piracy operators. Additionally, deterrence against infringement in Vietnam remains lacking due to the low penalties meted out in the few criminal cases that have proceeded. Greater deterrent penalties are also needed for administrative copyright offenses. Amendments to the Intellectual Property (IP) Law, which entered into force on January 1, 2023, contain some improvements, including certain measures that may allow rights holders to seek civil or criminal relief against online infringers. The implementing regulations, published in April 2023, also include some positive provisions that could improve protection and enforcement. In 2022, the Government of Vietnam acceded to both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties). Vietnam still needs to extend the term of copyright protection in line with evolving global norms and its obligations under the Bilateral Trade Agreement (BTA) with the United States, as well as further improve its enforcement framework to address online piracy including, for example, bringing the definition of "commercial scale" into line with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and evolving global norms. The government should also address deficiencies with the Copyright Office of Vietnam (COV), which has not taken any action to reform the dysfunctional collective management organization (CMO) for the music industry. Finally, Vietnam's piracy problems would also be mitigated if its restrictive market access barriers were removed.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Establish a robust enforcement framework, including clear monetary and evidential thresholds and enforcement timelines and appropriate deterrent penalties, and ensure enforcement officials—including the Ministry of Public Security (MPS), the Ministry of Information and Communication (MIC), and the Ministry of Culture, Sports, and Tourism (MOCST)—increase the number and effectiveness of operations against commercial-scale piracy sites and services.

Legal Reforms

- Make necessary changes to codes and laws and implement Resolutions, Decrees, and Circulars to address several critical issues (e.g., term of protection, broadcasting and communication rights, "communication to the public" definition, Internet service provider (ISP) liability, denial of protections, exceptions and limitations, hierarchy of rights, seizure of infringing goods) to improve copyright protection and enforcement and ensure Vietnam is in

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

full compliance with the WIPO Internet Treaties, the BTA, the WTO TRIPS Agreement, and other international obligations and evolving global norms.

- Adopt a Supreme People's Court Resolution that clearly defines and interprets "commercial scale" consistent with Vietnam's international obligations and enables more effective criminal referrals by providing essential guidance on the evidence required in cases of copyright infringement.
- Introduce clear and transparent 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.
- Reform the CMO function of the Recording Industry Association of Vietnam (RIAV) and engage with local and foreign music producers to set up a new collecting society to enable all music producers to effectively manage rights that are subject to collective management in Vietnam.
- Ensure that certain shortcomings on collective rights management regarding governance, tariff setting, and distribution of collected monies are addressed to bring them in line with international best practices.

Market Access

- Remove severe market access restrictions that continue to negatively impact the U.S. creative industries.

ENFORCEMENT

- **Establish a robust enforcement framework, including clear monetary and evidential thresholds and enforcement timelines and appropriate deterrent penalties, and ensure enforcement officials—including the Ministry of Public Security (MPS), the Ministry of Information and Communication (MIC), and the Ministry of Culture, Sports, and Tourism (MOCST)—increase the number and effectiveness of operations against commercial-scale piracy sites and services.**

Vietnam currently hosts some of the most egregious and popular piracy sites and services in the world that target a global and English-speaking audience.² Illegal content generally can be accessed via online and mobile network piracy, such as streaming sites, linking sites, apps, video hosting sites, download sites, peer-to-peer (P2P) networks, stream-ripping sites, search engines, and social media platforms. The video game industry reports that in 2024, Vietnam ranked seventh in the world for the number of connections by peers participating in the unauthorized file-sharing of ESA member mobile video game titles on public P2P networks. Piracy service operators often take advantage of free platform file hosting resources, including those from Facebook and Google, to store and share pirated content and stream the infringing content via piracy sites and apps.

According to data from the International Federation of the Phonographic Industry's (IFPI) Music Consumer Study 2023 (MCS), Vietnam has one of the highest levels of music piracy in the world.³ The study found that two-thirds (66%) of respondents aged 16-44 regularly pirated music, compared to a global average of 29%. Stream ripping—unlicensed downloads of music from video sites like YouTube—was the major music piracy threat in the country: 63% said they used web sites like *Y2Mate* or unlicensed mobile apps like *SnapTube* to illegally download music through stream ripping. In addition, 35% used cyberlockers like *Mega* or *Rapidgator* for music piracy (often to obtain pre-release leaks). Twenty-nine percent used BitTorrent sites like *ThePirateBay* for music piracy. The MCS found that more than 17% of Vietnamese respondents used the stream-ripping site *Y2Mate*, which received 9.8 million visits from Vietnam in Q2 2024 according to SimilarWeb.

Importantly, *Y2Mate* is one of many globally popular stream-ripping sites believed to be operating from Vietnam. Although the operator of *Y2mate.com* voluntarily geo-blocked access from the United States, United

² Media Partners Asia 2022 study on creative industry losses in Vietnam caused by online piracy is summarized here: https://nhandan.vn/hop-tac-ngan-chan-vi-pham-ban-quyen-truc-tuyen-tai-viet-nam-post706584.html?zarsrc=31&utm_source=zalo&utm_medium=zalo&utm_campaign=zalo.

³ See International Federation of the Phonographic Industry (IFPI), *Engaging With Music 2023*, available at https://www.ifpi.org/wp-content/uploads/2023/12/IFPI-Engaging-With-Music-2023_full-report.pdf.

Kingdom, France, and Germany, the site is once again accessible from these countries, and while the site was geo-blocked the operator set up alternative stream-ripping sites. Unlicensed music and other content are also distributed on online forums such as *Hdvietnam.xyz* where links are posted to download the content from cyberlockers such as *Fshare.vn*.

Streaming and Internet protocol television (IPTV) piracy remain the major type of online piracy in Vietnam. Piracy sites and services, including *2embed*,⁴ *Hianime*, *9anime*, and *123movies* continue to cause significant damage to the local and international marketplaces and make Vietnam a haven for piracy.⁵ Piracy sites and services have persisted despite initially successful shut down efforts. For example, while the Alliance for Creativity and Entertainment (ACE) successfully shut down *2embed.to* and *zoro.to* in July 2023, in a matter of weeks, a new domain (*aniwatch.to*, later, *Hianime*) replaced *zoro.to* and a new domain (*2embed.me*) replaced *2embed.to*. Further criminal enforcement action by the MPS is needed to deter the operators and conclusively close such expansive piracy syndicates.

Recently, Vietnam enforcement authorities took several important criminal enforcement actions. In April 2024, following the first prosecution for copyright offenses in Vietnam, the People's Court of Hanoi handed down Vietnam's first-ever criminal sentence for online copyright infringement against the operator of the illegal IPTV subscription service, *BestBuy IPTV*. The operator received a 30-month suspended prison sentence and was ordered to pay the equivalent of \$4,000 USD. A total of more than \$24,000 USD in illegal profit was confiscated and allocated to public funding. In July 2024, the People's Court of Quang Binh Province convicted the three operators of the illegal streaming websites *bilutvt.net*, *tvhayh.org*, and *hlss.pro*. The primary operator was sentenced to 24 months in prison with a suspended sentence and 48 months of probation. While these criminal enforcement actions are undoubtedly a positive development, they have thus far resulted in suspended sentences against the operators, which dampens the deterrent message to operators of piracy services. Vietnam should mete out stricter penalties available under the Penal Code to ensure they are commensurate with the significant damage and harm caused by such illegal activities.

In August 2024, the MPS, supported by ACE, shut down the largest pirate streaming operation in the world, including the piracy site *Fmovies* and numerous other notorious piracy sites, such as *bflixz*, *flixtorz*, *movies7*, *myflixxr*, and *aniwave*. *Vidsrc.to*, a notorious video hosting provider operated by the same individuals was also taken down, impacting hundreds of additional dedicated piracy sites. The criminal case against the *Fmovies* operators is still in progress, and deterrent sentences should be handed down to discourage persistent piracy.

Further, there is a need to clarify whether the Penal Code allows handling of intangible evidence, such as digital assets and domain names. The lack of express provisions addressing these issues may prevent enforcement agencies from taking steps to seize, handle, and preserve intangible evidence, all of which are crucial in IP cases. Moreover, despite defined procedures for handling criminal cases written into the Penal Code and the Criminal Procedure Code, the process for bringing criminal prosecutions remains opaque. There have also been significant difficulties identifying the evidence needed to meet the requirements for an offense under Article 225 of the Vietnamese Penal Code. In particular, there is a lack of guidance on what "commercial scale" means under Vietnamese law. Vietnam should establish a robust criminal enforcement framework, including clear monetary and evidential thresholds, clear enforcement timelines, and appropriate deterrent penalties.

Like the criminal process, the administrative process in Vietnam is cumbersome and eventual penalties provided for in the current legislation lack any deterrence. Regarding civil enforcement, the process is unclear and the outcomes are also non-deterrent. Moreover, the difficulty in identifying infringers (because infringers provide false identity and contact information to domain registrars and web hosting companies) makes civil actions in the online environment nearly impossible because rights holders have been advised by enforcement officials that actions against

⁴ *2embed* carries out "Piracy as a service" (PaaS), offering tools for creating streaming sites, including templates, multilingual subtitles, and a user-friendly interface. It continues to provide a library of over 300,000 movies and TV shows, which are used by illicit streaming sites. *2embed* was found to be linked to another major pirate streaming site, *zoro.to*, which had an average of 200 million visits per month before its shutdown.

⁵ In addition, several globally popular stream-ripping sites are operated from Vietnam, including *Y2mate.com*. Enforcement efforts in Vietnam by the music industry against *Y2mate* proved futile.

an unknown infringer (i.e., *John Doe* civil action) will not prevail, even where the domain name, Internet protocol (IP) address, and related email addresses are known.

In June 2024, the National Assembly of Vietnam approved an amended Law on the Organization of People's Courts that will allow, for the first time in Vietnam, the establishment of a specialized IP court: the Court of First Instance for Intellectual Property. Specific implementation details are expected in 2025. This is a welcome development and should provide new opportunities for rights holders to enforce their IP, as has happened in other markets (notably India). It will now be important for Vietnamese judiciary officials and lawmakers to properly implement and interpret Vietnam's international commitments, including the requirement under the WTO TRIPS Agreement (Article 61) for criminal procedures and penalties to be applied at least in cases of piracy "on a commercial scale" and the more detailed provision on criminal procedures and penalties in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which defines "commercial scale" to include "significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace." It is also hoped this development will pave the way to improved outcomes in civil suits, even when it is difficult or impossible to fully identify the pirate operators. It is critical for responsible enforcement authorities, including the relevant police units, the MPS, and the Authority of Broadcasting and Electronic Information (ABEI) under the MIC, to follow through on infringement complaints, take meaningful and effective enforcement actions, and impose deterrent sanctions against infringing websites.

Training should also be conducted to address existing issues in interpreting copyright law, such as applying "commercial scale" provisions under Article 225 of the Vietnamese Penal Code. In addition, building IP expertise should be part of the overall judicial reform effort. The U.S. government should remain involved in training not only for the judges, but also for police and prosecutors, who will ultimately play an important role in bringing criminal cases before the courts.⁶

LEGAL REFORMS

- **Make necessary changes to codes and laws and implement Resolutions, Decrees, and Circulars to address several critical issues (e.g., term of protection, broadcasting and communication rights, "communication to the public" definition, Internet service provider (ISP) liability, denial of protections, exceptions and limitations, hierarchy of rights, seizure of infringing goods) to improve copyright protection and enforcement and ensure Vietnam is in full compliance with the WIPO Internet Treaties, the Bilateral Trade Agreement (BTA), the WTO TRIPS Agreement, and other international obligations and evolving global norms.**

Copyright protection and enforcement in Vietnam is governed by the IP Law (as amended in 2022), the Criminal Code (as amended in 2017), the Joint Circular (2012), and the Administrative Violations Decree (No. 131) (as amended in 2017). The copyright-related provisions in the IP Law entered into force on January 1, 2023. The 2022 amendments made several changes to the IP Law, including adding important protections required by the WIPO Internet Treaties. The implementing regulations to the IP Law were passed on April 26, 2023 (Decree 17). Decree 17 includes some positive provisions that improve protection and enforcement, but several concerns remain, as detailed below. IIPA is very pleased that the government acceded to the WCT on November 17, 2021, effective February 17, 2022, and acceded to the WPPT on April 1, 2022, effective July 1, 2022, as required under the CPTPP and Vietnam's Free Trade Agreement with the European Union (EU).⁷ IIPA encourages Vietnam to take the necessary steps to fully implement these treaties.

⁶ In July 2022 the Ministry of Information and Communication (MIC), in collaboration with the Alliance for Creativity and Entertainment (ACE) and local rights holder K+, organized a symposium focused on addressing online content issues related to copyright infringement. This conference brought together Vietnamese officials from relevant authorities and representatives of the local and international content industry to consider effective strategies to prevent and reduce online copyright infringement, while evaluating the efficiency of technological solutions (including site blocking processes).

⁷ Vietnam formally ratified the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in October 2018, and it entered into force in January 2019. Vietnam entered into a Free Trade Agreement (FTA) with the European Union (EU) in August 2020.

The IP Law amendments contain some improvements for rights holders, including clarifying that the illegal uploading and streaming of a cinematographic work is a violation of the communication right, and the copying of part of a work is a violation of the reproduction right (thereby creating additional opportunities for rights holders to seek civil or criminal relief against online infringers). Nevertheless, the amendments and implementing regulations (Decree 17) leave some issues and questions unresolved, including regarding Vietnam's compliance with the WIPO Internet Treaties, the BTA, the WTO TRIPS Agreement, as well as other international obligations and evolving global norms. The following issues should be addressed in additional regulations or amendments:

- **Term of Protection:** The amended IP Law does not provide for an adequate term of protection for sound recordings, which should be updated to be in line with the international trend of a minimum of 70 years. The amended IP Law also retains an inadequate term of protection for all copyrighted works, including audiovisual works, and should be updated to be in line with the international trend of 70 years after the death of the author, or, when the term is calculated based on publication, at least 75 years (or 100 years from fixation) as required by BTA Article 4.4.⁸
- **Broadcasting and Communication Rights:** The IP Law now expressly and individually enumerates sound recording producers' exclusive rights in a manner that meets the minimum standards in WPPT. However, despite the inclusion of the broadcasting and communication rights in the list, their scope is dramatically limited by Article 33(1), which turns them into remuneration rights. Vietnam should provide sound recording producers with exclusive rights, or, at minimum, redraft Article 33(1) of the IP Law in a manner consistent with Vietnam's international obligations, for example along the lines of Article 15 of the WPPT. This includes making sure that implementing regulations do not limit remuneration rights by exempting certain users of music from payment, nor make interactive uses subject to a mere remuneration right.
- **Definition of Communication to the Public Departs from WPPT:** The definition of "communication to the public" in the IP Law does not include the second sentence of Article 2(g) of the WPPT on public performance. To avoid confusion and ensure consistency with the WPPT, this definition should be revised.
- **Making available right:** Further certainty would be helpful to ensure that stream ripping—an act of piracy in which a user downloads and stores streamed content, which has been licensed only for streaming, thus seriously hindering legitimate markets—is a violation of the making available right in Vietnam, as is the case in other jurisdictions and under WPPT.
- **ISP Liability:** Article 198b of the amended IP Law introduces an ISP liability regime, which is welcome, but IIPA is concerned that the scope of ISP liability limitations (i.e., safe harbors) may be too broad as currently provided. Decree 17 should be revised to ensure that copyright safe harbors should apply to only passive and neutral intermediaries that do not contribute to infringement, and that there are strong incentives provided for neutral ISPs to work with rights holders to address infringement on their services. In addition, eligibility requirements for ISP liability limitations should include appropriate conditions, including obligations for ISPs to remove infringing content expeditiously, and within a specific timeframe, upon obtaining knowledge or awareness of infringing activity, to implement effective repeat infringer policies, and to take other measures demonstrated effective in preventing or restraining infringement. In addition, Vietnam should require marketplaces and encourage all relevant intermediaries to implement "know your business customer" (KYBC) policies to ensure they keep up to date and accurate information about their customers and to allow rights holders to obtain accurate information to protect their rights against direct infringers.
- **Denial of Protection for Certain Works:** Articles 7(2), 7(3), and 8(1) of the IP Law appear to give the state power to potentially restrict rights and may conflict with Vietnam's international commitments.
- **Hierarchy of Rights:** Article 17(4) of the IP Law creates an unacceptable hierarchy of the rights of authors versus neighboring rights owners. This is inconsistent with Vietnam's obligations to provide certain exclusive rights to

⁸ Article 4.4 of the Bilateral Trade Agreement (BTA) provides, "Each Party shall provide that, where the term of protection of a work is to be calculated on a basis other than the life of a natural person, the term shall be not less than 75 years from the end of the calendar year of the first authorized publication of the work or, failing such authorized publication within 25 years from the creation of the work, not less than 100 years from the end of the calendar year of the creation of the work."

neighboring rights holders, including producers, performers, and broadcasters, under international agreements, including the WTO TRIPS Agreement. Article 17(4) should be repealed.

- **Broad Exceptions and Limitations:** Certain exceptions and limitations in the IP Law may be overly broad and call into question Vietnam's compliance with its international obligations, including Article 13 of the WTO TRIPS Agreement and Article 4.8 of the BTA. For instance, exceptions for "public information and education purposes," as well as importation of copies of others' works for personal use, are overbroad. Further, a broad compulsory license (Article 26(1)(b)) applicable to all works except cinematographic works is not in line with international norms. In addition, Decree 17 should clarify that the exceptions apply only to copyrighted works and sound recordings that are lawfully acquired. Finally, regarding the exception in Article 32(1)(dd) of the IP Law regarding temporary copies for broadcasting, Decree 17 should provide further scope to it to avoid it being abused.
- **Overbreadth of Draft Private Copy Exception:** The amended Article 25(1)(a) (private copy exception) should be limited to one physical copy in accordance with international standards.
- **Recirculation of Seized Good/Tools into Channels of Commerce:** Articles 202(5) and 214(3) of the IP Law permit seized infringing goods and the means of producing them to be distributed or used for "non-commercial purposes," rather than destroyed. These provisions fall short of Vietnam's BTA (Article 12.4) and WTO TRIPS Agreement obligations.
- **Adopt a Supreme People's Court Resolution that clearly defines and interprets "commercial scale" consistent with Vietnam's international obligations and enables more effective criminal referrals by providing essential guidance on the evidence required in cases of copyright infringement.**

Vietnam's Criminal Code, which became effective in January 2018, criminalizes piracy "on a commercial scale," although the Code does not define "on a commercial scale." Vietnam should implement its Criminal Code consistent with Vietnam's obligations under the WTO TRIPS Agreement and BTA, which require Vietnam to criminalize copyright piracy "on a commercial scale" (there are also detailed obligations on point in the CPTPP). The Supreme People's Court has indicated it is working on a draft Resolution to provide guidelines for interpreting "commercial scale" and how to calculate the monetary thresholds, but those efforts appear to have stalled.⁹ A Supreme People's Court Resolution should be issued without delay. The Resolution should also provide essential guidance on the evidence required in cases of copyright infringement, thereby enabling rights holders to make criminal referrals more effectively. In addition, further modernization of the Criminal Code would be helpful to ensure that there is congruity between acts considered copyright infringements under the amended IP Law and the Criminal Code (in other words, acts considered infringements, when carried out on a commercial scale, should be criminalized under the Criminal Code). This would include, for example, criminalizing commercial scale infringements involving the unauthorized making available or communication to the public of works or objects of related rights, as well as the act of circumvention of technical protection measures (TPMs) or trafficking in circumvention devices/services.¹⁰ Unfortunately, as discussed above, the government has not followed through on these important changes and has not set in motion a more deterrent approach to rampant local piracy.

- **Introduce clear and transparent 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.**

⁹ A Resolution should: (i) clearly define and interpret "commercial scale" consistent with Vietnam's international obligations; (ii) criminalize "significant acts not carried out for commercial advantage or financial gain that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace;" and (iii) take into account peer-reviewed studies to ensure that the monetary thresholds can realistically be met by applying an appropriate substitution rate to effectively criminalize the main piracy sites operating in Vietnam. Such a resolution should take notice of the CPTPP language that "the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace."

¹⁰ Under current Article 225 of the Criminal Code, only the following two acts are considered a criminal offense, (i) the unauthorized reproduction of copyright protected material, and (ii) its unauthorized distribution (applicable to tangible copies/products only). Therefore, to combat online piracy with criminal enforcement, rights holders have no choice but to base their complaints on an "unauthorized reproduction," which may not allow for inclusion of all acts of online piracy. It should be noted that Vietnam's IP Law includes the making available right under the right of communication to the public, not the reproduction right, or any secondary liabilities.

Over the past few years, MIC's ABEI worked with several rights holders to help combat online piracy, resulting in sanctions against infringing websites and the first-ever site blocks in Vietnam against egregious websites infringing the rights of Vietnamese television rights holders. There are now hundreds of infringing domains blocked in Vietnam, mostly under the ABEI process and by the MOCST. While this is a useful step forward, most of the sites that were "fully blocked" were unauthorized live sports sites. Unfortunately, the authorities demand an unattainable evidential threshold to fully block commercial-scale sites offering unauthorized video-on-demand (VOD) and live channels, even if such sites had already been blocked in other jurisdictions. Despite continuing efforts by rights holders to engage with ABEI and MOCST and share current site blocking best practices in the Asia-Pacific region and Europe, ABEI and MOCST appear unwilling to adopt such effective site-blocking procedures. Moreover, disablement in Vietnam, without criminal investigation and prosecution of the site operators (as discussed above), does not stop these Vietnam-based services from harming overseas markets, including the U.S. market. Procedural difficulties also remain for U.S. rights holders.¹¹ The process for submitting sites should be transparent, with documentation setting out the process and explaining the technical measures by which the sites will be blocked, timeframes for site-blocking referrals to be actioned by government and complied with by ISPs, and measures available to ensure ISP compliance. While Decree 17 includes some provisions that may be helpful, Vietnam should introduce mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites (both those hosted in Vietnam and hosted or operated in other countries but available in Vietnam) on a no-fault basis, upon rights holders' applications to appropriate authorities.

- **Reform the CMO function of the Recording Industry Association of Vietnam (RIAV) and engage with local and foreign music producers to set up a new collecting society to enable all music producers to effectively manage rights that are subject to collective management in Vietnam.**

Due to barriers against foreign music producers and distributors (discussed below), the local music industry is very small. As a result, the collective management entity accredited for representing record producers, RIAV, is made up of just a handful of local producers and is not able to function effectively and professionally. Furthermore, the restrictions and limitations on foreign and joint venture entities and their membership in CMOs established as associations need to be removed (found in Decree No. 45/2010/ND-CP). The COV should engage with foreign music producers to enable reform of collective management to establish an entity that represents all producers, foreign and local, and has the relevant expertise and technical capability to effectively perform collective management functions to the benefit of rights holders and users alike in line with international best practices.

- **Ensure that certain shortcomings on collective rights management regarding governance, tariff setting, and distribution of collected monies are addressed to bring them in line with international best practices.**

Amended Article 56 of the IP Law introduces positive elements for greater transparency and more clarity regarding CMO operations. However, it lacks detail on rights holder involvement in the decision-making process, good governance, transparency for the benefit of rights holders, distribution of income, and prohibiting discrimination. Unfortunately, while the new collective rights management framework included in Decree 17 includes some positive provisions regarding good governance and transparency, Decree 17 fails to provide the needed clarity on these issues, nor does it guarantee rights holder involvement in decision making.

Additionally, the amended IP Law and Decree 17 fall short of international standards regarding distribution of monies collected by CMOs. For example, the amended IP Law provides for funds collected by CMOs to be dedicated

¹¹ As previously reported, in 2019, the music industry petitioned the Authority of Broadcasting and Electronic Information (ABEI) to block two sites, *saigonocan.com* and *chiasenhac.vn*. The ABEI only agreed to consider the petition against *chiasenhac.vn*. After significant delays, the MIC finally notified the music industry that Yeu Ca Hat Entertainment Joint Stock Company, owner of *chiasenhac.vn*, had, per request by MIC, monitored the accounts of those who uploaded copyright infringing works, removed over 6,000 works from the company's system, sent warnings and blocked 41 infringing accounts, and simultaneously provided information to MIC relating to the 41 accounts that had been blocked. Despite this action by ABEI, *Chiasenhac* is a principal source of unlicensed music in Vietnam, with both local and international repertoire easily accessible via the site.

to cultural and social activities and that undistributed monies (from orphan works) be paid to the “competent state agency.” Decree 17 fails to address this problem and further imposes: (1) tariffs for the broadcasting and public performance remuneration when no agreement is reached between right holders and users, and (2) a default distribution key between rights holders, both of which will disincentivize agreements between the relevant stakeholders and would *de facto* regulate these matters by decree. The first issue is problematic because the list of uses and rates applicable if no agreement between users and rights holders is reached, included in Appendices to the Decree, may not adequately reflect the value of music in the market, may quickly be outdated, and may effectively encourage users to bargain for rates lower than those provided. The second issue is problematic because the proposed distribution key between rights holders is skewed in favor of authors, thus not reflecting the economic contributions of the different categories of rights holders.

Regarding tariffs other than those for broadcasting and public performance, the general rate setting mechanism of Decree 17 is a step in the right direction because it makes clear that the price of the licence is set by the CMOs. Unfortunately, as it implements the new Article 56(3)(c) of the IP Law, Decree 17 also imposes that these rates must then be approved by the Ministry of Culture. However, IIPA understands that the rates should be negotiated between CMOs and users according to an established set of criteria, which, in addition to those included in Article 44a of the IP Law, should include the economic value of the use of the rights in trade (i.e., the “willing buyer, willing seller” standard). Only in a case of disagreement with the level of the rates may the issue be submitted to the Ministry of Culture, which will settle the dispute. However, the draft Decree should also include provisions to avoid unjustified claims (e.g., users will escrow payments during the settlement procedure). Finally, Decree 17 should introduce an obligation for users to provide CMOs, within an agreed or pre-established time, information on the use of the rights in an agreed format, taking into account voluntary industry standards, along the lines of Article 17 of the EU Collective Rights Management (CRM) Directive.

More importantly, the new framework may potentially result in: (a) the determination of rates that are not reflective of the value of the music used in the market due to excessive intervention of the Ministry of Culture in the process, (b) the introduction of rules of distribution of royalties collected between rights holders that risk being unfair, discriminatory, and not reflective of their respective economic contributions, and (c) the introduction of a decision-making process of CMOs in which non-discriminatory participation of rights holders is not guaranteed.

MARKET ACCESS

- **Remove severe market access restrictions that continue to negatively impact the U.S. creative industries.**

Vietnam continues to generally restrict foreign companies from setting up subsidiaries to produce or distribute “cultural products.” Restrictions via foreign investment quotas and other entry barriers regarding production, importation, and distribution of copyrighted materials (whether in the physical, online, or mobile marketplaces) persist. The Vietnamese government has publicly indicated that it prioritizes preserving cultural diversity and strengthening Vietnam as a producer and provider, not just as a consumer, of creative products. Unfortunately, Vietnam’s restrictions on foreign investment in cultural production undermine this objective, severely limiting the content marketplace and discouraging investment in the creation of new Vietnamese cultural materials.

The restrictions also fuel demand for pirated products. Vietnam’s virulent piracy problems would be reduced if the country removed its highly restrictive market access barriers. By limiting access to legitimate content, these barriers push Vietnamese consumers toward illegal alternatives. The restrictions instigate a vicious cycle in which fewer legitimate products are produced or available. To facilitate commercial development of Vietnam’s cultural sector and the development of a potentially very significant digital content market, Vietnam should look to internationally accepted standards and practices, which recognize that constraining market access for legitimate creative content complicates efforts to effectively combat piracy. IIPA urges Vietnam to quickly discard the longstanding market access barriers identified below and open its market in the creative and cultural sectors.

Pay-TV Regulation: Vietnam requires that foreign channels on pay-TV services be capped at 30% of the total number of channels the service carries. Vietnam also requires operators to appoint and work through a locally registered landing agent to ensure the continued provision of their services in Vietnam. Furthermore, most foreign programming is required to be edited and translated by an approved licensed press agent, and all commercial advertisements airing on such channels in Vietnam must be produced or otherwise “conducted” in Vietnam. All channels are subject to Vietnam’s censorship requirements and international channels are subject to “editing fees.” These measures are unduly restrictive and continue to severely impede the growth and development of Vietnam’s pay-TV industry.

Decree Regulating Over-the-Top (OTT) Services: In October 2022, amendments to Decree 06 were promulgated as Decree 71, expanding the scope of existing pay-TV regulations to include over-the-top (OTT)/VOD services. Most concerning is a non-transparent licensing scheme that is understood to require a local presence or joint venture in addition to onerous censorship provisions for any VOD service that offers content not considered to be “films” (which would be regulated under the Cinema Law). While industry welcomes the self-classification of “films” content on OTT services pursuant to the amended cinema law, this licensing scheme required by Decree 71 falls short of industry expectation and is likely to indirectly contribute to online infringement due to the removal or restriction of legitimate content services from the market.

Screen Quotas: Under Cinema Law/Decree 54, Vietnam required that at least 20% of total screen time be devoted to Vietnamese feature films. In June 2022, Vietnam passed Cinema Law amendments that entered into force in January 2023, replacing Decree 54. Instead of the 20% screen quota under Decree 54, which was never implemented, the amended Cinema Law introduces a gradual phasing-in of the screen time requirement, with 15% of annual screen time to be allocated for Vietnamese feature films from January 2023 to December 2025; and 20% from January 2026 onwards. While the policy of a gradual phasing-in offers some flexibility, Vietnam should nonetheless remove all screen quotas for the long-term development of the industry.

Broadcast Quotas: In the television sector, foreign content is limited to 50% of broadcast time, and foreign programming is not allowed during prime time. Broadcast stations must also allocate 30% airtime to Vietnamese feature films, which was affirmed by an initial draft decree of the Cinema Law. These restrictions limit U.S. exports of film and television content.

Foreign Investment Restrictions: The June 2022 Cinema Law reaffirmed that foreign companies may invest in cinema construction and film production and distribution through joint ventures with local Vietnamese partners, but these undertakings are subject to government approval and a 51% ownership ceiling. Such restrictions are an unnecessary market access barrier for U.S. film producers and distributors and should be eliminated.

Implement the existing age-based film classification system, and ensure the content review process is transparent, predictable, expeditious, and does not have a disparate impact on U.S. content: Vietnam helpfully introduced an age-based classification system in 2016. Unfortunately, Vietnam is increasingly banning films for political reasons, which foments unpredictable market conditions and fuels piracy as consumers are driven to unlawful sources to view content. IIPA urges the Government of Vietnam to fully implement its age-based classification system, which will help distributors ascertain the feasibility of a product’s distribution.

Recent Amendments to Decree No. 72 Restrict Video Game Rights Holders: In 2023, Vietnam adopted Decree No. 72/2013/ND-CP (“Decree No. 72”) on the management of Internet services and online information, which mandates that companies obtain an official license and certification from the government to distribute a video game in the Vietnamese market. These restrictions were maintained and expanded upon in Decree No. 147/2024/ND-CP on the management, provision, and use of Internet services and online information (“Decree No. 147”), which took effect on December 25, 2024. As set forth in Decree No. 72, online games are classified as a conditional investment sector for the purposes of foreign direct investment (FDI), which means that for a company to be an authorized “online gaming

service” entity in Vietnam, it must have majority Vietnamese ownership via a joint venture or a business cooperation contract. For some games, the enterprise must obtain a license and approval of the contents of the game from MIC. Other restrictions are imposed, including: censorship of the content of video games in order for them to be approved; outright prohibition of certain content within video games data collection; age of users; and license duration limits. In 2023, the Vietnamese government increased enforcement against foreign video games that are not fully certified, removing them from the Vietnamese market. IIPA urges the Government of Vietnam to work towards globally accepted trade standards to eliminate limitations on foreign investment for the provision of online games and related services in Vietnam.

Onerous Market Access Restrictions on the Music Sector: Onerous and discriminatory Vietnamese restrictions prevent U.S. record companies from engaging in production, publishing, distribution, and marketing of sound recordings in Vietnam. The lack of a meaningful commercial presence of U.S. record companies in Vietnam, coupled with restrictions on the ability of industries to conduct investigations in Vietnam, hinders anti-piracy efforts. These restrictions effectively mean the Vietnamese government must enforce IP rights related to U.S. content largely on its own, a task at which it has not succeeded thus far. To enable lawful trading and curb copyright piracy in Vietnam, foreign record companies should be given an unrestricted right to import legitimate music products into Vietnam. Under the applicable Decree today, circulation permits for tapes and discs are granted by provincial-level MOCST Departments. However, restrictions placed on foreign companies limiting their ability to establish subsidiaries to produce and distribute “cultural products” in Vietnam, in turn, make it difficult for foreign companies to obtain circulation permits, as the applications must be submitted by local (Vietnamese) companies. Vietnam should consider encouraging foreign investment by allowing foreign investors to apply for business permits.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

As outlined above, Vietnam’s copyright protection and enforcement frameworks are inconsistent with its international obligations to the United States in many respects. These include the following:

- All infringements on a commercial scale may not be subject to criminal liability as required by WTO TRIPS Agreement Article 61 and BTA Article 14;
- Several copyright exceptions may be overbroad and inconsistent with the three-step test of WTO TRIPS Agreement Article 13 and BTA Article 4.9;
- Remedies for civil, administrative, and border enforcement permit “non-commercial” distribution of infringing goods and the materials and means for producing them, which is inconsistent with the obligations of WTO TRIPS Agreement Articles 46 and 59 and BTA Articles 12.4 and 15.12;
- Inadequate enforcement framework, complicated and non-transparent civil procedures, and inadequate training of enforcement officials all are inconsistent with Vietnam’s obligations under the WTO TRIPS enforcement provisions, including Articles 41, 42, and 61, and under BTA Articles 11, 12, and 14;
- Limited and inadequate pre-established damages do not meet the requirements of BTA Articles 12.2D and 12.3; and
- Term of copyright protection falls short of the requirements of BTA Article 4.4.

WATCH LIST

BELARUS

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

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

Executive Summary: After years of working to improve its laws on intellectual property (IP) protection and enforcement, Belarus took a significant step back in 2022 with the passage of Law No. 241-3, which legalized piracy against foreign states “committing unfriendly actions.” This law is a flagrant violation of Belarus’s international treaty obligations and a direct affront to the American copyright industries. Making matters worse, the Government of Belarus is blatantly and financially benefiting from this government-sponsored copyright infringement. IIPA urges Belarus to rescind this law and to comply with its international obligations, including with respect to copyright and related rights.

PRIORITY ACTIONS REQUESTED IN 2024

Legal Reforms

- Repeal Law No. 241-3, which legalizes unlicensed use of copyrighted works.
- Repeal Law No. 243-3, which imposed a requirement that certain rights of performers and phonogram producers, including exclusive rights, be collectively managed by a state-owned collective management organization (CMO).

LEGAL REFORMS

- **Repeal Law No. 241-3, which legalizes unlicensed use of copyrighted works.**

With the passage in 2022 of Law No. 241-3, Belarus legalized the unlicensed use of copyrighted works of all kinds, including computer programs, broadcasts of a broadcasting organization, audiovisual works, and musical works. The Government of Belarus stated that the law is temporary, and was set to expire on December 31, 2024, however it was extended through 2026. The law allowed the importation of goods with copyrighted content into the territory of the Republic of Belarus, so-called “parallel imports,” and allows the circulation of those goods without the consent of rights holders from foreign states “committing unfriendly actions,” if such goods are included in the lists of goods that are essential for the domestic market as approved by state bodies authorized by the Council of Ministers. When such goods are designated as essential for the domestic market, they are removed from the customs register, which means the Government of Belarus ceases border enforcement against those infringing goods.

The law further directed Belarus’s National Center of Intellectual Property (NCIP) to collect royalties on this unlicensed use of copyrighted works on behalf of the individuals and entities from “unfriendly” states – with a right for NCIP to apply a 20% admin fee – and to retain this remuneration for three years on behalf of the rights holder or collective management organization (CMO). If the rights holder or CMO does not request the royalties during this period, the monies will be transferred to Belarus’s general budget within three months. The Government of Belarus is blatantly and financially benefiting from government-sponsored copyright infringement.

Belarus is a member of several international IP treaties, such as the Berne Convention and the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty (collectively, the WIPO Internet Treaties), each of

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

which provide for the protection of the works at issue in Law No. 241-3, as well as the enforcement of the rights protected under these treaties. Moreover, the law violates the obligation to grant national treatment to works protected under the Berne Convention. IIPA urges Belarus to repeal this law and to comply with its international obligations, including with respect to copyright and related rights.

- **Repeal Law No. 243-3, which imposed a requirement that certain rights of performers and phonogram producers, including exclusive rights, be collectively managed by a state-owned collective management organization (CMO).**

Law No. 243-3, adopted in January 2023, introduced further problematic amendments to the Belarusian Copyright Law, making certain performers' and phonogram producers' rights subject to compulsory collective management by a state-owned CMO. Additionally, the new CMO accreditation rules introduced by the same law require that only one CMO, which must be state-owned, is allowed to operate as such. This framework severely undermines the ability of right holders to exercise their rights and ultimately to monetize the use of their content.

BRAZIL

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

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

Executive Summary: While Brazil continued to enhance its enforcement efforts against a wide variety of piracy operators, and in some cases exemplified best practices to its Latin American neighbors, Brazil's withdrawal of commitments to ratify and implement the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties), proposals that interfere with Brazilian audiovisual and digital music markets, existing and proposed burdensome taxes, sheer level of rampant piracy across creative sectors, and delays implementing critical online anti-piracy tools unfortunately overshadow many of last year's successes.

IIPA again commends Brazil's excellent progress on a number of enforcement actions against online piracy this past year, including the seventh phase of Operation 404, which took down roughly 689 websites and applications providing pirated content across Brazil. Last year's campaign also included a growing number of local and regional partners, including for the first time law enforcement officials from Paraguay. 2024 also witnessed the first Operation 404-related prison sentence where an Internet protocol TV (IPTV) operator was sentenced to more than five years in prison. While the number of piracy actions prosecuted by Brazilian federal authorities continues to increase, most only take place during the phases of Operation 404. After five years of successful Operation 404 campaigns, the Government of Brazil should now implement more consistent and continuous anti-piracy operations throughout the year. Brazilian enforcement agencies, including during Operation 404 phases, should also target piracy operations that offer hacking tools, circumvention devices, and mod installation services, and that develop tools that specifically support video game piracy and circumvention of technological protection measures (TPMs). Additionally, while São Paulo DA's cybercrime unit, *CyberGaeco*, continues to support the video game industry by successfully targeting circumvention devices, and the National Telecommunications Agency (ANATEL) significantly increased efforts to block pirate pay-TV channels and seize piracy devices (PDs) this year, the Brazilian Film Agency (ANCINE) decision to delay the implementation of its now codified site-blocking authority with respect to online services, granted in January 2024 by Law No. 14,815/2024, is a growing concern for rights holders. Additional political support and increased human and financial resources are also needed across Brazil's criminal, civil, and administrative IP enforcement agencies at all levels, as well as efforts to improve public-private and private-private partnerships that are necessary to tackle Brazil's piracy challenges.

Brazil's failure to ratify and implement the WIPO Internet Treaties is one of the primary concerns for rights holders in all of Latin America, as Brazil is one of the largest markets in the region for all creative industries. Moreover, the Federal Administration's recent decision to withdraw the WPPT's ratification process before the Brazilian Congress was an especially troubling development as the 30th anniversary of these treaties will be celebrated in 2026. Furthermore, IIPA members remain extremely concerned about Brazil's 2019 proposed amendments to the Copyright Act that still remain under consideration. Under the last version of the text publicly available, the proposed bill would create new royalty remuneration obligations for advertisements and news material, a new collective royalties remuneration for any on-demand distributions, a new remuneration right for holders of copyright and related rights in addition to the exclusive right that they already enjoy, and problematic definitions of communication to the public and public performance. This 2019 proposal was put forward without proper consultation with stakeholders or a meaningful impact assessment as to its effect on the local music and audiovisual markets. It is therefore essential for Brazil to reassess its latest copyright amendment proposals and instead ratify and fully implement the WIPO Internet Treaties to ensure its legal framework is interpreted in line with global standards. Moreover, in late 2024, Senator Randolfe

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

Rodrigues introduced bill # 4968/2024, proposing a similar wording to the aforementioned 2019 Copyright Act reform. With this legislative activity, IIPA expects discussions regarding additional remuneration rights and other concerning topics will gain renewed traction in 2025.

Regarding market access barriers, unfortunately, taxes on video game consoles and accessories continue to be significant, and IIPA encourages Brazil to reduce the burden on this sector of the economy as it completes overall tax reform. IIPA also continues to be concerned about potential new taxes and regulation for video-on-demand (VOD) services, such as permitting accounting sharing, as well as digital services taxes (DSTs). Moreover, it is important that Brazil does not implement network fees.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Support the Ministry of Justice and Public Security's (MJPS) coordination with the Department of Intelligence and Integrated Operations (DIOPI) to establish a clear and on-going copyright enforcement structure to expand on the success of Operation 404's multiple waves.
- Ensure that ANCINE implements Article 3 of Federal Law No. 14,815/2024 and provides administrative enforcement against the illegal transmission of audiovisual content.
- Ensure that ANATEL continues deploying administrative blocking for piracy of pay-TV channels and preventing the importation and distribution of PDs.
- Encourage state courts nationwide to assign specialized courts or judges to uniformly handle IP cases and implement a long-term national program to train judges, prosecutors, and police officers.
- Ensure the *Conselho Nacional de Combate à Pirataria* (National Council to Combat Piracy, CNCP) and the Interministerial Group on Intellectual Property (GIPI) continue to have strong political support and greater human and financial resources to engage in cross-industry efforts against copyright infringement and online piracy.
- Improve border controls against the importation of counterfeit video game hardware, PDs, modified consoles, and circumvention devices.

Legal Reforms

- Ratify and fully implement the WIPO Internet Treaties.
- Reject proposals to introduce new measures that would disrupt the growth of the Brazilian audiovisual and digital music market, such as the unnecessary and ineffective additional remuneration right for holders of copyright and related rights and unclear definitions for the scope of communication to the public and public performance.
- Ensure legislative proposals related to artificial intelligence (AI) meet the standards related to intellectual property (IP) protection set forth by the G7 Hiroshima AI Process.
- Follow through with revisions to the Customs Law to clarify that the retention of counterfeit or any other illegal products by customs authorities does not require a court order.

Market Access

- Enable industry growth by reducing high tariffs and taxes placed on video game products.
- Mitigate imposition of the VOD tax on movies and TV programming delivered on demand and refrain from developing excessively burdensome VOD or digital platforms regulations.
- Reform the collective management organization (CMO) system, while still allowing for rights holders to license music directly.
- In alignment with recommendations from the Organization for Economic Cooperation and Development (OECD), refrain from establishing a digital services tax, which would significantly increase operational costs and act as a market access barrier.
- Refrain from implementing network fees, which are harmful to competition, to network neutrality, and ultimately, to consumers' rights.

ENFORCEMENT

Piracy in Brazil is extensive. At a recent anti-piracy program hosted by the Brazil National Institute of Industrial Property (INPI) in December 2024, INPI President Júlio César Moreira shared the Government of Brazil lost over US\$80 billion in revenue in 2024 due to piracy.² According to the International Federation of the Phonographic Industry's (IFPI's) 2023 Music Consumer Study, the music piracy rate in Brazil stood at 47% of all Internet users—one of the highest in the world. In the same study, 42% of respondents shared they engaged in stream ripping using websites such as *SSYouTube* or *SaveFrom* or through mobile apps such as *SnapTube*, an Android mobile app used by more than one-in-five of all Brazilians to pirate music. Additionally, 25% of respondents said they used cyberlockers such as *4Shared* and *Krakenfiles* and 21% said they used BitTorrent sites such as *The Pirate Bay* and *1337x* to download pirated music. These numbers are slightly lower than reported in previous years. Online piracy (VOD and pay-TV) available through devices, Internet applications, and sites are also a major cause of concern. Reports show that 36.8% of Brazilian households with broadband access consume pirated materials online.³

Digital piracy remains the dominant format for the unauthorized access of video game products in Brazil. In terms of audience and content availability, the two most prevalent formats for video game piracy continue to be linking sites, with an approximately 15% increase on the overall visits to active sights accumulated in Brazil through November, followed by commercial websites (digital counterfeit via game account resale), with an over 48% increase on accumulated monthly visits through November, compared to January of the same year. The usage of BitTorrent sites for video game piracy has increased in 2024 by approximately 25%, the first time there has been an increase since 2022. As such, Brazil's overall picture relative to global video game piracy levels remains bleak. For example, in 2024, Brazil ranked fifth 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 (ranking even higher, and first in Latin America, for certain video game titles). By the same metric, Brazil ranked first in the world for unauthorized file-sharing of mobile games, third in the world for pirated console-based games, and fifth in the world for pirated PC-based games. Additionally, preloaded game consoles are considered affordable options among customers given their low prices and the variety of available titles, offering older game titles preloaded in generic hardware consoles, sometimes in thousands of titles per console. These illicit consoles are not stopped by Customs and become available primarily in illegal shops and outlet booths in street markets. Furthermore, particularly damaging to the market for legitimate video game play in Brazil is the proliferation of digital account resales, an unauthorized practice where pirates circumvent protection measures to sell access to a single game account to multiple different users via websites dedicated to this illegal commercial activity. These video game or console accounts are typically loaded with games, in-game items, or enhanced statuses to provide advantages in gameplay.

The increase in digital game piracy is related to the high demand from users and the profitability associated with these illegal operations. Through the use of legitimate and familiar payment intermediaries, site operators are able to maintain the appearance of a supposed legitimate commercial website and mask their illegality to the end user, the success of which encourages the expansion of the illegal website market across the country. Low compliance levels with Know Your Business Customer (KYBC) policies from e-commerce platforms and payment providers facilitate the operation of these commercial websites.

- **Support the Ministry of Justice and Public Security's (MJSP) coordination with the Department of Intelligence and Integrated Operations (DIOPI) to continue to establish a clear and on-going copyright enforcement structure to expand on the success of Operation 404's multiple waves.**

While the overall levels of piracy in Brazil remain high by global standards, enforcement efforts are having a notably positive impact, especially Operation 404 executed by MJSP's cybercrime unit CIBERLAB in coordination with

² See <https://www.gov.br/inpi/pt-br/central-de-conteudo/noticias/inpi-sedia-oficina-regional-sobre-delitos-contr-a-propriedade-intelectual>.

³ See <https://telesintese.com.br/wp-content/uploads/2024/12/Informe-de-alianza.pdf>.

DIOPI. On September 19, 2024, Operation 404 conducted its seventh phase, blocking 675 websites and 14 illegal streaming apps, deindexing content on search engines, removing social media profiles selling or advertising pirated content, conducting 30 search and seizure warrants, and making six arrests in Brazil and three in Argentina. Since Operation 404's inaugural action in November 2019, it has taken down 2,040 websites and 1,377 illicit streaming apps, removed more than 400 social media profiles, and resulted in the arrest of 55 people connected to piracy operations in Brazil and Argentina.⁴ These targets have included commercial digital piracy sites, download sites dedicated to video game piracy, applications with pirated audiovisual content, games, music, and sports events, MP3 download and stream-ripping sites, and more. Equaling its anti-piracy achievements, Operation 404 also succeeds by bringing in new partners including regional neighbors. Besides Brazil, the seventh campaign included Argentina, Peru, the United Kingdom, and, for the first time, Paraguay.⁵ This year also saw the first Operation 404-related prison sentence. In March 2024, based on a 2020 Operation 404 case brought by the Alliance Against Pay Television Piracy (ALIANZA), an IPTV operator was sentenced to prison for five years and four months for copyright violations and crimes against consumers. IIPA commends the Government of Brazil for growing Operation 404 into one of the world's leading online anti-piracy criminal enforcement campaigns.

After five years of successful Operation 404 campaigns, the Government of Brazil should now have the confidence and expertise to implement more consistent and continuous anti-piracy operations throughout the year. Additionally, Brazilian enforcement agencies, including during Operation 404 phases, should also target piracy operations that offer hacking tools, circumvention devices, and mod installation services, and that develop video game emulators and other tools that specifically support video game piracy and circumvention of TPMs. The Government of Brazil should also not overlook the significant work being conducted by the Office of the São Paulo DA's cybercrime unit (CyberGaeco). The success of CyberGaeco, which included the prosecution of more than 35 illegal game sites in 2024 alone, should be supported and encouraged to be replicated in different states by other special cybercrime units.

- **Ensure that ANCINE implements Article 3 of Law No. 14,815/2024 and provides administrative enforcement against the illegal transmission of audiovisual content.**

On January 16, 2024, Brazil enacted Law No. 14,815/2024, Article 3, that empowers ANCINE to “determine the suspension and cessation of unauthorized use of Brazilian or foreign protected works” by “prevent[ing] their issuance, diffusion, transmission, retransmission, reproduction, access, distribution, storage, hosting, exhibition, availability, and any other means that imply copyright infringement.” This law was a welcome development as a potentially powerful anti-piracy tool that rights holders could rely on outside of Operation 404 campaigns to block illicit audiovisual content transmitted through websites, streaming devices, and apps. In addition, Article 3 empowers ANCINE to not only enforce copyrights related to the theatrical industry by blocking pirate streaming sites, but also against camcording at theaters themselves. Unfortunately, ANCINE has yet to issue implementing regulations and this critical tool remains on the sidelines of the fight against piracy.

In the meantime, the lack of enforcement initiatives by the audiovisual content regulator ANCINE to address infringement pose an existing and ongoing risk to the creative industry and to the Brazilian economy and consumers.

⁴ More information on year-by-year Operation 404 campaigns can be found here: <https://www.gov.br/mj/pt-br/assuntos/noticias/operacao-internacional-contra-pirataria-tira-do-ar-675-sites-e-14-aplicativos-de-streaming>.

⁵ The seventh Operation 404 campaign included a number of local and foreign law enforcement agencies and intellectual property (IP) protection associations including Unidad Fiscal Especializada en Investigación de Ciberdelitos (UFEIC), from Argentina; City of London Police – Police Intellectual Property Crime Unit and Intellectual Property Office (IPO), in the United Kingdom; U.S. Department of Justice and Department of Commerce; National Institute for the Defense of Competence and Protection of Intellectual Property (INDECOP), from Peru; Premier League; Alliance for Creativity and Entertainment (ACE); Brazilian Pay Television Association (ABTA); Alliance Against Pay Television Piracy (ALIANZA) – Latin America; National Council to Combat Piracy (CNCP); Association for the Protection of Intellectual and Phonographic Rights (APDIF); Motion Picture Association (MPA) - Latin America; International Federation of the Phonographic Industry (IFPI); Entertainment Software Association (ESA); European Union Intellectual Property Office (EUIPO); and National Directorate of Intellectual Property (DINAPI) and Unidad Especializada en Hechos Punibles Contra la Propiedad Intelectual (Specialized Unit for Crimes Against Intellectual Property) from Paraguay. It also included a number of local law enforcement agencies including the Directorate of Operations and Intelligence (DIOPI), the National Public Security Secretariat (SENASP), the Civil Police of Espírito Santo, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Paraná, Pernambuco, Rio de Janeiro, Rio Grande do Sul and São Paulo and the Public Prosecutor's Offices of São Paulo (CyberGaeco) and Santa Catarina (CyberGaeco).

This is especially concerning as online piracy options for VOD continue to evolve and expand. The lack of ANCINE's engagement also hurts the theatrical exhibition sector by diminishing their audiences and the value-chain of movie releases. IIPA strongly encourages ANCINE to fully implement Law No. 14,815/2024, Article 3 and make certain Brazil provides a mechanism that ensures 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.

- **Ensure that ANATEL continues deploying administrative blocking for piracy of pay-TV channels and enforcing laws preventing the importation and distribution of PDs.**

Audiovisual content piracy continues to impact local and foreign rights holders in Brazil and represents a complex threat to be addressed by enforcement authorities and legislators within the country. The strong approach adopted by the telecommunications regulator ANATEL in 2023 regarding the seizure and site blocking against devices delivering pirated pay-TV channels was a positive development.

IIPA is pleased that ANATEL has sustained its initiatives in 2024 to inspect and seize PDs (also known as illicit streaming devices or ISDs) throughout the Brazilian territory, including searches performed within marketplaces' storage facilities. For example, ANATEL reported seizing more than 1.5 million IPTV boxes in the first half of 2024, with most arriving via the Port of Barcarena in the state of Pará, and others entering through Argentina, Paraguay, and Uruguay.⁶ ANATEL has also launched its own antipiracy lab, which supports the Agency's blocking measures against non-authorized pay-TV channel transmissions. ANATEL reported permanently blocking 623 IP addresses and roughly 10 URLs and is monitoring 9,280 IP addresses and 1,514 URLs.⁷

- **Encourage state courts nationwide to assign specialized courts or judges to uniformly handle IP cases and implement a long-term national program to train judges, prosecutors, and police officers.**

While exceptions exist, such as the specialized commercial and criminal courts in São Paulo and Rio de Janeiro, too much of Brazil's judicial system continues to lack adequate understanding of IP matters. This results in inconsistent prioritization of IP cases, limited capacity to manage complex piracy cases, unharmonized procedures, and non-deterrent remedies across the nation. For example, the video game industry reports that seeking and obtaining support from Brazilian authorities varies greatly state by state, especially relating to complex claims regarding TPM circumvention. To more effectively harmonize the handling of IP cases to address Brazil's growing piracy challenges, IIPA strongly urges Brazil to take the following actions:

- commit sufficient resources and political will to assign well-trained tribunals throughout the country by training its judges, prosecutors, and police in best practices to effectively address the country's rampant piracy problem, as well as on technical training on modern and often transnational online piracy operations, TPMs, and anti-circumvention technologies, and on public policy training on the impact of copyrights and piracy to Brazil's economy and society, including related to consumer protection;
- encourage state courts to assign specialized courts or judges to handle IP cases;
- enhance collaboration between cybercrime and IP specialized police units and prosecutors;
- amplify the already implemented framework in use with *CyberGaeco* (state of Sao Paulo) and other prosecutors that are part of other cybercrime units in different states;
- provide more support to the *Conselho Nacional de Justiça* (National Council of Justice, CNJ) and other state magistrate academies;
- provide deterrent penalties against pirates, especially for repeat infringers;

⁶ Mariana Toledo, "To strengthen the fight against piracy, Anatel wants to automate operations," *Tele Time*, August 20, 2024, available at <https://teletime.com.br/20/08/2024/para-reforçar-combate-a-pirataria-anatel-quer-automatizar-operacoes/>.

⁷ See *Id.*

- ensure the Brazilian Financial Intelligence Unit (COAF) investigates suspicious financial transactions resulting from piracy commercialization and reports its intelligence to competent enforcement authorities tasked with initiating actions against money laundering and organized crime; and
- support the work of the Association at the Parliamentary Front in Defense of Intellectual Property and Anti-Piracy, launched on April 30, 2024, for advancing improvements in IP legislation and efforts to enhance how IP cases are adjudicated across Brazil.

In positive news, judicial actions against music piracy continue to improve. On August 10, 2021, the Tribunal of Justice of the State of São Paulo issued a permanent blocking order against 14 stream-ripping sites in the criminal case initiated by the industry's anti-piracy body, *APDIF DO BRASIL (APDIF)*. The decision was the first of its kind in Brazil against music piracy services and confirms the legal power of Brazilian courts to order permanent injunctions in cases against foreign sites with a significant audience in Brazil. The decision is part of the campaign developed by *APDIF* and *CyberGaeco*. Following this decision, a series of further successful blocking applications were filed by *APDIF* and *CyberGaeco* in 2022, 2023, and 2024 and consequently over 300 stream-ripping sites have been blocked in Brazil. Furthermore, in December 2023, ISPs were ordered for the first time to block access to the cyberlockers *Dbree.org* (and related mirror site *Dbree.me*) following an application by *APDIF* and *CyberGaeco*.

- **Ensure CNCP and GIPI continue to have strong political support and greater human and financial resources to engage in cross-industry efforts against copyright infringement and online piracy.**

Even with positive enforcement advancements over the last few years, especially with Operation 404, Brazil still suffers from a lack of specific norms and regulations regarding the enforcement of copyrighted works over the Internet and a lack of resources and staff to support enforcement actions considering the reach and amount of content piracy in the region. In June 2020, the Brazilian government launched a consultation with private sector institutions and rights holder organizations to design a National Strategy on Intellectual Property (ENPI). Part of this work included empowering CNCP, within the MJPS, to promote public-private and private-private enforcement partnerships. Audiovisual industry stakeholders, including MPA and the Brazilian pay-TV Association (ABTA), video game industries, including ESA, and the music industries, including IFPI's national group Pro-Música Brazil, play an active role in CNCP and in the Ministry of Economy's GIPI. These initiatives are designed to engage all rights holders and other players in the Internet ecosystem (including ISPs, hosting providers, domain name registrars, search engines, advertising networks, payment providers, etc.) to develop better standards and effective voluntary agreements to fight online piracy, including against repeat infringers.

The success of these public-private and private-private IP enforcement partnerships has been mixed. The takedown rate under some existing private-private partnerships, such as the one in place between ESA and *MercadoLibre* was roughly 99%. With this specific example, the partnership includes the filtering and analysis of new products for automated and proactive removal by the platform, thereby reducing the volume of infringing listings found and removed by ESA in Brazil by nearly 3,500%. At the same time, removals on relatively new platforms, such as Shopee, remain low, and collaboration is poor. As for local e-commerce platforms used by commercial websites, such as *Loja Integrada* which is responsible for 43% of all cases related to illicit account resale, engagement by the platforms remains regularly active and levels of collaboration are increasing due to intermediation by local authorities. However, platforms still need to improve their KYBC policies and actions to avoid high volumes of illegal activities related to video game and other types of piracy. Additionally, some platforms still need to understand how commercial-level video game digital piracy occurs and include digital accounts resale as a direct and explicit infringement for further proactive copyright protection measures. The resale of digital accounts is an increasingly lucrative illicit business for piracy operators and platforms (and users-customers) and there is resistance from some platforms to ban these commercial activities, including by Chinese-backed platforms such as Shopee, which are actively lobbying the Government of Brazil to avoid this responsibility.

IIPA encourages MJPS to increase CNCP's human resources and funding necessary to support and grow these important public-private and private-private IP enforcement partnerships in order to combat the growing number of online enterprises dedicated to copyright infringement in or targeting Brazil.

- **Improve border controls against the importation of counterfeit video game hardware, PDs, modified consoles, and circumvention devices.**

Brazil needs to improve border controls to stop the influx of counterfeit video game hardware, PDs, modified consoles, circumvention devices, and ISDs, often manufactured in and exported from China. In 2023, ANATEL seized over 1.4 million ISDs, and it is important that these efforts continue.⁸ However, despite evidence that modification (mod) chips, circumvention devices, and mod installation services exist in Brazil, and over ten industry training sessions in 2024 for customs authorities, the video game industry reports a lack of raids or customs seizures related to modified consoles or involving mod chips or circumvention devices. Authorities currently focus efforts on simpler targets, such as preloaded game consoles or counterfeit merchandise. One video game console maker reported four customs seizures in 2024, with all seizures involving consoles preloaded with unauthorized video game software. Moreover, the Government of Brazil should encourage regional Federal Revenue enforcement units (DIREPs) to maintain anti-counterfeiting raid actions in the so-called secondary zones (in the local market). Another suggestion to enhance border security is increasing collaboration between Brazil's Foreign Trade Integrated System (SISCOMEX) and ANATEL, which should allow SISCOMEX to prevent even the export of PDs and ISDs while they are still at their exit ports abroad.

LEGAL REFORMS

- **Ratify and fully implement the WIPO Internet Treaties.**

Brazil is one of the largest markets in the region for all creative industries, but it has yet to ratify and fully implement the WIPO Internet Treaties. In 2019, the Government of Brazil announced it would accede to the WIPO Internet Treaties and on July 20, 2022, a bill was submitted to Congress to ratify the WPPT (but not WCT). Unfortunately, not only has no subsequent action been taken since to accede to these treaties, but the Federal Administration has recently decided to withdraw the WPPT's ratification process before the Brazilian Congress. Instead, Brazil's last attempt to amend its Copyright Act, the now over five-year old Bill 2370/2019 that is still under consideration, proposed several problematic amendments, failed to publish its final text, and had inadequate public discussions with rights holders.

As the 30th anniversary of these critical copyright treaties approaches, it is evermore essential for Brazil to ratify and fully implement the WIPO Internet Treaties in order to foster a vibrant legitimate market for Brazilian and foreign creative content. IIPA urges the Government of Brazil to consult with rights holders on any proposed copyright reform measures and ensure that it does not over-regulate or create broad exceptions and limitations to copyright. IIPA makes the following recommendations for the potential new law:

- codify the exclusive right of making available for both sound recordings and audiovisual works;
- codify the sound recording producers' separate, exclusive right of making available to the public, or as an alternative, ensure that interactive uses of sound recordings fall under Article 93(II) of the existing law rather than under the public performance right;
- amend Articles 98 and 99 to enable rights holders to: (1) determine whether to license their rights individually or collectively, which should be a voluntary decision; and (2) if they so choose, become direct members of the

⁸ See <https://www.tecmundo.com.br/mercado/267348-anatel-apreendeu-1-4-milhao-tv-boxes-piratas-2023.htm>

Escritório Central de Arrecadação e Distribuição (Central Bureau for Collection and Distribution, ECAD), a private umbrella CMO, and enjoy fair and balanced representation on its governing bodies;⁹

- clarify that the making available right, including the exclusive rights in interactive streaming, are excluded from ECAD's default mandate and mandatory collective rights management;¹⁰
- amend Article 103 to expressly allow rights holders to choose the method of calculation of damages and include damage/losses suffered, an account of the infringer's profits, and a reasonable royalty as methods of the calculation of damages;
- ensure that any amendment to the definition of communication to the public is aligned with the WPPT.
- amend Article 105 to confirm: (1) injunctions, including catalogue-wide injunctions where applicable, are available against all types of copyright infringement, circumvention of TPMs, and dealing in circumvention devices, circumvention software and/or components including installation and modification; and (2) injunction recipients bear the burden of ascertaining what they must do to avoid infringement;
- amend Article 107 to encompass all forms of access and copy control technologies as well as dealing in circumvention devices and to include deterrent sanctions and penalties for the violations of TPMs;
- codify intermediary liability for inducing or encouraging infringement under certain circumstances, including advertisements placed on pirate sites;
- criminalize signal theft in the pay-TV and non-authorized streaming at VOD sectors;
- ensure that any exceptions and limitations comply with the three-step test;
- ensure the availability of meaningful compensation is commensurate with the harm suffered by rights holders and at a level that will deter future infringements.

IIPA strongly urges the Government of Brazil to focus on the above needed amendments to strengthen protection and enforcement for rights holders and to ratify and fully implement the WIPO Internet Treaties. This is especially important as negotiations on the Mercosur-EU Free Trade Agreement recently concluded on December 6th, 2024, which includes an IP chapter potentially including a number of the recommendations noted above.

- **Reject proposals to introduce new measures that would disrupt the growth of the Brazilian audiovisual and digital music market, such as the unnecessary and ineffective additional remuneration right for holders of copyright and related rights and unclear definitions for the scope of communication to the public and public performance.**

In addition to the number of concerning legislative proposals and gaps in Brazil's most recent attempt to amend their Copyright Act, Bill 2370/2019 and Bill 4968/2024 also intend to create a new additional remuneration layer for rights holders of copyrights of audiovisual, musical and literary-musical works, and of related rights in phonograms, performances or broadcasts used by providers of streaming services, which would be subject to by-default collective management. It is especially noteworthy to point out that Bill 4968/2024 was tabled on the last day of the 2024 session of the Brazilian Senate, again without holding any consultations with rights holder or conducting an impact assessment.

⁹ Brazilian authorities should also seize this opportunity to urge *Escritório Central de Arrecadação e Distribuição* (Central Bureau for Collection and Distribution, ECAD) to amend its fixed split of the revenue collected from the single tariff to the considerable disadvantage of producers. For example, music producers receive only 13.8% of total distributions despite their significant investments. Article 99(1) of the Copyright Law (introduced in law in 2013), which provides for a "one right holder one vote" rule within ECAD, should also be amended. This is not in line with international good practices and does not ensure that all rights holders whose rights are managed by ECAD are guaranteed fair and balanced representation in ECAD's governing bodies.

¹⁰ In 2017, the Superior Tribunal Court (STJ) issued a decision in the *ECAD v Oi FM* case that held interactive and non-interactive streaming (including simulcasts) are separate acts, each requiring the separate consent of the right holder. In this regard, the decision is correct as it confirms that online simulcasting is a separate act of exploitation from the terrestrial broadcast, and as such requires a separate license. However, the decision was problematic in that the Court did not make any distinction between interactive and non-interactive streaming (including simulcasts), and held that both involve the public performance right, which falls under ECAD's rights management mandate. The decision undermines the music industry's practice (which is in accordance with the international treaties on the subject matter), and the accepted interpretation of existing law: that interactive streaming is deemed to involve acts which fall within the producers' exclusive distribution right, and interactive streaming services are licensed directly by record companies. Indeed, if interactive uses of sound recordings are deemed to fall under the public performance right (as opposed to the right of distribution, enshrined in Articles 93(II) and (V) of the Law, which has been the practice for many years), the licensing of such uses would fall under the default statutory mandate granted to ECAD (in accordance with Article 98 of the Copyright Law). In today's industry, streaming services are at the core of the business of the recording companies. Although right holders can opt-out of the default mandate granted to ECAD, collective management interference in a core area of the music business is unjustified and a substantial limitation to the ability of record companies to conduct their operations in a free market environment.

Moreover, pursuant to this draft's language, it would seem that previous agreements preventing the applicability of the remuneration right would not be sustained. The bill also introduces an obligation for phonogram producers to apply a deduction to the license payment agreed with digital service providers (DSPs) equivalent to the remuneration right paid by the latter. Of note, failure to comply with this obligation would be subject to sanctions of up to 10% of turnover. Also, DSPs could be required to disclose information about their revenues and about the frequency of reproduction of works.

The wording of these provisions, notably when read in conjunction with the explanatory notes, is confusing. However, it could be understood to introduce a remuneration right for holders of copyright and related rights in addition to the greater exclusive right that they already enjoy. The proposal is likely inspired by the additional remuneration right for performers that exists in Spain. However, as the Spanish experience shows, these "solutions" benefit mainly the performers' CMOs that manage this remuneration, and not the performers themselves. Even in Spain, where the local CMO is subject to the strict EU collective rights management framework, approximately 50% of collections are not distributed to performers due to deductions to account for management costs and the funding of social, cultural, or educational programs, and, more importantly, to the inability of the CMO to correctly identify or locate the rights holders for whom the amounts are collected.

This initiative, as well as similar ones in the region, need to be strongly opposed as they have a greatly disruptive effect on the digital market, investment in the region, and do not serve the purpose of improving performers' remuneration (in fact, studies and data suggest the contrary). It is concerning that the Group of Latin American and Caribbean Countries (GRULAC) at WIPO has been quite supportive of these initiatives. IIPA suggests that a more effective way for the countries in this region to improve performers' remuneration is to provide an adequate copyright framework, including adequate scoping of exceptions and limitations, a strict collective rights management framework, and, more importantly, effective enforcement mechanisms to combat piracy.

Finally, it should be stressed that Bill PL 2370/2019 also includes unclear provisions on the scope of communication to the public and public performance that could be understood to mean that interactive exploitations are considered an act of public performance and, as a consequence, subject to default collective management by ECAD, thus de facto downgrading the exclusive right to a mere remuneration right. Bill 4968/2024, on the other hand, also includes a problematic definition of communication to the public that departs from WPPT.

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

On several occasions throughout 2024, the Government of Brazil discussed regulating AI. For example, the Brazilian Congress is currently discussing roughly 60 bills intending to regulate AI, some of which are related to copyright. The main bill under discussion is Senate Bill 2338/2023, which passed at the Upper House at the end of 2024, and aims to create a General Artificial Intelligence Framework. Among other provisions, it includes a transparency obligation for AI developers that use copyright protected works and other subject-matter for AI training purposes, a copyright exception for text and data mining to the benefit of certain institutions and organizations, and language that would allow for issues related to remuneration and other commercial terms to be subject to implementing regulation, thus potentially interfering with the freedom of contract and the exercise of right holders' statutory rights. As Brazil looks to possibly regulate AI, IIPA strongly encourages the Government of Brazil to look towards certain provisions of the G7 Hiroshima AI Process, which 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.”

- **Follow through with revisions to the Customs Law to clarify that the retention of counterfeit or any other illegal products by customs authorities does not require a court order.**

The Government of Brazil should revise the Customs Law to clarify that customs authorities do not need a court order to be confirmed to retain counterfeit or other illegal products that they have seized.

MARKET ACCESS

- **Enable industry growth by reducing high tariffs and taxes placed on video game products.**

Brazil’s high tariffs and taxes on video game products and entertainment software are a long-standing concern and remain so moving into 2025. In August 2022, then-President Bolsonaro reversed reductions of industrial tax (IPI) that had been applied earlier in the year for over 100 products, including video game consoles, whose rates have now returned to the burdensome level of 20%. As of July 2022, under the authority of the Foreign Trade Chamber (CAMEX) of the Economy Ministry, import taxes (II) for consoles that do not have embedded screens as well as peripherals and accessories remain at 12%.

The combination of IPI and II taxes targeting the video game console ecosystem continues to act as an incentive for the proliferation of infringing games in Brazil, which ranks third in the world for the number of connections by peers participating in the unauthorized file-sharing of ESA member console-based video game titles on public P2P networks. These barriers also inhibit the growth of a legitimate video game industry in Brazil, including the growth of small local businesses offering legitimate imported game accessory products.

Under a 2013 interpretation of the law that considered customized software a service, tariffs and taxes began to be calculated based on the imputed “copyright value” of a video game title itself (i.e., the distribution and marketing fees paid to the copyright holder), rather than on the much lower value of the import medium, which continued to be applied to off-the-shelf, physical software. However, the taxation of off-the-shelf software, such as video games, is widespread, including the IPI, II, federal social contributions (PIS and COFINS), and the municipal services tax (ISS). The overall heavy tax burden on such software therefore marginalizes the legitimate market (since illegal physical copies or digital counterfeit versions are not subject to these fees). IIPA urges the reconsideration of this problematic interpretation from 2013.

With broad tax reform underway, the video game industry hopes legislative efforts will soon result in an overall simplification of the tax regime, ending its cumulative character, and provide for an overall rate reduction for video game products that face an unjustifiably high tax burden given the unnecessarily adverse effect on consumers. In the meantime, executive action could quickly and easily resolve the burden of Brazil’s current IPI and II taxes on the video game sector.

- **Mitigate imposition of the VOD tax on movies and TV programming delivered on demand and refrain from developing excessively burdensome VOD or digital platforms regulations.**

The Brazilian Congress is currently discussing several proposed legislative measures to regulate VOD (Bill 2331/2022, Bill 8889/2017, Bill 1994/2023, Bill 2497/2023, Bill 3299/2023, Bill 1153/2024, among others). If the most

detrimental bills on VOD regulation are approved, VOD platforms would have to comply with several new obligations, such as mandatory investment, catalogue quotas, CONDECINE tax of up to 6% of the annual gross revenues, prominence obligations, general duties to provide the regulatory body with information about their activities, and limiting or prohibiting measures taken by online subscription service providers to prevent account sharing among their users (ex: geolocation restrictions, additional fares, etc.). These initiatives would not only impact providers' revenues and general contract freedom but also would weaken copyright enforcement.

Since the end of 2022, ANCINE's board has been publicly positioning itself in favor of greater regulation for the VOD segment and included in its Strategic Agenda the publishing of new regulatory instruments that would require market players to provide the Agency with more information about their businesses. The Agency intends to require extensive information on the segment, including, for example, on the number of platforms' subscribers, users, and transactions, on the platforms' direct investments in works, and on exclusive licensing agreements. So far, no new regulations have been issued, but it is possible that they will be issued in the short or medium term. IIPA urges the Government of Brazil to refrain from developing excessively burdensome VOD or digital platforms regulations, which would discourage the entry of new competitors in the Brazilian market. If such regulations are to be implemented, it is essential that they respect contractual and economic freedom and trade secrets.

- **Reform the CMO system, while still allowing for rights holders to license music directly.**

The Government of Brazil should reaffirm that CMOs can assert rights to collect royalties for acts of communication to the public only in cases where authors and performers in audiovisual works have specifically mandated the CMOs do so, and only where the relevant rights have not already been assigned to producers of audiovisual works. Additionally, Brazil should remove the by-default one-stop-shop collective management system for broadcasting and public performance, which is managed by ECAD, and in any case, ECAD should be subject to good governance rules, in particular to guarantee fair and balanced representation in ECAD's governing bodies of all rights holders whose rights are managed by ECAD. In that sense, the "one right holder one vote" rule of Article 99(1) should be deleted. Finally, ECAD's policies and strategies towards music DSPs (trying to impose additional payments for neighboring rights on interactive uses of phonograms without a mandate or clear legal basis) have been a source of uncertainty and abusive behavior for years. These practices should be stopped.

- **In alignment with recommendations from OECD, refrain from establishing a digital services tax, which would significantly increase operational costs and act as a market access barrier.**

Bill 2,358/2020, Bill 131/2020, and Bill 218/2020 aim to create new taxes specifically for digital platforms and services. These bills are of great concern because, if approved, they could substantially increase the tax burden on existing digital platforms operating in the country and create a barrier to entry of new competitors into the Brazilian market. However, IIPA understands that these taxes are unlikely to be approved.

- **Refrain from implementing network fees, which are harmful to competition, to network neutrality, and ultimately, to consumers' rights.**

In 2024, ANATEL released a second round of calls for contributions that discussed, among other issues, the possibility of creating network fees, to be paid by application providers to connection providers, to fund telecommunications infrastructure. More recently, Bill 2,804/2024 was introduced to require online service providers (OSPs) to make payment agreements with ISPs when they are deemed responsible for over 3% of networks' bandwidth. Moreover, OSPs whose yearly gross revenues surpass US\$10 million would also have to contribute to the Fund for the Universalization of Telecommunication Services. On the other hand, Bill 469/2024 was introduced at the Lower House to prohibit charging any network fees within Brazil. This Bill has staunch support from value-added service (VAS) providers operating in Brazil, including relevant members from the Open Internet Alliance ("AIA"). If network fees are implemented, they would have a detrimental effect on digital platforms activities, not only from a financial

standpoint, but also because such fees are harmful to competition and to network neutrality, and ultimately, to consumers' rights.

CANADA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

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

Executive Summary: Canada's legitimate digital marketplace for copyright materials remains impeded by widespread infringement. Unfortunately, the Government of Canada's recent passage of new laws that removed copyright protections for technological protection measures (TPMs) and laws that created new market access barriers, while simultaneously failing to address longstanding piracy challenges, copyright legislative deficiencies, and additional market access barriers, have made Canada's copyright ecosystem even more challenging this past year.

Piracy operators that offer stream ripping, video-on-demand (VOD), and download offerings; subscription piracy services (infringing paid Internet Protocol Television (IPTV) and VOD services) and the ever-increasing Canadian re-sellers of these services; streaming sites and other online sources for unauthorized movies and TV shows; piracy devices (PDs also known as illicit streaming devices, ISDs) and apps, readily available both online and in the retail market, that suppress demand for legitimate digital streaming and VOD services; and the sale of devices, software, and services for circumventing access controls on video game consoles all continue to be serious concerns in Canada. This multitude of piracy operations could be addressed if the Government of Canada at all levels finally allocated sufficient resources and strategic priority to the enforcement of copyright laws, especially online.

The mandated parliamentary review of Canada's Copyright Act that was initiated in 2017 should have been a vehicle for addressing many of these enforcement problems that stem from legislative deficiencies. Prior IIPA submissions have detailed the many urgent problems, including the overbroad fair-dealing exception for education, lack of effective remedies and legal incentives to combat growing online piracy, an unjustified radio royalty exemption, a wholly ineffective "notice-and-notice" system, and a globally anomalous exception for user-generated content (UGC). IIPA is encouraged that despite the absence of specific legislation, Canadian courts continued this year to issue and uphold injunctive relief against intermediaries whose services are used to infringe copyright. In addition, Canada should remedy its deficient online copyright liability regime, which lags behind global norms. Unfortunately, the shortcomings in Canada's current copyright regime not only remain unaddressed, but the recent passage of Bill C-244 that allows broad circumvention of TPMs is especially concerning for creative industries that rely on TPMs to control access to and control the copying of their works and recordings, and to enable the full range of online digital services and content distribution models.

Finally, significant market access barriers continue to impede U.S. creative industries in Canada. IIPA urges the U.S. government to remain extensively engaged with Canada on this and other important intellectual property (IP) issues in 2025, including on market access issues, such as ensuring Canada's implementation of the recent Online Streaming Act does not impose undue burdens or obligations on non-Canadian digital media services, including an obligation for certain non-Canadian digital media services to pay 5% of their gross Canadian broadcasting revenues to certain funds, which should be repealed.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

¹ For more details on Canada's Special 301 history, see previous years' reports, at <https://www.iipa.org/reports/special-301-reports/>. For the history of Canada's Special301 placement, see <https://www.iipa.org/files/uploads/2025/01/Appendix-C-2025.pdf>.

- Prioritize enforcement against online piracy (including stream ripping), the operation and sale of subscription piracy services, and the trafficking in PDs, ISDs, apps, and circumvention software tools and modification services.
- Provide the Royal Canadian Mounted Police (RCMP), Crown Prosecutors, and local law enforcement with the resources and training required to implement IP rights (IPR) enforcement priorities.

Legal Reforms

- Swiftly enact legislative recommendations IIPA has noted in several previous submissions to counter piracy.
- Address the crisis in the educational publishing market by clarifying that the fair-dealing exception for “education” does not apply to educational institutions when the work is commercially available and amend the Copyright Act to confirm that tariffs approved by the Copyright Board are mandatory in nature.
- Harmonize remedies for collective management organizations (CMOs) under the Copyright Act.
- Ensure that recorded music producers and performers are fully compensated for all forms of radio broadcasting of their recordings, including by eliminating the radio royalty exemption.
- Eliminate, or at least clarify, the UGC exception, in accordance with parliamentary recommendations and Canada’s international obligations.
- Repeal recently passed Bill C-244 that allows broad circumvention of TPMs.
- Provide full rights for communication to the public and public performance of sound recordings.

Market Access

- Ease long-standing market access barriers for U.S. movies and TV programming, in accordance with Canada’s United States-Mexico-Canada Agreement (USMCA) commitments.
- Ensure that the Canadian Radio-Television and Telecommunications Commission’s (CRTC) implementation of the Online Streaming Act and the Online News Act does not impose undue burdens or obligations on non-Canadian digital services.

ENFORCEMENT

- **Prioritize enforcement against online piracy (including stream ripping), the operation and sale of subscription piracy services, and the trafficking in PDs, ISDs, apps, and circumvention software tools and modification services.**

The digital marketplace for copyrighted content in Canada continues to face challenges in realizing its full potential due to competition from illicit online sources. In 2023, 26% of Canadians accessed pirate music services, an increase of roughly 3.5% from the previous year.² Stream-ripping services, now the leading form of music piracy in Canada, the eighth largest recorded music market in the world in 2023, are a major contributor to this problem. Stream ripping enables users of licensed streaming services, like YouTube, to convert streams into unauthorized audio downloads that can be stored and replayed at will, with no royalty payment to rights holders.³ Stream-ripping services, such as through websites like *SSYouTube* or *SaveFrom* or unlicensed mobile apps undermine the legitimate markets both for streaming and licensed music downloads. Additionally, music piracy is also by enabled cyberlockers such as *4Shared* and *Krakenfiles* and BitTorrent sites such as *ThePirateBay* and *1337x*, as well as French-language BitTorrent sites such as *YggTorrent*.

As with music piracy, online movie and television piracy remains a formidable challenge in Canada, inflicting major financial harm. NERA Economic Consulting and the Global Innovation Policy Center (GIPC) estimates the commercial value of pirated digital film content at US\$285.7 billion and the commercial value of pirated digital television content globally in 2017 at US\$280.5 billion.⁴ The displacement of legitimate economic activity by piracy has a negative

² IFPI, 2023 Music Consumer Study.

³ The music industry reports that some 93% of Canadians who visited YouTube used the site to access music in 2021.

⁴ “What Do We Know About: Movie & TV Piracy Trends in Canada,” Motion Picture Association – Canada, available at https://www.mpa-canada.org/wp-content/uploads/2021/08/Canada-WDWK_ENG_Final.pdf.

impact on economic growth. Research by Carnegie Mellon University found that if pre-release piracy could be eliminated from the theatrical window, U.S. and Canada box office revenue would increase by 14-15% (equivalent to approximately US\$1.5 billion per year).⁵ According to the Government of Canada's own study published in May 2018, more than one-quarter (26%) of content consumers reported having "consumed" (downloaded or streamed or accessed) illegal online content in the previous three-month period, and movies (36%) and TV shows (34%) were among the forms of content most likely to be illegally "consumed."⁶ Canadians made 2.6 billion visits to piracy sites in 2018, and the nature of this piracy continues to evolve.⁷ In 2020, 76% of Canadians' visits to sites used for online piracy were to non-peer-to-peer (P2P) sites, including streaming sites and cyberlocker (host) sites, up from 39% in 2015.⁸ Mimicking the look and feel of legitimate streaming services, infringing streaming websites continue to overtake P2P sites as a highly popular destination for Canadians seeking premium content in both English and French.

The film and television industry in Canada continues to battle an influx of operators, sellers, and resellers of infringing paid subscription IPTV/VOD services. Canadians are also actively involved in the ripping and theft of on-demand streams and telecommunication signals for the purposes of: (1) making unauthorized streaming of live television and motion pictures programming available to their own for-profit IPTV service or for sale as a "source" for other infringing IPTV services; and (2) for release on the broader Internet, including, but not limited to cyberlockers, social/UGC sites, and other pirate sites. These illegal services in Canada have generated millions of dollars in revenue, often laundering the money through seemingly legitimate businesses set up solely for this purpose. The lucrative financial return of an infringing business model encourages a large ecosystem of players, including the operator of the service itself, individuals supplying the infringing content, resellers of the service, payment processors, advertisers, and networks that facilitate electronic transfers.

The circumvention of TPMs and other means of stealing legitimate signals for the purposes of: (i) making available unauthorized streaming of live television and motion pictures on their own for-profit subscription IPTV service, or (ii) selling the content to other infringing subscription IPTV services available inside and outside of Canada is damaging and pervasive. Mimicking the look and feel of legitimate streaming services, infringing streaming websites continue to overtake P2P sites as a highly popular destination for Canadians seeking premium content in both English and French. In fact, since 2015, Canadian visits to streaming sites used for online piracy increased from 39% to 77% whereas Canadian visits to P2P sites used for online piracy decreased from 51% to 16%.⁹

In 2024, Canada ranked 28th 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, Canada ranked 8th in the world for unauthorized file-sharing of console-based games. Video game publishers report that Canada has experienced a spike in the past year in total users and download attempts for unauthorized proprietary video game titles, as well as in the appearance of circumvention devices, counterfeit peripherals, and unauthorized preloaded consoles on ecommerce platforms, since the country's new TPM circumvention legislation.

It is more important than ever for each level of government in Canada to initiate and adequately fund a coordinated federal law enforcement effort against these many forms of copyright piracy, including with specialized training regarding subscription piracy services, PDs, and devices and software that enable circumvention of TPMs, particularly following the Heritage Report's recommendation to increase enforcement efforts.¹⁰ IIPA encourages

⁵ Id.

⁶ Shifting Paradigms Report of the Standing Committee on Canadian Heritage" ("Heritage Report"), available at https://www.ourcommons.ca/Content/Committee/421/CHPC/Reports/RP10481650/chpcrp19/chpcrp19-e.pdf?mc_cid=d88779154e&mc_eid=0183856a67.

⁷ Ibid.

⁸ Sandvine, Video Piracy in Canada, April 2018, available at <https://www.sandvine.com/hubfs/downloads/reports/internet-phenomena/sandvine-spotlight-video-piracy-in-canada.pdf>; Sandvine, The State of Affairs: A Spotlight on Video and Television Piracy Worldwide, available at <https://www.sandvine.com/blog/the-state-of-affairs-a-spotlight-on-video-and-television-piracy-worldwide>.

⁹ What Do We Know About: Movie & TV Piracy Trends in Canada," Motion Picture Association – Canada.

¹⁰ See Julie Dabrusen, Chair, Standing Committee on Canadian Heritage, *Shifting Paradigms: Report of the Standing Committee on Canadian Heritage* (Heritage Report), 42nd Parliament, 1st Session, May 2019, Recommendation 6, p. 19, available at https://www.ourcommons.ca/Content/Committee/421/CHPC/Reports/RP10481650/chpcrp19/chpcrp19-e.pdf?mc_cid=d88779154e&mc_eid=0183856a67.

RCMP, which is a member of the U.S. National Intellectual Property Rights Coordination Center (IPR Center), to work collaboratively with U.S. enforcement officials on online piracy cases. Since the availability of piracy services (and of PDs or circumvention tools) will not be reduced without criminal prosecutions against traffickers and the imposition of deterrent sentences, particularly jail time, Crown Counsel must take on and fully prosecute more copyright infringement and TPM circumvention cases and should be provided with the training and other support that is needed. IIPA members remain ready to assist and have extended offers to provide such training. Unfortunately, the consistent absence of any criminal enforcement in Canada against even the most blatant forms of online theft completes the picture of a system that is still not up to the challenge.

- **Provide the RCMP, Crown Prosecutors, and local law enforcement with the resources and training required to implement IPR enforcement priorities.**

Within Canada's main federal law enforcement agency, the RCMP, IP crimes are neither a strategic nor an operational priority. Instead, the RCMP often transfers its IP cases to municipal police forces, which, like the RCMP, often lack the human and financial resources, as well as the strategic mandate, to thoroughly investigate IP crimes or to prepare the cases for prosecution. Thus, while local police agencies have generally responded well to anti-piracy training programs offered by industry, they are simply unable to effectively deal with organized copyright piracy, and thus, increasingly fail to pursue even well-documented referrals from industry stakeholders. The non-statutory barriers to effective enforcement, as identified in parliamentary reports going back more than a decade, remain basically unchanged because Canadian law enforcement remains under-resourced, and too few agencies consider it a priority. Given the widespread availability of hundreds of subscription piracy services, more resources are needed to address this growing problem.¹¹ Additionally, while there were some recent positive developments in cooperation between the Canadian Competition Bureau and RCMP to identify piracy targets, the longstanding legislative deficiencies described below unfortunately make these collaborations ineffective.

Similar problems arise with Canadian prosecutors and courts. Historically, Crown Prosecutors are reluctant to seek the breadth of remedies for IP crimes. This issue often arises due to knowledge gaps concerning the prosecution of IP crimes, a problem that is amplified when dealing with emerging piracy models, such as infringing IPTV or VOD services. While there have been some recent prosecutions, ongoing education of Crown Prosecutors by stakeholders is key to ensuring Canada stays ahead of emerging piracy business models. In addition, Canadian customs procedures place a legal compliance burden on rights holders (who must file a claim and track down importers of counterfeit goods) rather than on importers. The Canadian government should change these procedures so that this burden falls on the importer, as is the case in the United States.

LEGAL REFORMS

- **Swiftly enact legislative recommendations IIPA has noted in several previous submissions to counter piracy.**

In December 2017, Canada's Parliament launched the copyright law review mandated by the 2012 Copyright Modernization Act (CMA).¹² The review provided an invaluable opportunity for Canada to assess whether the Copyright Act has kept pace with rapid technological and market changes and to upgrade, improve, or correct the Copyright Act where it falls short in today's digital environment, including correcting deficiencies in the CMA. The review concluded

¹¹ Standing Committee on Industry, Science and Technology, *Counterfeiting and Piracy Are Theft*, June 2007, available at https://www.ourcommons.ca/Content/Committee/391/INDU/Reports/RP3060548/391_INDURpt08/391_INDURpt08-e.pdf (called for a higher priority for enforcement at the retail level). See also, Standing Committee on Public Safety and National Security, *Counterfeit Goods in Canada – A Threat to Public Safety*, May 2007, available at <https://www.ourcommons.ca/Content/Committee/391/SECU/Reports/RP2985081/securp10/securp10-e.pdf> (raised similar concerns about law enforcement priorities and funding).

¹² The Copyright Modernization Act (CMA), adopted in 2012, was fully brought into force in January 2015. Section 92 of the Copyright Act mandated that a parliamentary review of Canadian copyright law begin in 2017.

with the May 2019 release of the Heritage Committee Report called “Shifting Paradigms” (Heritage Report) and the June 2019 Industry Committee Report (Industry Report).

The Heritage Report recognized the negative impact the 2012 amendments have had on the publishing industry from the introduction of an undefined “education” as fair-dealing exception, as well as the “disparity between the value of creative content enjoyed by consumers and the revenues that are received by artists and creative industries” (known as the “value gap”).¹³ The Heritage Report included several positive recommendations intended to address these concerns, which have yet to be adopted, as well as other significant shortcomings of Canada’s legal framework. Among other things, the Heritage Report¹⁴ recommended that the Government of Canada:

- clarify that fair dealing should not apply to educational institutions when the work is commercially available;
- increase efforts to combat piracy and enforce copyright;
- “review the safe harbor exceptions and laws to ensure that ISPs are accountable for their role in the distribution of infringing content;”
- harmonize remedies for collecting societies under the Copyright Act;
- narrow the radio royalty exemption so that it applies only to “independent and/or community-based radio stations;”
- increase support for creators and creative industries in adapting to new digital markets;
- create educational materials to raise awareness of copyright provisions and artist remuneration for consumers;
- review, clarify and/or remove exceptions contained in the Copyright Act, ensuring that any exception respects Section 9 of the Berne Convention for the Protection of Literary and Artistic Works;
- ensure that the Copyright Board reviews tariffs for online music services to ensure that royalty payments provide fair compensation for artists; and
- meet international treaty obligations (including the Berne Convention for the Protection of Literary and Artistic Works, the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), and WIPO Copyright Treaty (WCT)).

The Industry Report also included some notable recommendations.¹⁵ Unfortunately, in preparing its report, the Industry Committee did not consult the Heritage Committee, which was tasked with examining the specific issue of artist and creative sector remuneration. This lack of consultation created inconsistencies with the Industry Committee’s analysis, resulting in certain recommendations (often on those overlapping issues) that lack an evidentiary basis. IIPA urges the Government of Canada to swiftly enact the recommendations IIPA has noted in several submissions and adopt needed reforms that have been delayed for too long, including:

- strengthen legal incentives for hosting providers, payment processors, advertising networks, domain registries and registrars along with other intermediaries, which fail to stand by their terms of service or acceptable usage policies that often clearly outline an intolerance for copyright infringing activities and cooperate with copyright owners, and in accordance with international best practices, thereby deterring piracy from taking place via their services;
- 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 (as reflected below in the recent positive case law in this area);
- reform the currently inadequate and globally anomalous “notice-and-notice” regime, where an ISP’s failure to forward notices from rights holders is without significant consequence, in favor of a more effective mechanism;
- clarify that safe harbors should apply only to passive and neutral intermediaries that do not contribute to infringing activities;
- enact measures where marketplaces should be required and all relevant intermediaries encouraged to institute a “know your business customer” (KYBC) policy to ensure they keep up-to-date and accurate information about their customers and to allow rights holders to obtain accurate information to protect their rights against direct infringers;

¹³ See Heritage Report, p. 6.

¹⁴ See Heritage Report, List of Recommendations, pp. 1-3.

¹⁵ See Industry Report, pp. 3-10.

- amend Section 27(2.3) of the Copyright Act to also apply to those who provide offline piracy services for the purpose of enabling copyright infringement, such as those who traffic in PDs and ISDs pre-loaded with software applications or the enabling software tools themselves;
- avoid introducing inappropriate licensing tools for the audiovisual sector, such as compulsory licensing and extended collective licensing (ECL).

Moreover, the lack of adequate tools in the Copyright Act concerning Canadian intermediaries continues to hamper enforcement against rogue sites or services in Canada. The law's conditioning of liability for hosting infringing material on obtaining a judgment against an end user is unworkable in practice, particularly regarding valuable, time-sensitive pre-release content, and creates a disincentive for hosting providers to cooperate or take any effective action in the case of content they know or ought to know is infringing.

The lack of incentives has a real-world impact. For example, the International Federation of the Phonographic Industry (IFPI) reports that *Tucows*, a Canadian based domain registrar, provided either incomplete or inaccurate information when rights holders sought customer details to enable action to be taken against infringing site operators. Similarly, IFPI and RIAA made over 1000 reports of infringing websites to Canadian based hosting provider *Frantech* between July 2023 and June 2024, but not a single response was provided.

In some positive news, and as noted above, Canadian case law continues to underscore the ability of rights holders to obtain site-blocking orders on the basis of the courts' equitable jurisdiction to grant injunctive relief. For example, on July 9, 2024, on the basis of the decisions of the Federal Court of Appeals (FCA) in *Teksavvy Solutions Inc. v. Bell Media Inc.* (“*GoldTV*”)¹⁶ and of the Federal Court in *Rogers Media Inc. v. John Doe 1*,¹⁷ the latter of which granted a dynamic site-blocking order for “live” blocking of National Hockey League (NHL) and Major League Baseball (MLB) games in Canada,¹⁸ the Federal Circuit in *Rogers Media Inc. v. John Doe 1* (2024) issued a “wide” injunction to prevent the unauthorized online streaming of live games produced or broadcasted by multiple sports leagues to be captured simultaneously.¹⁹ Most recently, the Federal Court granted a “pirate brand” site-blocking order allowing the plaintiffs to add to the order any additional domains, subdomains, or IP addresses associated with the *Soap2day* platforms that have been identified.²⁰

However, taken as a whole, the deficiencies noted above significantly disadvantage creators and creative industries and continue to send the wrong signals to consumers about whether infringing activities are tolerated. The Government of Canada should adopt the above recommendations to make its current regime more effective and provide meaningful incentives to stimulate inter-industry cooperation against online piracy.

- **Address the over decade-long crisis in the educational publishing market by clarifying that the fair-dealing exception for “education” does not apply to educational institutions when the work is commercially available.**

The bulk of the 2012 CMA consisted of several new or significantly expanded exceptions to copyright protection. None has had a more concrete and negative impact than the addition of “education,” undefined and unlimited in application, to the list of purposes (such as research and private study) that qualify for the fair-dealing exception. Previous IIPA submissions have extensively analyzed how this exception led to the current 12-year crisis in the educational publishing sector, hurting not only U.S. authors and publishers, but devastating Canadian publishers and authors in the educational sector.

¹⁶ *Teksavvy Solutions Inc. v. Bell Media Inc.*, 2021 FCA 100, May 26, 2021, available at <https://decisions.fca-cf.gc.ca/fca-cf/decisions/en/item/497659/index.do> (appeal dismissed by Supreme Court of Canada, available at <https://decisions.scc-csc.ca/scc-csc/scc-l-csc-a/en/item/19257/index.do>).

¹⁷ *Rogers Media Inc. v. John Doe 1*, May 27, 2022, available at <https://www.canlii.org/en/ca/fct/doc/2022/2022fc775/2022fc775.html?resultIndex=1>.

¹⁸ *Rogers Media Inc. v. John Doe 1*, July 18, 2023, available at <https://torrentfreak.com/images/MLB-Blocking-Order.pdf>.

¹⁹ *Rogers Media Inc. v. John Doe 1*, July 9, 2024, available at <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/526054/index.do>.

²⁰ *Bell Media Inc. et al v. John Doe dba Soap2day*, December 16, 2024, T-1125-23, available at <https://troypoint.com/wp-content/uploads/2024/12/Soap2Day-Site-Blocking-Order5.pdf>.

The Government of Canada is fully aware of the dire state of its educational publishing market. Even the flawed Industry Report noted above acknowledged a problem with the current state of affairs, although it stopped short of recommending an adequate solution and instead took a wait-and-see approach.²¹ The Government of Canada's Budget 2022 underlined the government's commitment to ensuring that the Copyright Act "protects all creators and copyright holders," and noted that "the government will work to ensure a sustainable educational publishing industry, including fair remuneration for creators and copyright holders, as well as a modern and innovative marketplace that can efficiently serve copyright users."²² Yet, rights holders appear to be waiting in vain for any meaningful change.²³

Canadian federal authorities and the country's Parliament should act with speed to redress this crisis by implementing the corrective measures recommended in the Heritage Report,²⁴ including clarifying the scope of the fair-dealing exception for education. Furthermore, to prevent educational institutions from circumventing the tariff system, the Copyright Act should be amended to confirm that a tariff approved by the Copyright Board is mandatory in nature, and its enforceability is not dependent upon a person's assent to, or agreement with, its terms. The goal must be an appropriate balance under which educational publishers and authors are once again compensated for their works, thus ensuring a viable domestic marketplace for commercially published educational materials.

- **Harmonize remedies for CMOs under the Copyright Act.**

Amendments to the Copyright Board took effect in April 2019.²⁵ The amendments introduced statutory rate-setting criteria that require the Board to consider, among other things, the willing buyer/willing seller principle in determining the royalty rates. While the Board may consider other factors, including "any other criterion that the Board considers appropriate," if implemented properly, the new criteria should be a welcome improvement.²⁶ However, it remains very important to ensure that the Board applies the willing buyer/willing seller criterion properly, and that it is not undermined by other amorphous and undefined criteria, such as the "public interest." In practice, this allows the Board to consistently override marketplace rates that the willing buyer/willing seller principle would dictate and tariffs for use of music are routinely set at sub-market and sub-global standard rates. The "public interest" criterion – which the Industry Report notes could cause unpredictable results prompting costly, lengthy appeals and significant effects or other tariffs – is unclear and does not have a basis in economics.²⁷

The amendments also broaden enforcement prohibitions to cover users who have offered to pay proposed tariffs in addition to users who have paid or offered to pay tariffs that have been approved. It is critical that, in implementation, this broadened enforcement prohibition does not delay or undermine CMOs' ability to collect royalties from active users. Unfortunately, the July 2021 SCC decision upheld the April 2020 decision by the Federal Court of Appeals (FCA) in *York University v. Access Copyright* that the Copyright Board approved tariff issued by Access Copyright is not mandatory and, therefore, not enforceable against York University or other non-licensees.²⁸ This presents a significant obstacle to a well-functioning market for the collective management of rights. To operate in that

²¹ Dan Ruimy, Chair, Standing Committee on Industry, Science and Technology, *Statutory Review of the Copyright Act: Report of the Standing Committee on Industry, Science and Technology* (Industry Report), 42nd Parliament, 1st Session, June 2019, Recommendation 16, p. 65, available at <https://www.ourcommons.ca/Content/Committee/421/INDU/Reports/RP10537003/indurp16/indurp16-e.pdf>.

²² Government of Canada, 2023 Budget, available at <https://budget.canada.ca/2023/report-rapport/toc-tdm-en.html>.

²³ Id. at 7.

²⁴ See Heritage Report, Recommendation 18, p. 43.

²⁵ These reforms included: an overhaul of the legislative framework governing tariff-setting proceedings before the Copyright Board, which should improve the timeliness, clarity, and efficacy of the proceedings; substantial revisions to the timelines for proposing and objecting to the tariffs, which allow tariffs to be filed earlier and remain effective longer, should help to avoid the extreme delays that have made economic forecasting nearly impossible for stakeholders (both users and rights holders), and have made it very difficult for collective management organizations (CMOs) to collect and distribute license fees by forcing them to apply tariffs retrospectively; and streamlined procedures and formalized case management to allow the Board to operate more efficiently, and to focus its resources on contested tariffs in cases in which negotiated agreements are not possible. The government has also implemented regulations requiring the Copyright Board to issue its decisions within 12 months following the close of hearings, which is a positive development.

²⁶ Under the old framework, the Board's assertion of unlimited discretion to set tariff rates leads to results that are not only unpredictable, but often wildly out of step with the evidence presented at hearings, including rates agreed to in freely negotiated agreements and in comparable markets.

²⁷ See, Industry Report, Recommendation 11, pp. 45-46.

²⁸ *York v. Access Copyright*, 2020 FCA 77.

market, CMOs require the ability to enforce the rights they represent, in accordance with their mandates from rights holders.

- **Ensure that recorded music producers and performers are fully compensated for all forms of radio broadcasting of their recordings, including by elimination of the radio royalty exemption.**

A key concern for the music industry is the statutory exemption from protection of recorded music used by commercial radio stations in Canada. The Copyright Board concluded that there is no economic rationale for this provision, which it called a “thinly veiled subsidy” to “large, profitable broadcasters.” This royalty exemption applies only to sound recordings; musical works are fully protected. Furthermore, this exemption discriminates against other Canadian businesses that publicly perform or communicate recorded music (such as online music services, satellite radio, restaurants, or background music suppliers), none of which are subject to such an exemption from paying royalties to sound recording producers and performers. This exemption deprives performers and record labels of approximately CAD\$14 million annually in rightfully earned royalties. Since 1997, when the radio royalty exemption was enacted, record labels have been deprived of over CAD\$215 million that they would have received in the absence of the exemption. Further, the Canadian system does not guarantee the “equitable” remuneration that Canada is obligated to provide under Article 15 of the WIPO Performances and Phonograms Treaty (WPPT) and that Canada committed to provide under the USMCA. Unfortunately, the 2020 USMCA implementation legislation did not address this problem. Both the Heritage Report²⁹ and the Industry Report³⁰ called for narrowing this exemption so that it does not apply to the vast majority of commercial radio stations. IIPA urges the Government of Canada to eliminate the radio royalty exemption.

- **Eliminate or at least clarify the UGC exception, in accordance with parliamentary recommendations and Canada’s international obligations.**

The copyright exception for “non-commercial user-generated content” also merits close scrutiny. This provision allows any published work to be used to create a new work, and the new work to be freely used or disseminated, including through an intermediary (commercial or otherwise), so long as the use or authorization for dissemination (though not necessarily the dissemination itself) is “solely for non-commercial purposes” and does not have a “substantial adverse effect” on the market for the underlying work. The provision could substantially undermine exclusive rights that Canada is obligated to provide under international agreements and treaties, including the TRIPS Agreement, the Berne Convention, WCT and WPPT (collectively known as the WIPO Internet Treaties), and its breadth raises serious questions of compliance with the three-step test for permissible limitations and exceptions. Although the exception has no precedent in global norms, it has spawned would-be imitators. This underscores the importance of removing, or at least clarifying, the UGC exception, in accordance with recommendations in the Heritage Report.³¹

- **Repeal recently passed Bill C-244 that allows broad circumvention of TPMs.**

On November 7, 2024, Bill C-244 received Royal Assent by the Canadian Governor General and became law. Bill C-244 amended the Copyright Act to allow the circumvention of a TPM in a computer program if the circumvention is solely for the purpose of the diagnosis, maintenance, or repair of a product in which the program is embedded.

Video game industries are especially concerned about the passage of this bill as copyright owners (or their licensees) rely heavily on TPMs to control access to and control the copying of their works and recordings, which are key to enabling a full range of online digital services and content distribution models. In particular, the circumvention of crucial TPMs that protect video game consoles presents unique security and piracy risks to the video game ecosystem,

²⁹ See Heritage Report, Recommendation 10, p. 26.

³⁰ See Industry Report, Recommendation 31, p. 109.

³¹ See Heritage Report, Recommendation 12, p. 30.

which has an estimated market value in Canada of US\$3.2 billion. Already, repair shops like *picorepair.ca* and *motherboardrepair.ca* offer mod services for video game consoles, while many offer services through social media or online marketplaces, like *Kijiji*. Without proper limitations, which Canada is obligated to provide as a party both to the WIPO Copyright Treaty³² and to the USMCA³³, the exception opens the door to abuse and copyright infringement.

IIPA strongly urges the Government of Canada to repeal these laws, and at the very least, ensure implementation is narrowed to prevent abuses that could undermine digital platforms and services. Any such implementation should be narrowly tailored for specific, necessary purposes that do not open a back door to infringing devices or services that could undermine legitimate digital services and devices.

- **Provide full rights for communication to the public and public performance of sound recordings.**

The Copyright Act should be amended to provide full rights for communication to the public of sound recordings, which includes the retransmission of sound recordings. Although Article 15 of the WPPT is clear that the right to remuneration for public performances encompasses both direct and indirect uses of phonograms, the Canadian Copyright Act (s.72.1) prohibits rights holders from directly licensing “indirect” uses, where commercial businesses like shops or bars play music as part of their business operations or for ambiance, but the music comes from the radio rather than from a CD player or a background music provider service (for example). By prohibiting rights holders from directly licensing the users who actually use and benefit from their music, this provision fundamentally undervalues the right. Canada should amend the Copyright Act to ensure that the right allows the direct licensing of such uses in accordance with Article 15 of the WPPT.

MARKET ACCESS

- **Ease long-standing market access barriers for U.S. movies and TV programming, in accordance with Canada’s United States-Mexico-Canada Agreement (USMCA) commitments.**

Significant market access issues continue to impede participation by U.S. film and TV producers and distributors in the Canadian market. Unfortunately, Canada has not made progress on certain long-standing market access issues as part of its USMCA implementation efforts, and as noted below, is considering additional measures that would discriminate against foreign online digital service providers. In accordance with its market access commitments in the USMCA, Canada should change course and eliminate the following measures that restrict access by U.S. film and TV producers to Canada’s market.³⁴

Television Content Quotas – The CRTC imposes two types of quotas that determine both the minimum Canadian programming expenditure (CPE) and the minimum amount of Canadian programming that licensed Canadian television broadcasters must carry (Exhibition Quota). Such quotas are discriminatory and artificially inflate the amount expended on, or the time allocated to, Canadian programming.

First, large English-language private broadcaster groups have a CPE obligation equal to 30% of the group’s previous year’s gross revenues from their conventional services and discretionary services (specialty and pay-TV)

³² Article 11 of the WCT requires parties to “provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention” Exceptions to that obligation are permitted by Article 10 of the treaty only in limited circumstances permitted by the Berne Convention’s so-called “three-step test”: where there are “[1] certain special cases [2] that do not conflict with a normal exploitation of the work and [3] do not unreasonably prejudice the legitimate interests of the author.”

³³ Article 20.66.1 of the USMCA requires the parties to (among other things) provide civil remedies against knowing circumvention of “an effective technological measure that controls access to a protected work.” Article 20.66.3 of the USMCA explains that a violation of national law implementing that provision is to be “a separate cause of action, independent of any infringement.” Articles 20.66.4 and .5 of the USMCA strictly limit exceptions to national laws prohibiting circumvention. Specifically, those provisions only permit exceptions for certain specified purposes or for other non-infringing uses of particular classes of works determined based on substantial evidence in a proceeding like the triennial proceedings under 17 U.S.C. § 1201(a)(1).

³⁴ IIPA expects that if Canada resorts to the “cultural carve out” under Article 32.6 to avoid implementing any of its obligations under the USMCA, USTR will use the robust retaliation provision under that provision to ensure that Canada meets its commitments.

combined, but there is some flexibility as to allocation among the services within the group. CPE obligations have also been assigned to independent signals and to independent discretionary services that have over 200,000 subscribers upon renewal of their licenses and are based on historical levels of actual expenditures on Canadian programming. Second, per the Exhibition Quota, private conventional broadcasters must exhibit not less than 50% Canadian programming from 6 p.m. to midnight. Private English-language discretionary services (specialty and pay-TV) must exhibit not less than 35% Canadian programming overall.

Non-Canadian Signal and Service Restrictions – Canadian broadcasting distribution undertakings (BDUs), such as cable, IPTV, and direct-to-home satellite, must offer more Canadian than non-Canadian services. These protectionist measures inhibit the export of U.S. media and entertainment services.

First, BDUs must offer a “skinny basic” tier for not more than \$25 per month that may include one set of “U.S. 4+1” (ABC, CBS, FOX, NBC, and PBS) from the same time zone as the BDU’s headend, where available, if not, from another time zone. BDUs may also offer an alternative basic tier that includes the same set of U.S. 4+1 signals. A BDU may offer a second set of U.S. 4+1 signals to its subscribers only if it receives authorization by the CRTC pursuant to a condition of license. Unless otherwise authorized by condition of license, the second set of U.S. 4+1 signals may be offered only to cable or satellite subscribers who also receive at least one signal of each large multi-station Canadian broadcasting group originating from the same time zone as the second set of U.S. signals.

Second, except as permitted in a BDU’s license from the CRTC, all other non-Canadian signals and services may be carried only on a discretionary basis and must be selected from the list of non-Canadian programming services authorized for distribution (the Authorized List) approved by the CRTC and updated periodically. A service will not be added to the Authorized List if a competitive Canadian pay or specialty service (other than a national news service) has been licensed. Further, a service may be removed from the Authorized List if it changes formats and thereby becomes competitive with a Canadian pay or specialty service, if it solicits advertising in Canada, or if it does not conduct its negotiations and enter into agreements with BDUs in a manner that is “consistent with the intent and spirit of the Wholesale Code.” A principal purpose of the Wholesale Code is to prohibit contractual terms that discourage or penalize the offering of services on a stand-alone basis.

Broadcasting Investment Limitations – The Broadcasting Act provides that “the Canadian broadcasting system shall be effectively owned and controlled by Canadians.” Pursuant to a 1997 Order in Council, all broadcasting licensees, which are both programming undertakings (conventional, pay and specialty television) and distribution undertakings (cable and IPTV operators and satellite television distributors), must meet certain tests of Canadian ownership and control: (1) a licensee’s CEO must be Canadian; (2) at least 80% of a licensee’s Directors must be Canadian; and, (3) at least 80% of the licensee’s voting shares and votes must be beneficially owned and controlled by Canadians. If the licensee is a subsidiary corporation, its parent must be Canadian and at least two-thirds of the voting shares and votes of the parent must be beneficially owned and controlled by Canadians. The parent corporation or its directors cannot exercise control or influence over the programming decisions of its licensee subsidiary where Canadians own and control less than 80% of the voting shares and votes, the CEO of the parent company is non-Canadian, or less than 80% of the directors of the parent corporation are Canadian. In such circumstances, the CRTC requires that an “independent programming committee” be put in place to make all programming decisions pertaining to the licensee, with non-Canadian shareholders prohibited from representation on such independent programming committee. No other developed market in the world maintains such discriminatory foreign investment limitations.

Québec Distribution Restrictions – The Québec Cinema Act severely restricts the ability of non-Québec-based theatrical film distributors to do business directly in Québec. Since 1986, grandfathered MPA member companies have been permitted to apply for a Special License for any film produced in English that meets the less restrictive requirements set out in an Agreement between the MPA and the Québec Minister of Culture and Communications. The Agreement was revisited in 2022 and was extended for seven years. These restrictions should be repealed.

Online Harmful Content: From April to June 2022, an expert advisory group on online safety held eight sessions to advise on developing a legislative and regulatory framework to address harmful online content. This followed a July through September 2021 consultation on “*The Government’s proposed approach to address harmful content online.*” The government then held 19 roundtables from July to November 2022 and released a summary report of what was discussed in January 2023. While the government has discussed this potential legislation for some time, the policy has proven difficult because of its relationship to public protection, censorship, freedom of speech, and misinformation, with parties holding conflicting positions on many of those topics. IIPA urges the U.S. government to continue to monitor the government’s work and any effects it may have on the broader online ecosystem.

- **Ensure that the CRTC’s implementation of the Online Streaming Act and the Online News Act does not impose undue burdens or obligations on non-Canadian digital services.**

The Online Streaming Act received Royal Assent on April 27, 2023. As a result, the CRTC now has the explicit power to regulate non-Canadian digital media services, including the power to make regulations that would impose financial and reporting obligations to support the Canadian broadcasting system.

As part of its regulatory plan to implement the Online Streaming Act, the CRTC issued a decision in June 2024 that requires non-Canadian digital media services with \$25 million or more in annual Canadian gross broadcasting revenues (including non-Canadian digital media services with less than \$25 million in annual Canadian gross broadcasting revenues but that are part of a broadcasting ownership group that reaches the \$25 million threshold in the aggregate) to pay 5% of those revenues to certain funds with payments set to commence by August 31, 2025. Certain aspects of this decision are currently under appeal. The CRTC’s regulatory plan also provides for a series of additional public consultations that will culminate in the CRTC finalizing the overall contribution requirements for non-Canadian digital media services as well as the implementation guidelines for its new regulatory framework, which is set to take effect in 2025.

The Government of Canada should ensure that the CRTC’s implementation of the Online Streaming Act does not impose undue burdens or obligations on non-Canadian digital services, including by repealing the requirement for non-Canadian digital media services to pay 5% of Canadian gross broadcasting revenues to certain funds.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

Canada’s international agreements with the United States most relevant to copyright obligations include TRIPS and the USMCA.³⁵ As noted above, some aspects of Canada’s current copyright regime may raise significant issues of compliance with these agreements (for example, whether Canada’s copyright and TPM exceptions, as applied, comply with the well-established “three-step test”),³⁶ and Canada’s Online Streaming Act and other market access restrictions are inconsistent with the country’s commitments under the USMCA.

³⁵ United States-Mexico-Canada Free Trade Agreement, available at <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

³⁶ See TRIPS Article 13 and USMCA Article 20.64.

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 (ASIP), 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-tpa.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-iplr.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.”

MOROCCO

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Morocco be placed on the Watch List in 2025.¹

Executive Summary: Morocco has extremely high rates of piracy for film and music. Enforcement against copyright piracy is limited due to shortcomings of the existing customs recordation system and a weak legal framework that does not adequately empower authorities to address digital piracy. Moreover, administrative authorities have not acted against many instances of piracy, despite their authority to do so. Education of the public on the harms of infringement and the rights of copyright holders could significantly decrease the piracy rate in Morocco because the public at large lacks a basic understanding of copyright principles. IIPA urges Morocco to improve enforcement efforts, educate the public on general copyright principles, and revise its legal framework to reduce its piracy problem.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Implement effective enforcement methods against those involved in illegal distribution of copyrighted materials, specifically streaming and IPTV services.
- Educate the public and government officials about the damaging effects of copyright piracy, specifically in the digital environment.

Legal Reforms

- Modify the current customs recordation system to allow rights holders longer than ten working days to initiate legal proceedings.
- Encourage adoption of a legal framework to improve and expedite administrative actions against illegal IPTV and streaming services in a rapid manner.
- Make amendments to Moroccan law that clarify the powers of the Bureau Marocain des Droits d'Auteur et Droits Voisins (BMDAV) to ensure that rights holders have autonomy in the management of their rights, that licenses covering related rights do not extend outside of Morocco, and that broadcasting and communication to the public rights for sound recording producers are exclusive rights.
- Affirmatively declare that copyright protection extends beyond Moroccan citizens and residents.

ENFORCEMENT

- **Implement effective enforcement methods against those involved in illegal distribution of copyrighted materials, specifically streaming and IPTV services.**

The level of achievable enforcement in Morocco is currently not adequate to make a meaningful impact on copyright piracy. Illegal Internet protocol television (IPTV) is rampant in Morocco. Many illegal IPTV services have professionalized, with some offering business cards and after-sale technical assistance to legitimize their reputation and increase sales. These IPTV services are operated out of Morocco and/or by Moroccan nationals. The yearly subscriptions to these illegal services are typically inexpensive, between 150 and 500 dirhams (~US\$50-\$150) per year. These types of subscription services no longer require a receiver or physical equipment and are accessible via

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

any device with a browser, which makes purchasing easier and selling less risky. IPTV subscriptions are especially popular in Morocco because of the cultural interest in soccer games.²

A flea market in Casablanca, *Derb Ghallef souk*, is a hub for pirated content with over 1,500 storefronts.³ Infringing copies of copyrighted works are sold within this market for redistribution nationally. Consumers are attracted to pirated copies of works because of a lack of awareness of the law and the cheap cost of infringing works in these marketplaces. Due to the size and the longevity of markets like *Derb Ghallef* (which has existed since the beginning of the 1900s),⁴ the availability of pirated goods is rampant in the large cities of Morocco.

Rights holders are often frustrated by the BMDAV's inaction in the process of enforcing their rights, which has led to a decline in complaints filed overall. The BMDAV, the Moroccan copyright office, created through public law and granted financial autonomy, also functions as a collective management organization (CMO). The BMDAV is thus responsible for the protection and exploitation of copyright and related rights in Morocco.⁵ Rights holders have lodged complaints against many known sellers of infringing content, but the BMDAV has not initiated enforcement actions.

- **Educate the public and government officials about the damaging effects of copyright piracy, specifically in the digital environment.**

Infringers' lack of understanding of basic copyright principles creates significant resistance to compliance with copyright laws. Morocco has an extremely high rate of piracy for films and music. A staggering 93% of consumers in Morocco are engaged in piracy of films and music.⁶ There were more than 3 million visits to stream-ripping sites from Morocco in September 2023, and over 1.5 million visits to just two of the most popular cyberlockers in the same month.⁷ These sites are also often exporters of piracy services, targeting foreign jurisdictions while operating within Morocco's permissive environment. Social acceptance of the purchase and sale of pirated content contributes greatly to the spread of infringing activity. In June 2023, cafés and restaurants were charged for licenses to utilize copyrighted works in their businesses (e.g., playing music in a café). The owners of these establishments filed a complaint with the Court of First Instance in Rabat against the BMDAV alleging that it was acting without a basis in law.⁸ These business owners claimed that the radio stations or television stations performing the works to the public were the only entities responsible for licensing the material.

To address this lack of understanding it is critical to raise public awareness about the true costs of copyright infringement. Many Moroccans are unaware that consuming pirated content is illegal or do not see the direct connection between piracy and the harm it causes to the local creative economy. A targeted campaign to educate consumers on the legal, ethical, and financial consequences of piracy could make a significant difference. For example, public service announcements on popular social media platforms, in schools, and in public spaces could explain the legal risks involved and promote affordable legal alternatives for accessing content. Additionally, partnerships with local celebrities or artists could add a personal touch, emphasizing the real-world impact piracy has on their work. Highlighting the consequences of piracy in a national conversation and offering practical solutions would begin to reduce the prevalence of copyright infringement and foster a more supportive environment for the creative industries in Morocco. Similarly, steps to educate local citizens on the illegality of illegal IPTV services could greatly reduce the pervasiveness of these

² In 2022 the Alliance for Creativity and Entertainment (ACE) shut down two of the most popular sports piracy sites in Morocco just before the World Cup. These two sites had recorded 20.6 million collective visits in October of 2022 alone. See Mehdi Hitane, HESPRESS English, World Cup 2022: Copyright watchdog prides itself for taking down Morocco piracy ring, but to no avail, November 21, 2022, available at <https://en.hespress.com/53418-world-cup-2022-copyright-watchdog-prides-itself-for-taking-down-morocco-piracy-ring-but-to-no-avail.html>.

³ See Aziza Belouas, La Vie Eco, In *Derb Ghallef*, activity is not about to resume, shopkeepers are worried, October 5, 2020, available at <https://www.lavieeco.com/influences/societe/a-derb-ghallef-lactivite-nest-pas-pres-de-reprendre-les-commerçants-sinquietent/>.

⁴ See Abouammar Tafnout, H24Info, From the skin trade to microchips, the surprising story of *Derb Ghallef*, September 30, 2018, available at <https://www.h24info.ma/du-commerce-de-peaux-aux-puces-electroniques-la-surprenante-histoire-de-derb-ghallef/>.

⁵ See BMDAV, Who Are We?, available at <https://bmda.ma/>.

⁶ See Ministère De L' Économie, Des Finances Et De La Souveraineté Industrielle Et Numérique, Morocco Intellectual Property, available at <https://www.tresor.economie.gouv.fr/Pays/MA/propriete-intellectuelle>.

⁷ According to Similarweb traffic from June 2024 to November 2024, the stream ripping site *Notube.io* received the second highest level of traffic from Morocco.

⁸ See Morocco Latest News, Cafés and Restaurants Take Legal Action, June 20, 2023, available at <https://moroccolatestnews.com/cafes-and-restaurants-take-legal-action/>.

illegal streams. This lack of awareness, the ease with which Moroccans can subscribe to illegal IPTV services, the low cost of these illegal services, and the professionalism of the sellers all contribute to rampant infringement.

Improving the education of Moroccan enforcement officials should result in faster and better results in enforcement actions. In February of 2023, the U.S. Patent and Trademark Office organized a workshop in Casablanca to educate prosecutors and judges on digital copyright infringement, illegal services, and methods of identification of the anonymous operators of these illegal entities. Also in February of 2023, the Court of Algiers organized a day for industry members to learn about the protection of intellectual property (IP) on the Internet. Both events are examples of productive educational efforts.

Regular training sessions of enforcement officials tailored to the unique challenges posed by illegal IPTV operations can provide officials with the knowledge and tools necessary to identify, investigate, and prosecute infringers. Similarly, training local law enforcement and judges on digital piracy is a critical step in curbing the spread of illegal content in Morocco. As digital piracy evolves with technology, so must the knowledge and skills of those responsible for enforcing the law. Many law enforcement officers and judges may not be fully aware of the complexities involved in modern digital piracy cases, including how illicit streaming services operate, how content is distributed, and the methods used to conceal these activities. This lack of expertise often hampers effective enforcement and prosecution.

A key challenge is the technical knowledge necessary, but lacking, by law enforcement to collect and interpret digital evidence. This gap can cause significant delays in cases involving IPTV and illegal streaming services, allowing operators to continue and suspects to evade capture. To prevent such delays and ensure more effective responses, Morocco should introduce specialized training programs in collaboration with international experts like INTERPOL. These programs would educate law enforcement officers on tracing illegal streams, detecting pirated content, and identifying the financial networks behind these operations.

Judges would also benefit from training and should adopt international procedural best practices for adjudicating digital crimes. For instance, courts in countries like France and the Netherlands have streamlined processes that allow courts to issue quick rulings, such as blocking illegal services or freezing financial assets linked to piracy. Morocco can learn from these models to improve its judicial process and protect IP more effectively. Providing judges with a deeper understanding of global piracy trends, legal frameworks, and enforcement strategies would enable them to make more informed rulings. Equipping both law enforcement and the judiciary with these essential skills would not only improve Morocco's ability to investigate and prosecute digital piracy but also significantly deter such crimes.

LEGAL REFORMS

- **Modify the current customs recordation system to allow rights holders longer than ten working days to initiate legal proceedings.**

Under Morocco's current customs recordation system, rights holders or their representatives may file requests with the Central Administration of Customs to seize or suspend pirated goods at the ports of entry in Morocco.⁹ The BMDAV may also file these requests in the case of copyrighted goods. Once customs has detained goods as requested, the rights holder has a maximum of just ten days from the date of notification to request a formal order for a seizure to continue until a bailiff can visit the port to inspect the goods. If this order is not filed, the goods are released after the ten day period. Ten days is too short because rights holders need additional time to investigate these issues and prepare before initiating proceedings. Additional time is even more critical for foreign rights holders or those who are not physically located in Morocco, for whom this narrow time frame is especially restrictive. IIPA urges Morocco to update the customs recordation system to increase the time for rights holders to initiate legal proceedings.

⁹ See Law No. 17-97 on the Protection of Industrial Property, Article 176.4.

- **Encourage adoption of a legal framework to improve and expedite administrative actions against illegal IPTV and streaming services in a rapid manner.**

The BMDAV does not initiate action against known infringers or investigate complaints lodged by rights holders. Law No. 25-19 on the Moroccan Copyright and Neighboring Rights Office has clarified the status of the BMDAV as a legal entity under public law with financial autonomy to investigate reports of infringement.¹⁰ Morocco should adopt a new legislative or regulatory framework requiring the BMDAV to initiate action or affirmatively decline action requested by a complaint to ensure the BMDAV is accountable to rights holders.

Under Article 65.2 of Morocco's Copyright Law, copyright infringement may be subject to proceedings ordered by the Public Prosecutor's Office without a complaint from a private party or rights holder.¹¹ Although an expert report is not mandatory to initiate such actions, it becomes crucial for civil actions where technical details are paramount. Even when available experts lack in-depth knowledge of digital piracy, their reports remain critical to guide investigations and legal proceedings effectively. Rights holders can request the appointment of an expert through the national court, but this process can take two to three months. The timeline for expert appointments is technically subject to a deadline of ten days to one month, but these deadlines are rarely met due to a limited pool of available experts. Some experts decline appointments, citing insufficient technical knowledge of digital piracy, which delays investigations and/or legal proceedings and allows infringing activities to persist. Furthermore, some experts may decline appointments because of insufficient technical knowledge in digital piracy, which can significantly delay proceedings and allow infringing activities to continue unabated. In some cases, alternative evidence—such as bailiff reports and investigation minutes—can suffice for criminal complaints, enabling the Judicial Police to conduct investigations independently of expert reports. However, if the prosecutor takes the case to court, the court may still order an expert report if deemed necessary. To enhance the effectiveness of copyright enforcement in Morocco, it is imperative to address the existing bottlenecks in the expert appointment process. This can be achieved by expanding the pool of knowledgeable experts, improving their training in digital piracy, and expediting the appointment process. Such measures are essential for effectively implementing reform and reducing prolonged infringing activities.

- **Make amendments to Moroccan law that clarify the powers of the *Bureau Marocain des Droits d'Auteur et Droits Voisins* (BMDAV) to ensure that rights holders have autonomy in the management of their rights, that licenses covering related rights do not extend outside of Morocco, and that broadcasting and communication to the public rights for sound recording producers are exclusive rights.**

The current collective rights management system and enforcement mechanisms in Morocco grant BMDAV a legal monopoly for the management and enforcement of all forms of copyright exploitations. This system must change to allow rights holders autonomy in exploiting their rights and choosing collective management methods.

Article 4 of Law 25-19 requires rights holders to become members of the BMDAV, a state-run CMO. BMDAV provides all collective rights management services per Law 25-19, which precludes rights holders from establishing their own CMOs.¹² The provisions in Law 25-19 ultimately restrict rights holders from deciding whether to manage their rights individually or collectively.

Further, the effects of the requirement for rights holders to join the BMDAV CMO are not limited to Morocco. This is because the newly adopted Article 49.1 of the Copyright Law could be interpreted to extend the scope of BMDAV licenses, including licenses covering related rights, outside of Morocco.

¹⁰ See Law No. 25-19 on the Moroccan Copyright and Neighbouring Rights Office, WIPO LEX, available at <https://www.wipo.int/wipolex/en/legislation/details/21930> (2022).

¹¹ See Law No. 2-00 on Copyright and Related Rights, WIPO LEX, available at <https://www.wipo.int/wipolex/en/text/567196> (2000).

¹² See Law No. 25-19 *Relative au Bureau Marocain des Droits D'Auteur et Droits Voisins*, WIPO LEX, available in French at <https://www.wipo.int/wipolex/en/text/587394> (2022).

Morocco should also provide sound recording producers with exclusive rights for broadcasting and communication to the public. Exclusive rights enable record companies to negotiate commercial terms for the public performance and broadcast of sound recordings.¹³

Article 59.6 of the Copyright Law contains a distribution key, which unfairly prejudices phonogram producers for collections of the private copying levy. Phonogram producers are allocated only 10% of these collections, versus 35% for authors and performers respectively.¹⁴ This distribution key is arbitrary and does not accurately reflect the economic value of the rights at issue. Given that the BMDAV manages exclusive rights, there is concern that this distribution key may be the basis of distributions of monies collected from other exploitations. Article 59.6 should be reevaluated and if necessary revised to ensure an economically proportionate and fair distribution to rights holders.

- **Affirmatively declare that copyright protection extends beyond Moroccan citizens and residents.**

Article 67 of Morocco's Copyright Law establishes the scope of copyright protection. Phonograms specifically are limited to (i) those, the producer of which is a national of Morocco, (ii) those, the first fixation of which took place in Morocco, and (iii) those produced for the first time in Morocco.¹⁵ Article 68 of Morocco's Copyright Law gives international treaties (such as the WIPO Performances and Phonograms Treaty) to which Morocco is party precedence over the national law in the case of a conflict. To eliminate all doubt, Article 67 should affirmatively declare that foreign nationals of nations that are parties to treaties to which Morocco is also party are entitled to the same scope of copyright protection under Morocco's Copyright Law as Moroccan nationals.

¹³ See id.

¹⁴ See Law No. 79-12 Complétant la loi no. 2-00 Relative aux Droits D'Auteur et Droits Voisin, WIPO LEX, available in French at <https://www.wipo.int/wipolex/en/text/570011> (2014).

¹⁵ See Law No. 2-00 on Copyright and Related Rights, WIPO LEX, available at <https://www.wipo.int/wipolex/en/text/567196> (2000).

NIGERIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Nigeria be placed on the Watch List in 2025.¹

Executive Summary: As Sub-Saharan Africa's largest economy, Nigeria is a critical market for the copyright industries, which have made significant investments in the creation and distribution of creative content in the country. Nigeria is also home to "Nollywood," one of the largest movie industries globally. The substantial increase in the accessibility of high-speed Internet and mobile devices in Nigeria has created opportunities for the creative industries; unfortunately, due to a lack of public awareness and inadequate enforcement, online piracy is a growing problem. The increasing number of websites that make movies and music available illegally continues to ravage the country's creative sector, undermining revenues from legitimate channels, including streaming platforms and movie theaters, for disseminating licensed content. To address its online piracy problem, Nigeria enacted a new Copyright Act, 2022 (Act No. 8 of 2022) in March 2023 that includes several positive aspects, including a clearer making available right, an administrative website blocking procedure with the Nigerian Copyright Commission (NCC), and improvements to Nigeria's enforcement framework. However, these are undercut by certain problematic provisions—including a vague extended collective licensing regime that does not yet have sufficient safeguards to ensure that it does not prejudice rights holders, an unclear open-ended fair dealing exception, and an overbroad compulsory licensing regime—which should be urgently revised not only to foster investment in Nigeria, but also to bring Nigeria's legal framework in line with international copyright norms and best practices. In addition, Nigeria's enforcement authorities should maximize the new enforcement provisions in the Copyright Act and take more enforcement actions, and the government should increase public awareness about the harms caused by piracy. Finally, the Government of Nigeria should reform the collective management framework in Nigeria to ensure a clear, fair, market-based, and transparent system, including by engaging with sound recording producers to allow for the existence of a collective management organization (CMO) that represents local and foreign producers effectively and meets international best practices. The lack of a clear framework for collective licensing, and the subsequent absence of effective and transparent CMOs, have been a serious problem for all rights holders, including sound recording producers.

PRIORITY ACTIONS REQUESTED IN 2025

Legal Reforms

- Make additional legal reforms, including revising the new Copyright Act, to address several critical concerns (e.g., withdraw overbroad compulsory licensing scheme, provide adequate safeguards for overbroad extended collective licensing, narrow overbroad and unclear exceptions to copyright protection, ensure exclusive rights of distribution and broadcast, extend term of copyright protection) to ensure Nigeria fully implements the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties) and meets its international obligations and evolving global norms.

Enforcement

- Maximize the new Copyright Act to improve enforcement, including resourcing and training NCC staff to use their new powers more effectively and increasing enforcement actions against online piracy services that are harming the creative industries.
- Raise awareness among Internet service providers (ISPs) around effective policies to address piracy, use the new powers granted to NCC under Section 61 of the Copyright Act to block access to pirate sites, and build cooperation between ISPs, enforcement entities, and rights holders to implement effective policies to address piracy.

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

- Increase public awareness regarding the illegality of and harm caused by piracy.
- Reform the collective management framework in Nigeria to ensure a clear, fair, market-based, and transparent system, including by engaging with sound recording producers to allow for the existence of a CMO that represents local and foreign producers effectively, has the relevant expertise and technical capability to perform collective management functions, is owned or controlled by member rights holders, and is a non-profit organization.

LEGAL REFORMS

- **Make additional legal reforms, including revising the new Copyright Act, to address several critical concerns (e.g., withdraw overbroad compulsory licensing scheme, provide adequate safeguards for overbroad extended collective licensing, narrow overbroad and unclear exceptions to copyright protection, ensure exclusive rights of distribution and broadcast, extend term of copyright protection) to ensure Nigeria fully implements the WIPO Internet Treaties and meets its international obligations and evolving global norms.**

In March 2023, the President of Nigeria assented to the new Nigerian Copyright Bill, 2022 (Copyright Act), resulting in the enactment of the Nigeria Copyright Act, 2022 (Act No. 8 of 2022). The new Copyright Act includes several important reforms, including: an exclusive right of making available; improvements to the enforcement framework, including procedures for blocking websites and criminal penalties for online infringements; improved protections for technological protection measures (TPMs); and obligations for ISPs to ensure their networks do not facilitate piracy, including to “expeditiously” take down infringing content, institute a repeat infringer policy, and ensure infringing content that has been taken down remains off their networks. These elements are strongly welcome and a positive step forward; unfortunately, there are several significant deficiencies in the Copyright Act that should be corrected for Nigeria to properly implement the WIPO Internet Treaties and meet its international obligations and evolving global norms, including the following:

- Section 35 of the Copyright Act introduced a compulsory license scheme that is incompatible with Nigeria’s international obligations, including under the Berne Convention and the WIPO Internet Treaties. Under this provision, the NCC could bypass the copyright owner and authorize the use of a copyrighted work “by any person for the purpose of rectifying the abuse of a dominant market position or to promote public interest.” The provision undermines rights holders’ ability to assert their rights in or license their works because any user could request that the NCC bypass the copyright owner and authorize or prohibit certain uses of a work based on the mere allegation that the user “made a reasonable effort to obtain permission from the owner of copyright on reasonable commercial terms and conditions and that the effort was not successful.” Hence, Section 35 undermines contractual freedom and legal certainty and is inconsistent with Nigeria’s international obligations, including under the Berne Convention and the WIPO Internet Treaties. This section is also outside the scope of the compulsory licenses set out in the Berne Convention and its Appendix, which cannot be applied to the right of making available or beyond the narrow uses set out therein. Moreover, Section 35 reduces the scope of the exclusive right of making available, thereby undermining implementation of the WIPO Internet Treaties by compromising their milestone right.
- The Copyright Act also introduced extended collective licensing (ECL) in Nigeria. An ECL system is appropriate only in well-developed collective rights management systems, where organizations represent a substantial number of rights holders for each segment of the collective marketplace, and only in well-defined areas of use, where obtaining authorization from rights holders on an individual basis is typically onerous and impractical to a degree that makes a license unlikely. As noted above, Nigeria’s collective management system is inadequate. In addition, the provision is overly broad. For these reasons, such a system is not appropriate in Nigeria and the new ECL framework should be withdrawn. At the very least, adequate safeguards should be introduced, e.g. via the CMO Regulation proposals (discussed below), using best practice examples such as Article 12 of the European Union (EU) Digital Single Market (DSM) Directive.

- The Copyright Act appears to provide for a hybrid fair use-fair dealing provision that may be implemented substantially broader than the U.S. fair use doctrine to the detriment of the creative industries for several reasons. First, the provision includes additional broad purposes that are not present in the U.S. statute, including “private use” and “private study.” Second, U.S. fair use is determined on a fact-intensive, case-by-case basis. Without the foundation of a well-developed body of case law, Nigeria’s untested, broader fair use provision would result in uncertainty for both rights holders and users on the parameters of permissible uses. The additional broad purposes listed in the text adds to the uncertainty and risk that Nigerian judges, none of whom have ever adjudicated a fair use case and would be doing so without any binding precedent to guide them, will find an unacceptably wide range of uses to be non-infringing. Third, the expansive, new “fair use” exception is included as part of a “fair dealing” system that includes several overly broad new exceptions, as discussed below. This hybrid approach further adds to the uncertainty and risk that the fair use provision will deny copyright owners fundamental protections on which they rely to license their works and sound recordings. Therefore, the broad hybrid fair use-fair dealing provision is inconsistent with the three-step test.² In particular, the provision is not limited to certain special cases and there is a substantial risk that it would be applied in a manner that conflicts with the normal exploitation of a work or unreasonably prejudices the legitimate interests of the rights holder.
- An exception for archives, libraries, and galleries, is broader than the exception in U.S. law and inconsistent with the three-step test, because it would permit these institutions to make and distribute “copies of works protected under this Act as part of their ordinary activities” without limitation, and it would also permit lending such copies to users.
- The Copyright Act provides for compulsory licenses for translation and for reproduction of published works. This provision should be revised to ensure it is calibrated according to the terms of the Berne Convention Appendix, which it currently is not.
- While the Copyright Act includes an exclusive right of distribution, extraneous language has been added that appears to limit the right of distribution “for commercial purposes” and for works that have “not been subject to distribution authorized by the owner.” IIPA is concerned that this language could be interpreted to extend the concept of exhaustion of rights to distributions of digital content.
- While the broadcast right for sound recordings is granted as an exclusive right in Section 12, it is then downgraded to a mere remuneration right in Section 15. Sound recording producers’ broadcast right should be maintained as an exclusive right without being downgraded to provide the fair market conditions in which rights holders can negotiate commercial terms that reflect the economic value of uses of recorded music to broadcasters.
- The Copyright Act introduces draconian criminal sanctions, including imprisonment, for rights holders who fail to keep proper records of the disposition of their rights. This provision is unprecedented and disproportionate to any intended purpose and should be deleted.
- The overbroad quotation exception should be revised to limit the use of a quotation to purposes of criticism or review.
- Private copying exceptions, and with them, provisions for levies, should apply only to content that is lawfully acquired—the exceptions should not be misused as a means to legalize piracy—and ensure that rights holders receive adequate shares of collections made, deductions are kept to a minimum, and compensation is payable directly to rights holders.
- The term of protection for all works and sound recordings should be extended to 70 years from fixation or publication (and the same for juridical entities), and, for all works, to the life of the author(s) plus 70 years.

ENFORCEMENT

- **Maximize the new Copyright Act to improve enforcement, including resourcing and training NCC staff to**

² See, e.g., Article 13 of the WTO TRIPS Agreement.

use their new powers more effectively and increasing enforcement actions against online piracy services that are harming the creative industries.

A large number of Nigeria-based individuals operate advertising-funded piracy websites. These individuals use mainly foreign based, but also some regional, web hosting services to distribute links to infringing content, including pre-release and other high value content. These sites also frequently make use of .NG country code Top Level Domains (ccTLDs) to provide access to websites that make available infringing content.³ Social media is used to further drive traffic to these sites, thereby increasing revenue derived from advertising. Site operators use a mix of pop-under and in-situ advertisements to generate revenue based on site traffic and advertisement clicks. Unlike in most other countries, and reflective of their ability to freely operate in Nigeria, infringing site operators do little to hide their identities and contact information. Nigeria has also witnessed the proliferation of Internet protocol TV (IPTV)-based piracy. Chinese-manufactured set top boxes are shipped to Nigeria in large quantities and an illicit distributor loads those devices with applications that are designed to access pirated content and sells them to consumers, often involving a monthly subscription to access the pirated content.

Many of these piracy sites and services fail to remove infringing content upon notification by rights holders. Moreover, removal of infringed content upon receipt of a notice should not be sufficient where the content is uploaded by the site operators, because such operators should not be eligible for safe harbor protections. For music and audiovisual piracy, the unauthorized content includes a mix of domestic and international content. Such sites are exceedingly popular within Nigeria but also, in many cases, regionally and beyond, hampering not only the development of the local music, film, and television industries but also polluting other markets.

The growing number of these websites undermine legitimate channels for licensed content, including streaming video-on-demand (SVOD) and movie theaters. The International Federation of the Phonographic Industry's (IFPI) Music Consumer Study for 2023 (MCS) found that the music piracy rate in Nigeria was the highest in any of the 26 countries included in the study.⁴ Across a nationally representative sample of 16-44-year-olds, 76% of respondents said that they had used unlicensed means to obtain music in the previous month, nearly three times the global average of 29%. Nearly three-quarters (74%) of these users of pirated music used illegal stream-ripping sites and apps to download music content, mainly on mobile devices (the most common way of accessing the Internet in Nigeria). The most popular stream-ripping sites were Y2Mate (used by 19% in Nigeria) and SSYouTube (used by 13%). The MCS also found that two-thirds (65%) of respondents admitted to using direct download piracy sites such as *TrendyBeatz* to obtain music. Other popular direct/indirect download sites include *Hiphopkit.com*, *Waploaded.com* and *Justnaija.com*.

Nigerian enforcement authorities, including the NCC, suffer from insufficient training and lack the capacity and resources to adequately address these piracy problems, particularly online. More must be done by law enforcement, local domain registries and registrars, and ISPs to shut down pirate online services. For example, local intermediaries, including hosting providers, domain registries and registrars should take effective measures to prevent the use of their services in connection with infringing sites, including by enforcing provisions of their Terms of Service that allow them to terminate and suspend services in the case of infringement of intellectual property rights (IPR).

In a positive development, in April 2024, the NCC issued a Copyright Advisory to the general public and, particularly, to places of business regarding the need for appropriate licenses or authorization from CMOs before making available to the public copyrighted works and sound recordings. According to the Copyright Advisory, NCC's Copyright Officers would conduct routine checks at places of business where music and audiovisual works are made available to ensure compliance with the Copyright Act. In September 2024 the NCC, the Nigerian Police Force and Audio Visual Rights Society of Nigeria, a CMO, visited three well-known Abuja-based hotels accused of unauthorized

³ Many piracy sites, both operated from within Nigeria and overseas, make use of the .NG country code Top level Domain (ccTLD). Accordingly, Nigeria should act against piracy sites that use the .NG and .COM.NG ccTLDs. Unfortunately, the music industry did not receive a substantive response from the domain registrar WEB4AFRICA.NG in response to a complaint filed in 2018.

⁴ See International Federation of the Phonographic Industry (IFPI), *Engaging With Music 2023*, available at https://www.ifpi.org/wp-content/uploads/2023/12/IFPI-Engaging-With-Music-2023_full-report.pdf.

use of audiovisual works. The CMO representatives met with hotel management and obtained a firm commitment to comply with copyright laws and obtain the appropriate licenses.

Several enforcement deficiencies and limitations negatively impact intellectual property (IP) protection and enforcement in Nigeria, including:

- high levels of government corruption;
- excessive bureaucracy within government agencies—including Nigerian police, IP Registries, and other related agencies—that undermines protection of IP rights by obstructing rights holders' ability to make criminal complaints against piracy and other forms of infringement or to seek to protect their IP rights;
- protracted litigation and case backlogs in courts, which result in delayed and non-deterrent outcomes and create little disincentive against piracy, enabling locally operated pirate sites to thrive and proliferate;
- insufficient resourcing and technical capacity of IP officials;
- lack of funding for IP Registries in the country resulting in an ineffective IP protection system; and
- poor utilization of technology by the IP Registries leading to inefficient administrative systems.

Nigeria needs to more effectively enforce against the numerous unlicensed online music and audiovisual services that operate in Nigeria, which are harming many markets inside and outside of Nigeria. Now that the Copyright Act has entered into force (as discussed above), NCC staff should be sufficiently resourced and trained to fully use the new criminal provisions in the Copyright Law as the basis for improved enforcement actions against piracy services. Moreover, more resources are needed for the NCC online enforcement unit to adequately engage in sustained efforts to combat piracy in the country, including to ensure authorities have critical resources such as electricity and Internet access. In addition, the Government of Nigeria should take the following steps to improve enforcement:

- The Judiciary should fully maximize the new Copyright Act to protect rights holders and take the following actions:
 - build up case precedents that promote the rights of creators and reinforce confidence and trust in the law and the Judiciary by borrowing from case law interpretation in foreign jurisdictions that provide adequate and effective protection and enforcement of copyrights;
 - form specialized cybercrime courts and prosecution units;
 - designate specialist courts and specialist IP judges within states that have large creative ecosystems;
 - increase reliance on expert witnesses in the requisite IP fields; and
 - partner with reputable academic institutions for regular updates on IP laws, consultations, and training on IP to improve IP expertise among judges.
- Provide adequate statutory and punitive damages in cases of copyright infringement and online piracy.
- Ensure that rights holders' enforcement of their rights is not impeded due to protracted litigation.
- Provide sufficient resources and enhance engagement by enforcement authorities to ensure IP cases can be investigated and prosecuted efficiently and at scale.
- Ensure the NCC, in collaboration with other relevant IP agencies in the country, develops an awareness policy to educate rights holders on available IP protection mechanisms.
- Increase judicial and prosecutorial training in IPR cases, with a focus on anti-piracy enforcement matters.
- **Raise awareness among Internet service providers (ISPs) around effective policies to address piracy, use the new powers granted to NCC under Section 61 of the Copyright Act to block access to pirate sites, and build cooperation between ISPs, enforcement entities, and rights holders to implement effective policies to address piracy.**

There is no formal framework for cooperation between ISPs and rights holders in Nigeria. The Nigeria Communications Commission issued a Guideline for the Provision of Internet Service, which mandates ISPs to ensure that users are informed of any statements of cybercrime prevention or acceptable Internet use published by the Commission or any other authority, and that failure to comply with these acceptable use requirements may lead to

criminal prosecution, including for violations of IP rights.⁵ The Government of Nigeria should raise awareness among ISPs around effective policies to prevent piracy, including the site blocking provision (Section 61) of the new Copyright Act, which NCC should use to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities, with a view to building the foundations of cooperative efforts between ISPs, enforcement entities, and rights holders.

- **Increase public awareness regarding the illegality of and harm caused by piracy.**

In Nigeria, many people are unaware that piracy is illegal and that pirate websites are operating illegally. For many, piracy is seen as common and widespread, and they have not seen those engaged in piracy face consequences. The Government of Nigeria should implement a policy to increase public awareness regarding the illegality of and harm caused by piracy.

- **Reform the collective management framework in Nigeria to ensure a clear, fair, market-based, and transparent system, including by engaging with sound recording producers to allow for the existence of a CMO that represents local and foreign producers effectively, has the relevant expertise and technical capability to perform collective management functions, is owned or controlled by member rights holders, and is a non-profit organization.**

The NCC has failed to meaningfully engage recording industry stakeholders on the accreditation of a related rights CMO following protracted dispute between the NCC and The Copyright Society of Nigeria (COSON, the CMO that was responsible for managing performance rights in musical works and sound recordings but whose operating license was withdrawn by the NCC). While rights holders and the NCC took steps to improve COSON's transparency and governance, in 2023 the NCC in consultation with select rights holders validated an Action Plan for CMO in the Music Industry that included recognition of the Musical Copyright Society of Nigeria (MCSN) as the only accredited music industry CMO. However, several leading domestic stakeholders and international companies in the industry controlling significant repertoire have expressed concern regarding the ability of MCSN to effectively manage their rights. To resolve this, the Government of Nigeria should reform the collective management framework in Nigeria, in partnership with key stakeholders including the recording industry body, RELPI, to ensure a clear, fair, market-based, and transparent system. This should include engaging with sound recording producers to allow for the existence of a CMO that represents local and foreign producers effectively, has the relevant expertise and technical capability to perform collective management functions, is owned or controlled by its member rights holders, and is a non-profit organization. Accordingly, IIPA recommends that through RELPI a new CMO should be established with the support of the NCC to ensure there is adequate and effective representation of both local and international rights holders. With these provisions in place, as well as improved enforcement as noted above, CMOs would be able to license effectively in Nigeria.

The NCC published the Copyright (Collective Management Organizations) Regulations 2023 (CMO Regulations), which is intended to repeal the Copyright (Collective Management Organizations) Regulations 2007 and update Nigeria's collective management regulations in keeping with international and good practices. At a fundamental level, the CMO Regulations should reflect essential characteristics and ensure that CMOs are operating according to good standards of transparency, accountability, and governance, including that the definition of a "collective management organization" should be amended such that entities falling within the definition are owned or controlled by their member right holders as well as to confirm the non-profit nature of the organization; and the regulation addressing ECL should be amended to include essential safeguards in keeping with best practice that must be met before an ECL system is put into operation in Nigeria.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

⁵ See Nigeria Communications Commission, Guidelines for the Provision of Internet Service, available at <https://www.ncc.gov.ng/docman-main/legal-regulatory/guidelines/62-guidelines-for-the-provision-of-internet-service/file>.

As noted above, certain provisions of the new Copyright Act, notably the overbroad compulsory licensing provision of Section 35, are likely inconsistent with Nigeria's obligations under the WTO TRIPS Agreement, the Berne Convention, and the WIPO Internet Treaties.

SWITZERLAND

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendations: IIPA recommends that Switzerland be placed on the Watch List in 2025.¹

Executive Summary: The last revision of Switzerland's Copyright Law in 2020 failed to address substantial concerns related to copyright enforcement. IIPA urges the U.S. government to convey to the Government of Switzerland that its Copyright Law does not sufficiently comply with Switzerland's obligations to provide for effective and deterrent remedies against any act of copyright infringement, especially with respect to the use of unlawful sources, cross-border infringement, and intermediary liability. The enforcement deficit remains problematic, particularly within the context of our otherwise strong bilateral trade relationship with Switzerland. IIPA further urges the Government of Switzerland to consider additional amendments to the Copyright Act to strengthen enforcement tools for rights holders and bring the Copyright Law in line with its international treaty obligations, current best practices in Europe, and international norms.

PRIORITY ACTIONS REQUESTED IN 2025

Legal Reforms

- Further amend the Copyright Act to provide sufficient tools to combat all types of piracy, including cross-border piracy, regardless of technical details, including by providing mechanisms that 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 in addition to aligning ISP liability provisions with international standards.
- Require marketplaces and strongly encourage all relevant intermediaries, including data centers and ISPs, to implement and enforce better "know-your-business-customer" (KYBC) protocols.
- Further amend the Copyright Act to affirm that Switzerland's private use exception permits single copies for private use only if they derive from a legal (authorized) source and restrict the permission for third parties to provide services for private use to prevent unlicensed commercial services affecting, or competing with, rights holders' exploitations.
- Ensure narrow practical application of the extended collective licensing (ECL) regime.
- Amend the Copyright Act to redress the unreasonable and commercially damaging statutory restrictions on rights holders' freedom to negotiate licensing terms for the use of their respective rights.
- End the unfair treatment of neighboring rights for sound recordings under collective rights management by modifying the 3% cap in Article 60(2) of the Copyright Act, which remains below the level of other European countries.
- Provide an independent broadcasting and public performance right for music producers, in line with the WPPT.
- Revise additional provisions of the Copyright Act to ensure Switzerland provides adequate and effective copyright protection and enforcement and meets its international obligations.
- Amend the Copyright Act and other relevant laws to enable rights holders to collect evidence to enforce rights (e.g., collection or processing of Internet protocol (IP) addresses to bring *direct* civil claims without a related criminal proceeding).

Market Access

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

- Abolish or ease provisions of the Swiss Film Act that negatively affect the distribution and making available of audiovisual works in Switzerland and remove streaming and broadcasting quotas.
- Materially simplify all filing and reporting obligations imposed on the audiovisual industry, including under the Copyright Act and tariffs thereunder and under the Film Act.

LEGAL REFORMS

- **Further amend the Copyright Act to provide sufficient tools to combat all types of piracy, including cross-border piracy, regardless of technical details, including by providing 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 in addition to aligning ISP liability provisions with international standards.**

Piracy continues to undermine and disrupt the growth of the legitimate digital content market and leads to less willingness to pay for legitimate offerings. For example, although the Swiss recorded music market has been growing for the last eight years, it still accounts for less than three-quarters of the revenue it generated 20 years ago. It is critical that the Government of Switzerland strongly enforce against piracy that disrupts the growth of the legitimate market. The main methods of music piracy remain cyberlockers, stream ripping, and BitTorrent indexing sites.

Unfortunately, rights holders continue to lack efficient legal instruments to enforce their rights against both domestic and, especially, cross-border infringement and against involved intermediaries. While the operation of notorious cyberlockers based in Switzerland has ceased, the country is becoming an attractive base of operations for some ISPs dedicated to piracy on a global scale. Moreover, cyberlockers continue to be widely used by the Swiss audience. Notorious cyberlockers like *rapidgator.net*, which received over 318 million visits globally during 2024 according to SimilarWeb, attract a significant number of visits from Switzerland.

Rights holders do not currently have effective remedies against a wide range of copyright infringements, both civil and criminal. As discussed below, Switzerland does not allow for collection or processing of personal information solely to bring civil claims. In addition, where a copyright infringing online service operates anonymously and from undisclosed locations, a rights holder cannot bring direct legal action against the infringing service without knowing whom to sue and where they should be served with court papers. In criminal enforcement cases, law enforcement authorities face the same challenges when dealing with a copyright infringing online service operating anonymously and from an undisclosed location. Switzerland should therefore provide 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. Such mechanisms are the only feasible remedy in cases where a copyright infringing online service operates anonymously and from undisclosed locations. It is notable that Switzerland had a referendum in June 2018 on a gambling law amendment to permit blocking of unauthorized gambling sites, and Swiss voters approved the amendment by a good majority.² The approval of the gambling law amendment shows that there are no bars in principle to the extension of this form of injunctive relief to copyright cases, but political will to do so is absent (a remedy of this kind was rejected by the federal government in the ongoing copyright amendment process).

Stream-ripping sites and applications, which permit users to create an unauthorized local copy of streamed content, are still widely used, and there is currently no effective solution in Switzerland. According to SimilarWeb data, there were nearly 12 million visits to stream-ripping sites from Switzerland from October 2023 to October 2024. According to SimilarWeb, *YTMP3.la* (formerly *YTMP3s.nu*) received more than 500,000 visits alone, *Savefrom.net* more than 248,000 visits, and *notube.lol* more than 155,000 visits in Q2 2024.

² 72.9 percent of voters. See <https://www.bbc.co.uk/news/world-europe-44430267>.

Illegal streaming platforms operated from remote or unknown jurisdictions continue to be popular in Switzerland and carry copyrighted material that undermines the legitimate market. Peer-to-peer (P2P) and BitTorrent activity for sharing infringing material also remains popular. The illegal streaming and P2P activity are facilitated by the notion that private use of copyrighted works from illegal sources is legally permitted. As discussed below, a 2019 federal court decision held that downloading and streaming of unauthorized content for private use are permitted if no uploading occurs, and this has poignantly shaped consumers' expectations and attitudes. Several BitTorrent indexing sites, including *Yggtorrent*, *thepiratebay.org*, and *1337x.to*, are also very popular in Switzerland. *Yggtorrent* is a French-language BitTorrent group of sites that regularly change top-level domains to avoid attempts by French courts to block access to the site in France. According to Q2 2024 SimilarWeb data, *1337x.to* received over 156,000 visits and both *Yggtorrent* and *thepiratebay.org* received over 88,000 visits.

While the Government of Switzerland has demonstrated a willingness to pursue pirate sites on the *.ch* domain (the Swiss country code top-level domain (ccTLD)), numerous copyright infringing sites that have been adjudicated as illegal in other countries rely on the *.ch* domain, such as *ygg.re* (formerly *yggtorrent.ch*), *wootly.ch*, *ytmp3.ch*, *listentoyoutube.ch*, and *keepvid.ch*. IIPA recommends that the Government of Switzerland expand its enforcement actions, as its jurisdiction is not necessarily limited to sites with a *.ch* domain in Switzerland.

As discussed above, Switzerland lacks meaningful remedies and effective enforcement against online copyright infringement, and rights holders in Switzerland often have very little recourse against piracy sites, particularly those operated or hosted outside Switzerland. In addition to the introduction of more effective remedies, better cooperation from intermediaries is crucial to effectively tackle the problem of illegal content in Switzerland. Switzerland has never introduced reliable rules for considering ISP liability, which should be aligned with international standards, and the broad private use exception, discussed further below, also impairs cooperation.

Article 39d of the Copyright Act provides a “stay down” provision for certain hosting providers that create a “particular danger” of copyright infringement. It has not been enforced since its inception in 2020, after the last notorious Swiss cyberlocker, *Uploaded*, ceased operation. Going forward, Article 39d may serve as a deterrent against similar services. However, it will require potentially intricate and lengthy pilot proceedings to become enforceable, given its vague and unclear legal requirements. The provision addresses an isolated phenomenon but does not provide an efficiently enforceable overall framework for intermediary liability.

It remains critical that the Swiss government come into compliance with the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties), WTO TRIPS Agreement, the Berne Convention, and internationally acceptable enforcement standards. Necessary minimum changes include: (1) ensuring broader liability under Swiss law for parties who facilitate, encourage, and profit from widespread infringement; (2) engaging ISPs, including access providers, in the fight against online piracy; (3) affirming that current law does not permit copying from unauthorized sources; and (4) implementing adequate civil and criminal enforcement tools.

- **Require marketplaces and strongly encourage all relevant intermediaries, including data centers and ISPs, to implement and enforce better “know-your-business-customer” (KYBC) protocols.**

The music and motion picture industries report several host and data centers based in Switzerland that provide hosting services to other ISPs, often without any review to ensure their customers do not include pirate services. Panama Connection, a Switzerland-based “bulletproof” ISP (i.e., an entity that holds itself out as not complying with rights holder notices), offered “no questions asked” hosting services and was also involved in other criminality, before it was removed by *Reseaux IP Européens* (RIPE), an entity that controls the allocation of IP addresses in Europe. Following the removal action by RIPE, the company dissolved. Some ISPs that purport to be based elsewhere, for example in Seychelles, in fact, have data centers in Switzerland.

Swiss authorities should act to ensure that these ISPs and data centers operate meaningful KYBC policies and take action to have these policies enforced. Switzerland has not adopted such practices, which have become standard elsewhere in Europe. KYBC policies for ISP hosting services are needed to prevent ISPs from providing hosting services on online platforms that facilitate infringing activity. The government should amend the Copyright Act or pass other implementing legislation to require marketplaces and strongly encourage other intermediaries, including host and data centers, to adopt and enforce such policies, which reflect the basic duty of care applicable to these businesses.

- **Further amend the Copyright Act to affirm that Switzerland's private use exception permits single copies for private use only if they derive from a legal (authorized) source, and restrict the permission for third parties to provide services for private use to prevent unlicensed commercial services affecting, or competing with, rights holders' exploitations.**

A long-standing priority of the creative industries is to narrow Switzerland's private copying exception, which is overbroad and exceeds the limits of the Berne Convention's three-step test. The exception has been interpreted to allow the making of copies of works or phonograms that come from unlawful sources. This broad private copying exception, together with the inadequate protection accorded to technological protection measures (TPMs, discussed below), constitute significant hurdles for protection against stream-ripping services that dominate the list of top music pirate services as well as other infringing services. This is because there is no remedy against private copying from illegal sources or unlicensed services, and rights holders do not have a legal basis to challenge services offering stream-ripping functionality to create such private copies. The Swiss Federal Supreme Court, in a 2019 decision, rejected an application to order one of the country's largest Internet access providers to block pirate sites, stating that although it is clear that operators of illegal streaming websites are violating the law, there is no way of connecting a Swiss Internet access provider to that infringement because the Article 19 "private use" exception to copyright (which covers any streamed or downloaded content regardless of whether it comes from an unlicensed source) means that there is no copyright infringement by the access provider's customers.³

Furthermore, the Copyright Act permits third parties to provide a broad range of commercial services to facilitate private use, including copying or reproduction, recording, and in some cases making available, with limits that are not adapted to the digital environment and have become mostly obsolete. This opens the door to unlicensed commercial services offering works, performances, and recordings on a commercial scale, competing against regular exploitation, and undercutting licensing opportunities. For instance, the Swiss Federal Arbitration Commission relies on the private copy exception to permit cable and over-the-top (OTT) providers, including major telecom corporations, to offer seven-day "catch-up" services on integral recordings of hundreds of TV programs, imposing a government-approved collective remuneration tariff for these services. This system abolishes exclusivity of audiovisual works and precludes direct licensing by rights holders, which limits their right to maximize and exclusively control these significant primary rights, including the use by the initial broadcaster, on a platform-by-platform basis. This extension of the private copy exception to these catch-up TV services undermines the exclusive making available right, and thus is inconsistent with Switzerland's international obligations, including under the WCT. As noted above, the private copy exception has also been an impediment to the assertion of rights against intermediaries, which rely on their users' private use permission.

- **Ensure narrow practical application of the extended collective licensing (ECL) regime.**

Article 43a of the 2020 Copyright Act provides for ECL, a collective licensing scheme including non-affiliated rights owners, with a case-by-case opting-out provision. Although the provision was purportedly motivated by the desire to make difficult-to-license content, such as large archive stock, more accessible, and has been applied in that area so far, the provision's scope is overly broad. This creates a risk that ECLs could be applied in areas where they undermine the enforcement and exercise of exclusive and individual licensing. The opt-out provision does not render an ECL

³ FSCD 4A_433/2018 (4A_433/2018 08.02.2019 - Schweizerisches Bundesgericht (bger.ch))

voluntary, and the language of the provision suggests that opting out must be declared for each individual license. Therefore, there is a substantial risk that ECLs applied in the online space would devalue the market value of the work, setting a tariff “norm” that could undermine exclusivity and licensing terms for rights holders who choose to opt out and exercise their exclusive rights. An initial tariff was agreed upon and became effective in 2022. In addition, requiring a rights holder to opt out to exercise exclusive rights could constitute a formality prohibited by international law, including the Berne Convention and the WTO TRIPS Agreement. In short, ECLs, even with opt-out rights, are wholly inappropriate with respect to services that are already licensed directly around the world.

The Swiss government should ensure that the ECL regime in practice applies: (1) only to uses that are onerous to license on an individual basis; (2) without impacting any other exploitations of those works; and (3) where collecting societies already represent a significant number of rights owners. In addition, opting out must be a simple and efficient process. Furthermore, the Government of Switzerland should not permit ECL-based licensing for uses of copyrighted works from unauthorized sources. In particular, the creation of a private streaming service for schools and educational institutions that would make use of thousands of DVD/Blu-Ray copies of copyrighted works, including many works owned or distributed by U.S. rights holders, from schools and libraries without authorization from rights holders raises concerns. While the operators of the streaming service have engaged in a dialogue with rights holders, the operators could ultimately try to secure an ECL or lobby for a new educational exception to avoid properly licensing these uses. The Government of Switzerland should not permit ECL-based licensing for these uses and should reject any new educational exception that would enable uses without a proper license.

- **Amend the Copyright Act to redress the unreasonable and commercially damaging statutory restrictions on rights holders’ freedom to negotiate licensing terms for the use of their respective rights.**

Article 47 of the Swiss Copyright Law severely restricts the ability of music rights holders to exercise their rights to license their music for use in broadcasting and public performance. The rights in question must be exercised collectively, and the relevant collective management organizations (CMOs) are required by statute to first agree to a joint tariff that would then be presented to users. This means that authors of musical works and sound recording rights holders (i.e., producers and performers) are compelled to agree to a joint tariff. This situation is similar in practice to a statutory imposition of a single-window licensing requirement. As such, it puts Switzerland at odds with the international standard, because the vast majority of countries do not compel such cooperation but instead leave it to the rights holders to voluntarily agree on the extent of cooperation. Even in these cases, music authors on the one hand, and music producers and performers on the other, maintain separate licensing tariffs. This unreasonable requirement leads to protracted, difficult, and costly negotiations and impairs the functioning of collective management in Switzerland. Moreover, rights holders have no option to opt out of this system as the exercise of these rights in Switzerland is subject to mandatory collective management.

In addition, Swiss law requires that representatives of users (e.g., broadcasters) be members of the CMO (Swissperform), which is entitled to license sound recording related rights for broadcasting and public performance. Accordingly, there is a conflict of interest, because both rights holders and users are members of the same CMO. This statutory requirement impairs the ability of music producers and performers to negotiate terms reflecting the economic value of their content and further compounds the restrictions on the ability of the recorded music industry rights holders to exercise their commercial rights freely.

- **End the unfair treatment of neighboring rights for sound recordings under collective rights management by modifying the 3% cap in Article 60(2) of the Copyright Act, which remains below the level of other European countries.**

Article 60(2) of the Swiss Copyright Act continues to cap the remuneration payable to owners of related rights at 3% of the licensees’ income. First, it is problematic in that remuneration is limited by statute to a given percentage of business revenues and set at such a low level. Second, the caps operate in a discriminatory way by providing 10%

for authors and 3% for sound recording rights holders (the provision is worded as granting the remuneration to performers, with income to be shared with producers). This discrimination against related rights holders leads to low revenue levels for artists and record companies. It also differs from the international norm (which does not involve such caps). Remuneration that is capped by legislation at a given percentage of business revenue is not compatible with the concept of securing licensing terms reflecting the ever-changing economic value of the content in trade. This provision also undercuts any scope for bargaining and free-market commercial negotiations. In 2010, Swissperform, the Swiss CMO for performers and producers, initiated arbitration proceedings against this cap, but in 2014 the Federal Supreme Court upheld the cap. The Court acknowledged that the remunerations for performing rights are, in fact, higher in other European countries, but decided not to intervene on the merits. Instead, the Court ruled that it is up to the Swiss legislature to set these caps based on a political assessment. Unfortunately, the legislature declined to address this issue in the recent Copyright Act amendments. This unusual and unjustified discrimination against neighboring rights owners should be ended and replaced with a fair and equitable remuneration for both performing artists and producers.⁴

- **Provide an independent broadcasting and public performance right for music producers, in line with the WPPT.**

IIPA notes that there are no independent broadcasting and public performance rights for sound recording producers under current Swiss law, as producers merely have an entitlement to receive a share of artists' remuneration. The Copyright Act should be amended to provide broadcasting and public performance rights, in line with the WPPT.

- **Revise additional provisions of the Copyright Act to ensure Switzerland provides adequate and effective copyright protection and enforcement and meets its international obligations.**

The Swiss government should revise the following additional provisions of the Copyright Act to ensure Switzerland provides adequate and effective copyright protection and enforcement and meets its international obligations.

Circumvention of Technological Protection Measures (TPMs): Swiss law allows acts of circumvention of TPMs “for the purposes of a use permitted by law” (Article 39(a)(4)). This exception is far too broad and inconsistent with Switzerland’s obligations under the WIPO Internet Treaties, which require “adequate legal protection and effective legal remedies” against circumvention of TPMs.⁵ Moreover, given the inappropriately wide scope of the private copy exception (discussed above), this exception to the circumvention of TPMs could be interpreted to permit individuals to circumvent access or copy controls that protect copyrighted content and disseminate that content widely.

Orphan works provision (Article 22b): This provision allows for compulsory licensing of orphan works, where works are considered “orphan” after “research performed with appropriate thoroughness.” The dispatch on this article produced during the legislative process troublingly noted that “this responsibility is considered fulfilled if [the users] have consulted the relevant databanks for the corresponding work category.” A better standard would be the requirement for a “diligent search,” as set out in the European Union (EU) Orphan Works Directive. A recordation requirement for rights holders to protect their works could constitute a formality prohibited by international law, including the Berne Convention and the WTO TRIPS Agreement. Also, the provision does not specify that the institution (such as a public or publicly accessible library, school, museum, collection, archive, or broadcaster) possessing the orphan work copy must be domiciled in Switzerland; it requires only that the copy is created, copied, or made available in Switzerland, including, potentially, copies made available from foreign sources. As a result, the provision could be applied to content hosted outside of Switzerland.

⁴ Moreover, as discussed above, it is inappropriate and detrimental that the government has created additional collectively managed rights in the Copyright Act without first addressing the fundamental unfairness in Switzerland’s collective management system—namely, the discrimination against neighboring rights holders. This discrimination is fundamentally contrary to the important U.S. policy of not establishing a hierarchy of rights and should be ended by modifying the cap.

⁵ See Article 11 of the WIPO Copyright Treaty (WCT) and Article 18 of the WIPO Performances and Phonograms Treaty (WPPT).

Free reproduction license for scientific research (Article 24d) and related exceptions: The license under this provision, which is meant to cover “text-and-data mining,” could exceed its intended purpose. For example, it is possible this provision could be combined with other exceptions such as the existing, unusually broad, private use exception, which can apply to commercial organizations.

Likewise, the potentially large scope of the statutory license for businesses and organizations to copy or reproduce (and in some cases, make available) works for “internal information or documentation” (Article 19(1)(c) of the Copyright Act) needs clarification and a narrow interpretation. The statutory license should exclude all uses in which such works serve as material for commercial or other offers outside the business or organization. It should also be made clear that a reproduction made under a specific statutory license may not be diverted to further use by another business or organization, which would effectively circumvent the restrictions on each such license.

Protection of photographs regardless of their “individual character” or level of creativity (Article 2, paragraph 3bis): In keeping with international norms, all types of photographs should be protected under the same standard generally applicable to other copyrightable works (e.g., music, film, literature). Under Swiss law, photographs that “do not necessarily have an individual character” are protected for just 50 years after their publication (or production). This dual standard for photographs should be eliminated and the term of protection for all copyrighted photographs should be 70 years.

- **Amend the Copyright Act and other relevant laws to enable rights holders to collect evidence to enforce rights (e.g., collection or processing of Internet protocol (IP) addresses to bring *direct* civil claims without a related criminal proceeding).**

The application of Swiss privacy law to prevent, in general, the use of IP addresses in court proceedings is disproportionate and conflicts with Article 41 of the TRIPS Agreement, which requires an effective remedy to be available against acts of copyright infringement. The ruling of the Federal Court in the *Logistep* case (1C_285/2009 and 1C_295/2009) made it practically impossible to collect IP addresses, even though such evidence is often essential for copyright enforcement purposes (in both civil and criminal cases). The Court prohibited rights holders in Switzerland from collecting IP addresses of suspected copyright infringers in order to file complaints with the police, if the procedure would involve identification of the suspect by the police and the possibility of seeking a settlement from them in advance of any criminal conviction. While this decision has been partially limited by the reforms brought about by the 2020 Copyright Act amendments, the current law still does not allow for collection or processing of this information solely to bring *direct* civil claims without a criminal proceeding.⁶

The amended Copyright Act brought a new legal basis allowing rights holders to use personal information (including IP addresses) for the purposes of filing criminal complaints. The amended law also allows the use of personal information for the purposes of civil claims, but only if such claims are raised in a criminal proceeding or afterwards. However, Swiss law still does not allow for collection or processing of this information solely to bring *direct* civil claims without a criminal proceeding. In this regard, the legal situation remains, in effect, unchanged and incompatible with international legal norms. This needlessly limits rights holders’ ability to enforce their rights, essentially forces rights holders to rely exclusively on criminal enforcement, and puts copyright holders at a disadvantage against other

⁶ The 2020 Copyright Act amendments unfortunately fell short of implementing the full Working Group on Copyright (AGUR12) compromise recommendations agreed to by rights holders. For a full description of the AGUR12 process, see prior years’ IIPA Special 301 reports, at https://iipa.org/reports/reports-by-country?country_filter=70&q=.

claimants.⁷ Additionally, criminal enforcement alone is grossly inadequate because prosecutors rarely bring criminal cases against piracy due to resource constraints and a general reluctance.⁸

MARKET ACCESS

- **Abolish or ease provisions of the Swiss Film Act that currently negatively affect the distribution of audiovisual works in Switzerland and remove broadcasting quotas.**

Film Act: Effective since 2016, a Film Act provision known as the “unique distributor clause” has been extended to all forms of exploitation, including DVD/physical home entertainment and all forms of video-on-demand (VOD)/online distribution, with the exception only of linear television (broadcasters’ ancillary on-demand rights are excepted only for seven-day catch-up). Exploitation of a film in any media in Switzerland now requires control over all language versions in Switzerland, to the extent actually exploited, in the hands of a single distributor. This is accompanied by laborious registration and reporting duties, which address foreign entities owning and exploiting rights in Switzerland. Despite a revised guideline published by the Federal Office in 2020, the provision still lacks clarity regarding the extent of “grandfathering” protection for existing contractual fragmentation of film rights: output deals made prior to 2016 lost “grandfathering” treatment as of 2019. In sum, this amendment interferes with internationally established licensing practices.

Another amendment to the Swiss Film Act, adopted in May 2022, introduced an investment obligation for non-domestic VOD services targeting the Swiss market. The 4% investment obligation is based on Swiss revenues and must be invested in Swiss filmmaking. In September 2023, the Federal Council adopted these amendments, as well as those that require compliance with a 30% European works quota. These obligations entered into force in 2024. Effective in January 2024, the revised Film Act also sets a 30% quota for European works for non-domestic VOD services targeting Switzerland.

Broadcasting Quotas: The Federal Act on Radio and Television obligates broadcasters to reserve half of their transmission time for European works, where practicable. This obligation should be removed to ensure a level playing field for U.S. audiovisual works.

- **Materially simplify all filing and reporting obligations imposed on the audiovisual industry, including under the Copyright Act and tariffs thereunder and under the Film Act.**

The Copyright Act includes a compulsory collective right to remuneration for authors and performers for exploitation of their audiovisual works on VOD online platforms. This mandatory collective remuneration scheme applies only if a film is of Swiss origin or produced in a country that provides a similar collectively enforced right of remuneration.⁹ There is also a significant risk of over-payment and liability due to this complexity. The Swiss government should materially simplify all filing and reporting obligations imposed on the audiovisual industry under this provision, as well as the provisions regarding the content quota, investment duty, and statistics required under the Film Act, discussed above.

⁷ In 2021, amendments to the ordinances of the Telecommunications Act entered into force that may create a further obstacle for anti-piracy activities because the ordinances will make it harder for rights holders to gather information about the domain name registrants and operators of infringing websites. While registrars will have to identify “holders” (i.e., registrants), (i) publication of such domain registrant’s identification and contact details in WHOIS is banned for individuals and is not an obligation even where the registrant is a legal entity; and (ii) there is no obligation for registrants to provide and update all information, which is needed for enforcement purposes. While free-of-cost access for rights holders to non-public domain registrant data is provided in principle, its quickness and effectiveness will depend on the access proceedings and the required level of substantiation, unilaterally defined by the registrar.

⁸ The Swiss government has not shown adequate ability or will to engage in effective copyright enforcement. For example, a criminal trial against the notorious cyberlocker *Cyando/Uploaded*, which facilitates rampant infringement, ended in March 2019 with the prosecutor’s announcement that it found “no real ties” to Switzerland, despite the parent company Cyando AG’s apparently blatant ties to Switzerland. Criminal prosecution in the canton Vaud against a seller and provider of Kodi Boxes connected with an unauthorized streaming and streaming link service, initiated in 2016, has not made progress for several years.

⁹ The Memorandum accompanying the adopted Copyright Act states that the Government of Switzerland anticipates to “grant” reciprocal rights to foreign authors of audiovisual works from: Argentina, Belgium, Bulgaria, France, French-speaking Canada, Italy, Luxembourg, Monaco, Poland, and Spain.

Reporting Obligations: As a result of the corresponding tariff (CT13), service providers must comply with overly complex and detailed reporting obligations on not only their catalog offerings, but also the actual demand for and usage of films—and, as of the reporting year 2024, series as well—on their services. This obligation includes detailed rules on reporting formats (including the uncommonly used ISAN (International Standard Audiovisual Number)), which creates a significant administrative burden.

SWITZERLAND'S COMPLIANCE WITH EXISTING INTERNATIONAL OBLIGATIONS

Switzerland is a member of the Berne Convention, WTO TRIPS Agreement, WCT, and WPPT. Switzerland is thereby obligated under these international agreements to provide “effective” remedies to prevent and deter infringement. For example, under Article 41(1) of the WTO TRIPS Agreement (and similarly WCT Article 14(2) and WPPT Article 23(2)), Switzerland is required to “ensure that enforcement procedures . . . are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.” Switzerland is not currently doing so, and as explained in this report, the amended Copyright Act does not bring Switzerland in line with its existing obligations. In addition, as noted above, Switzerland is not presently providing “adequate legal protection and effective legal remedies” against the circumvention of TPMs, as it is required to do under Article 11 of the WCT and Article 18 of the WPPT.

TAIWAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Taiwan be placed on the Special 301 Watch List.¹

Executive Summary: Although the Government of Taiwan took positive steps in 2019 to improve its digital marketplace for legitimate audiovisual content, including outlawing piracy devices (PDs) and apps, over the last five years Taiwan has failed to remedy other legislative deficiencies and modernize enforcement procedures. Because Taiwan has not taken these steps necessary to tackle modern piracy operations, it has become a growing target for piracy and a less attractive market for all creative industries. Online piracy has worsened. There have been some criminal enforcement leading to positive outcomes, but offshore piracy sites accessible in Taiwan still operate freely and without fear of repercussions. To stem this growing tide of piracy, the Government of Taiwan must confirm and demonstrate that existing laws provide a mechanism that ensures 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, including those hosted outside Taiwan.

Additionally, the amendments to the Copyright Act passed in May 2022 failed to address deficiencies in Taiwan's legal framework and continue to raise questions regarding Taiwan's existing international obligations. Instead, the Government of Taiwan should implement the effective relief described above and swiftly remove market access barriers negatively impacting the audiovisual sector. Taiwan should also refrain from imposing any new barriers, including those impacting over-the-top (OTT) services and intermediary platform regulations. Finally, at a minimum, Taiwan should ensure its enforcement framework and copyright legislation comply with its obligations under the WTO TRIPS Agreement, including ensuring remedies are at deterrent levels and the scope of any exceptions and limitations under its Copyright Act are narrowly tailored and specific.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Ensure criminal authorities investigate and prosecute more online piracy cases (including those involving PDs and apps under the amended Copyright Act) and seek deterrent-level punishment against commercial piracy operations.
- Confirm and demonstrate that existing laws provide a mechanism that ensures 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, including those hosted outside Taiwan.

Legal Reforms

- Enact legislation to address the gaps under the amended Copyright Act to provide effective relief for copyright infringement, including 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; provide proper incentives for ISPs; and other matters not addressed in the amendments.

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

- Ensure the adequacy of civil remedies by enhancing Article 88 of the Copyright Act to remove the restrictive language on calculating damages.
- Remove current exceptions and refrain from introducing new exceptions that are broader than the limits of the three-step test.
- Address shortcomings in amendments to the Collective Management Organization (CMO) Act.
- Comply with the requirements of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties) irrespective of formal accession.
- Ensure that any potential OTT regulations or any regulations on intermediary platforms do not disincentivize foreign investment.

Market Access

- Eliminate market access barriers to U.S. audiovisual content, including investment, the basic cable rate cap, and discriminatory television content quotas.

ENFORCEMENT

Online and mobile device piracy in Taiwan increased in 2024 while its anti-piracy framework stagnated. Both domestic and foreign-based websites, apps, and other online services that provide illegal content are an increasing problem that undermines the ability of rights holders and legitimate services to distribute copyrighted content. These sites prevent rights holders from seeing their investments reach their full potential in Taiwan. For example, the streaming site *GimyTV* remained a key piracy concern in Taiwan. *GimyTV* received over 547 million global visits between January and September 2024 from users globally and is ranked the second most popular streaming website in Taiwan.

The proliferation of PDs remains a problem in Taiwan, and enforcement against PD operators is insufficient.² For example, streaming devices that run with proprietary infringing apps enable unauthorized access to live channels and video-on-demand (VOD) content and are readily available online and in physical marketplaces. Sellers of streaming devices try to distance themselves from the installation of infringing apps by claiming that the manufacture or sale of the boxes themselves is not illegal, and it is resellers that provide a code for their customers to install infringing apps. In addition to piracy, these infringing apps expose users to malware and the risk of remote hardware hijacking.³

Further, streaming and linking sites that aggregate and index links to pirated content stored on other sites continue to make up a large amount of piracy consumption in Taiwan. Social media platforms also have now become a popular way to share pirated content either directly, or via sharing of links to such pirated content. Stream ripping, where users of legitimate online platforms use tools, such as an app or a website, to illegally “rip” the streamed audio or video content, is a growing problem that first impacted the music industry but is now beginning to affect other creative industries as well.⁴ In recent reports, the music industry cites that Taiwanese enforcement agencies take significantly fewer actions against music piracy, in part because many piracy websites are hosted outside Taiwan.

Additionally, the need for enhanced enforcement measures is now more crucial following the emergence of new means of infringement via mobile apps with built-in karaoke capability imported from China or created in Taiwan. These apps allow consumers to access and download content from a cloud database located overseas, with the app providing access to a vast amount of unauthorized karaoke audiovisual content. Right holders of such karaoke

² Piracy Devices (PDs) refer to media boxes, set-top boxes, or other devices and their corresponding apps and services. Mostly originating from China, PDs are available throughout Taiwan, including at so-called “3C” shops, and via online retailers, and facilitate unauthorized streaming of motion pictures and television content through apps that direct users to pirated content. These devices often contain, or can connect to, a hard disk to store the downloaded content and may have an SD card slot, which helps novices connect to foreign piracy sites. More than 30 different brands of such devices are now available in the marketplaces in Taiwan. Manufacturers of popular PDs in Taiwan include *Unblock Tech*, *EVPAD*, and *SVI Cloud*.

³ Watters, *Cybersecurity Risks from Illicit Streaming Devices in Taiwan*, September 14, 2024, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4986107

⁴ For example, *Backupmp3.com* received over 99% of its traffic from Taiwan in Q2 2024 with over 7 million visits to the site. Other popular stream ripping sites in the same period include *Y2mate* with 1.2m visits, and *Y2meta.com* with more than 0.7m visits.

audiovisual content in Taiwan have consequently suffered significant losses because of this issue. Given these significant and growing piracy challenges in Taiwan, IIPA and its members strongly encourage Taiwan to take the priority actions to fight piracy identified below.

- **Ensure criminal authorities investigate and prosecute more online piracy cases (including those involving PDs and apps under the amended Copyright Act) and seek deterrent-level punishment against commercial piracy operations.**

The past few years saw several criminal piracy enforcement cases conclude with meaningful penalties that were ultimately insufficient. For example, in September 2023, the Taiwan Police seized over 1000 *SVICLOUD* piracy devices and arrested seven suspects working in the piracy operation. In February 2024, after more than three years since a criminal referral was brought against the piracy service *GimyTV* in December 2020, the Taipei District Court sentenced its primary operator to 26 months in prison, the sites' programmer to 22 months, and two of its operators to 18 and 12 months. However, although *GimyTV*'s main domain *gimy.ai* and related sites such as *gimy.tube* and *gimy.is* were blocked, new domains including *gimy.video* and *gimy.cc* remain operational as of this report. Enforcement authorities have also recently been more proactive combating piracy websites when the operations have a clearer nexus to Taiwan. In April 2023, the Taoyuan District Court sentenced two operators of the piracy website *8maple* (domains including *8drama.com*; *8maple.ru*; *fenglin.to*; *eyny.tv*) to 18 months in prison and confiscated illicit gains of approximately US\$1,946,000. Unfortunately, similar enforcement efforts are not undertaken when piracy operators or operations are located overseas. The *GimyTV* and *8maple* cases have appeals pending.

While these actions and penalties should certainly be commended, especially the notable *GimyTV* verdict, the Government of Taiwan should take the following steps to improve the scale and efficiency of processes to deter the widespread and commercial-scale piracy taking place in Taiwan:

- The criminal process is lengthy, which means that piracy websites can continue operating while cases go through the courts (including appeals). This timeline should be reduced.
- Burdensome procedural requirements, which introduce unnecessary complexity and delays to an already lengthy criminal referral process, should be mitigated or removed entirely. For example, notarized and legalized powers of attorney continue to be required for the filing of each individual criminal referral and in each court, meaning the same power of attorney used in the first instance trial court is not sufficient when the same case goes on appeal.
- Enforcement authorities (including the Intellectual Property Rights (IPR) Investigation Corps in the Criminal Investigation Bureau (CIB) and the Telecommunication Police Brigade (TPB)) should further prioritize content piracy cases, including those involving PDs and apps, using the amended law to its maximum extent to seek deterrent-level punishment against commercial piracy operations.
- Taiwan should take deterrent action against persons who facilitate stream ripping (i.e., the app developer or website operator) which infringe the reproduction or making available rights and often unlawfully circumvent technological protection measures (TPMs).
- Enforcement authorities should consistently implement Articles 87 and 93 of the Copyright Act that provide a clear legal basis for enforcement against the dissemination of piracy apps and the manufacture and trafficking of PDs and piracy apps, as well as against resellers of devices that do not have piracy software or apps pre-loaded (but that are well equipped by the manufacturer or by middleware providers to install illicit software or apps), as implementation continues to be lacking and inconsistent.
- The deterrent effect of prison terms should not be dampened through suspended sentences or probation.

Unless the Government of Taiwan takes these steps to address piracy sites and services, Taiwan will continue to become an outlier in Asia, as more governments in the region (and elsewhere in the world) are taking active steps to address rampant and evolving online and mobile piracy.

- **Confirm and demonstrate that existing laws provide a mechanism that ensures 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, including those hosted outside of Taiwan.**

Taiwan's Internet users often obtain pirated content from websites located overseas. Unfortunately, Taiwan's legal framework to address overseas infringements remains inadequate. Taiwan's legal system does appear to offer mechanisms that ensure ISPs can, on a no-fault basis, impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites, upon rights holders' applications to appropriate authorities. Unfortunately, existing mechanisms appear to fall short and are both problematic and relatively untested. The *GimyTV* criminal action noted above, which resulted in an order to block certain domains, may pave the way for an approach by the Government of Taiwan to more readily take action to disable access to sites primarily engaged in piracy. One current remedy available to disable access to such sites (i) can only be initiated via a criminal process, which as noted above can be incredibly lengthy; (ii) is entirely discretionary and the duration for which access is disabled is dependent on a number of factors and may be shortened if the criminal investigation is halted; and (iii) even when implemented, access is disabled only in relation to the specific defendant domains identified, i.e., there has been to date no dynamic impact. Another mechanism—a mediated and quasi-voluntary approach—shows promise, but the main ISPs have not agreed to implement the remedy for eligible sites. In discussions between Taiwanese government officials, rights holders, and ISPs, ISPs indicated that they are generally sympathetic to the need to better address the growing illicit behavior on their platforms, but maintained the position that they will not act unless directed by the government or ordered by courts. Additionally, as discussed below, Article 87 of the Copyright Act should be amended to expressly confirm that these mechanisms can be used against foreign-based services.

LEGAL REFORMS

- **Enact legislation to address the gaps under the amended Copyright Act to provide effective relief for copyright infringement, including 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; provide proper incentives for ISPs; and other matters not addressed in the amendments.**

Taiwan has not enacted comprehensive amendments to its Copyright Act since 2013. As previously reported, in 2019, Taiwan enacted nominal amendments to Articles 87 and 93 of the Copyright Act that prohibited piracy apps and the manufacture and trafficking of PDs and piracy apps. However, revised Article 87 maintains the condition that violators must “receive benefit” from their actions. This requirement should be removed, since in some cases the “benefit” may be indirect and difficult to prove. It should be clarified that the list of acts setting out “an infringement of copyright” is non-exhaustive to allow the provision to be applied to other acts of infringement, such as stream ripping. Also, the requirement to prove the offender's knowledge that the broadcast or transmitted content infringed copyright may make this new provision unenforceable when the content is licensed to broadcast or transmit in a specific territory but then broadcasted or transmitted beyond the licensed territory. Moreover, this amendment limits rights holders' ability to take action against infringers operating outside of Taiwan, the most prevalent type of piracy impacting the Taiwanese market.

Prior IIPA submissions have detailed the flaws in the 2019 amendments.⁵ As noted, while many of the online services built on infringing activities or facilitating infringement are located outside of Taiwan, a significant amount of infringing activity still occurs within Taiwan and should create a nexus for action. ISPs in Taiwan have indicated a willingness to address the problem of flagrantly infringing websites but insist they must be ordered by a court or the government to act. It remains unclear whether the current legal framework could be interpreted to enable ISPs to do

⁵ See 2019 IIPA Taiwan Special 301 Country Report, pp. 83-84, available at <https://www.iipa.org/files/uploads/2019/02/2019SPEC301TAIWAN.pdf>.

more or whether it specifically inhibits ISPs from proactively doing so. IIPA believes the Taiwanese government should enact legislation to provide 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. It is unfortunate that no such proposals have been included as part of the copyright reform process, especially since other governments in the region, including Australia, South Korea, Singapore, India, Indonesia, and Malaysia have enacted such measures.⁶ Moreover, the 2019 amendments failed to address several other deficiencies in Taiwan's existing legal regime. Taiwan should:

- ensure the ISP liability framework incentivizes intermediaries to act against online piracy and that safe harbors apply only to passive and neutral intermediaries that do not contribute to infringing activities; such intermediaries should fulfill certain conditions, including adoption of a repeat infringer policy, with a requirement for marketplaces and encouragement for all ISPs to institute "know your business customer" (KYBC) policies; and that, upon obtaining knowledge of infringement (including a notice) or otherwise becoming aware of circumstances of which the infringement is apparent, intermediaries should promptly take steps to limit, stop, and prevent further infringement, including expeditious takedown of infringing content and other measures demonstrated effective in preventing or restraining infringement;
- classify all criminal copyright infringement, including Internet piracy, as "public crimes" (mirroring past precedent regarding CD and DVD piracy), which would be an effective deterrent and would benefit all rights holders, including those who cannot afford to pursue civil enforcement actions;
- extend the term of protection for copyrighted works, including sound recordings and audiovisual works, in line with the international trend, i.e., to 70 years after the death of the author, or in cases in which term is calculated based on publication, to the term of 95 years, but in any case, no less than 70 years;
- clarify that it is a criminal offense to engage in unauthorized camcording of motion pictures in movie theaters or of live musical performances;⁷
- correct problematic Taiwan Intellectual Property Office (TIPO) practices regarding tariff setting and tariff dispute resolution for uses managed by CMOs, as well as other collective management related issues;⁸ and
- ensure sound recordings are treated the same as literary, musical, and dramatic or choreographic works, including but not limited to providing producers and performers exclusive (rather than mere remuneration) rights for public performance and retransmissions of sound recordings.

While Taiwan passed amendments to its Copyright Act in May 2022, those amendments contained several provisions that were inconsistent with evolving international norms and raised questions regarding compliance with Taiwan's existing international obligations and should not be pursued, including the following:⁹

⁶ Europe has addressed this problem through Article 8.3 of the European Information Society Directive, which is the basis for injunctive relief against intermediaries to remove access to infringing content.

⁷ The music industry reports that infringement through camcording live concerts is increasing.

⁸ Corrections should include allowing the setting of fair market-based rates for collectively managed rights (instead of tariffs determined by the Taiwan Intellectual Property Office (TIPO)); establishing judicial dispute resolution mechanisms in lieu of the requirement to have collective management organization (CMO) tariffs reviewed, revised, and approved by TIPO; and eliminating TIPO's authority for setting a "joint royalty rate" and appointing a "single window" for collection. The 2010 amendments to the Copyright Collective Management Organization Act leave in place overbroad authority with TIPO to fix royalty rates for both the broadcast and performance of music and sound recordings and allow for delays in fixing the rate, thus interfering with the ability of rights holders to collect royalties. A detailed discussion of the shortcomings of the Act appears in previous IIPA filings.

⁹ The Copyright Amendments passed in May 2022 are part of Taiwan's effort to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) free trade agreement. The Amendments will come into force if Taiwan joins the CPTPP.

- numerous broad exceptions and limitations to protection, including fair use,¹⁰ which would call into question Taiwan's compliance with its TRIPS obligations;¹¹
 - provisions that reduce criminal liability standards (e.g., requiring participation in CMOs as a prerequisite for criminal enforcement, exempting a broad range of uses of copyright works from criminal liability, and removing the minimum prison sentence of six months for making and distributing infringing copies);¹²
 - provisions that require rights holders to file a formal complaint rather than providing *ex officio* authority for law enforcement to take action against criminal acts of infringement; and
 - provisions that fail to treat producers of sound recordings fairly by denying them exclusive rights for public performance (including where this has been "simultaneously further communicated to the public").
- **Ensure the adequacy of civil remedies by enhancing Article 88 of the Copyright Act to remove the restrictive language on calculating damages.**

Civil damages in Taiwan for copyright infringement are currently inadequate. Article 88 of the Copyright Act includes restrictive language on calculating damages and limits damages to roughly US\$31,787 in cases where actual damages cannot be clearly determined. Due to the nature of a lot of copyright piracy, actual damages cannot be clearly determined, which is why the United States has deterrent-level statutory damages. Article 88 should be enhanced by removing the limits and restrictive language. Additionally, the damage threshold is far too high and does not address goods that have a low market price. It appears that the damage threshold should be applied on a per infringement basis and reconsideration of a reasonable minimum damage threshold is needed.

- **Remove current exceptions and refrain from introducing new exceptions that are broader than the limits of the three-step test.**

Other longstanding draft copyright amendments proposed by the TIPO, which are now before the Legislative Yuan, propose many unfortunate changes that would weaken copyright protection. The draft amendments contain problematic provisions for rights holders, including a poorly defined exception that allows public presentation of works using home-style equipment for "non-recurring" and "non-profit" purposes that risks including audiovisual works released through VOD services and does not address many of the criticisms IIPA raised in comments on the previous drafts that TIPO had released for public comment. As of October 2023, most of the draft amendments remain under active consideration by the Legislative Yuan. However, in May 2022, the Legislative Yuan passed a small portion of the draft amendments focused on broader education exceptions in the Copyright Act that may result in weakened protection for copyright.

- **Address shortcomings in amendments to the CMO Act.**

In 2022, Taiwan amended its CMO Act. The Act still presents shortcomings, however, that affect the establishment of new CMOs and their governance. For example, the Act includes the obligation for half of the promoters of a new CMO to be residents in Taiwan and creates obstacles for rights holders' associations and current members of a CMO to be promoters of a new one. Moreover, the Act introduces term limits for management-level positions and

¹⁰ Article 65(1) of the draft states that all of the enumerated exceptions (Articles 44-63) are subject to fair use without any requirement that they be confined to the fair use factors outlined in Article 65(2). Article 65(2) instead appears to function as an additional "catch all" fair use exception. As a result, the draft sets out a sweeping exception regime that is largely exempt from the safeguards set out in Article 65(2), which was originally intended to confine the enumerated exceptions to the three-step test. All of these exceptions should be expressly confined to the three-step test (e.g., WTO TRIPS Article 13) to ensure compliance with Taiwan's international obligations.

¹¹ Other problematic exceptions include an exception for using "common domestic reception appliances" to publicly retransmit works that have been publicly broadcast, and a broad exception for public performance of works for "nonprofit" activities. To ensure compliance, the three-step test should be made explicitly applicable to all relevant exceptions and, where it has been removed from existing law, the "reasonable scope" limitation should be retained.

¹² The draft mandates that rights holders participate in a CMO to benefit from criminal enforcement against some infringing re-broadcasts or public communications, which impinges on the contractual freedom of creators and raises serious questions of TRIPS compliance. Parallel imports should not be decriminalized, because the government needs appropriate means to address the fact that many piratical imports are labeled as legitimate goods, which undermines Taiwan's legitimate marketplace. Also, the exemptions from criminal liability set forth in Article 37 are too broad, covering, for example, exploitation of digitized karaoke machines or jukeboxes, which contain reproductions of musical works for public performance and re-transmission.

internal controls that are difficult to apply to CMOs in which a reduced number of rights holders hold significant shares of the market.

Taiwan should consider amending the current CMO Act to address the practical issue of royalty rate setting by CMOs. Article 24(1) requires CMOs to take into account “[t]he result of consultations with the users, and the users’ suggestions,” but is effectively only reported to the copyright authority (TIPO) after a general public consultation period, rather than being open for dispute and/or review by TIPO prior to its publication. There is a need to ensure greater engagement between CMOs and their users prior to the publication of any new rates. For example, Article 24 could be amended to require TIPO review and approve any changes to CMO royalty rates rather than having them automatically take effect at the end of the 30-day announcement period.

- **Comply with the requirements of the WIPO Internet Treaties irrespective of formal accession.**

While it may be politically impossible for Taiwan to officially join the WIPO Internet Treaties, Taiwan should nonetheless adopt a legal framework that provides adequate and effective protections for the Internet age, including meeting the requirements of the treaties, which provide the global minimum standard of protection for copyrighted works online.

- **Ensure that any potential OTT regulations or any regulations on intermediary platforms do not disincentivize foreign investment.**

The National Communications Commission (NCC) continues to actively consider a draft “legal framework” for the revised Internet Audiovisual Services Act (IAVSA), which has been undergoing drafting since 2020 and is understood to still be under active consideration in 2024. The “framework” for the IAVSA would obligate foreign OTT and VOD service providers to register with the NCC, appoint a local agent, comply with a content regulation system that is potentially inconsistent with international standards, and potentially disclose sensitive commercial information. The draft also proposes local content obligations and associated penalties for noncompliance. The full revised draft of the IAVSA (based on the framework) has not been released to date.

Unfortunately, some local stakeholders have pointed to the significant problem of piracy originating outside of Taiwan (as discussed above) to advocate for local registration requirements. Local registration requirements would discriminate against legitimate services and be ineffective against the problem of illicit piracy services located outside of Taiwan that target the Taiwanese market. As noted above, there are other remedies that would effectively address this problem.

Additionally, a Digital Intermediary Services Act (DISA) put forward by the NCC, which focuses on regulating platform accountability, illegal content, transparency, and disclosing business information and service terms to protect users’ rights, was met with widespread disapproval from stakeholders and was shelved in September 2022. The issues of greatest concern were the breadth of definitions, remedies proposed with respect to certain intermediaries (particularly with respect to online content regulation), and possible disclosure of sensitive commercial information. As of December 2023, the draft remains shelved, although IIPA understands the DISA remains under active consideration.

MARKET ACCESS

- **Eliminate market access barriers to U.S. audiovisual content, including investment, the basic cable rate cap, and discriminatory television content quotas.**

The Cable Radio and Television Law limits foreign direct investment (FDI) in a domestic cable television service to 20% of the operator’s total issued shares. FDI in satellite television broadcasting services is also restricted to no more than 50%. In 1990, Taiwan set a rate cap for cable TV service of NT600 (US\$20) per month per household,

which has never been adjusted to keep up with inflation. Other restrictions on television services include a mandatory carriage requirement of 90-100 channels in the basic cable package and, for all Internet Protocol TV (IPTV) offerings above the basic level cable TV services, only *à la carte* pricing is allowed. Such investment restrictions and rigid regulations of retail cable rates by the central and local government have hindered the development of the cable TV industry, satellite operators, and content providers, resulting in at least one major channel provider announcing their exit from the market in 2023.

In January 2017, the NCC issued regulations that included significant local content requirements that limit the broadcasting of U.S. audiovisual content on terrestrial and satellite television.¹³ These discriminatory conditions limit consumer choice, undermine the growth of the pay-TV sector in Taiwan, restrict U.S. exports, and should be repealed.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

The deficiencies in Taiwan's enforcement framework outlined above—including inadequate civil remedies that do not result in deterrence and a judicial system that does not take criminal piracy cases seriously, resulting in non-deterrent criminal sentences—are inconsistent with Taiwan's obligations under the TRIPS enforcement provisions, including Articles 41, 42, and 61. Furthermore, as noted above, should Taiwan adopt certain proposed draft amendments to the Copyright Act without significant revisions, Taiwan's copyright laws will run afoul of a number of its TRIPS obligations including, in particular, those under TRIPS Article 13 on exceptions and limitations.

¹³ The Administrative Regulation for the Terrestrial TV Stations Broadcasting Local Production Programs and the Administrative Regulation for the Satellite TV Channels Broadcasting Local Production Programs require terrestrial TV stations to broadcast at least 50% of locally produced dramas between 8 pm and 10 pm and local satellite TV channels to broadcast at least 25% of locally produced children's programs between 5 pm and 7 pm and at least 25% of locally produced drama, documentaries, and variety programs between 8 pm and 10 pm. These regulations require 40% of these locally produced programs to be new productions. Furthermore, cable TV services must broadcast at least 20% of local programming.

THAILAND

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

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

Executive Summary: The Royal Thai Government continues to struggle to systematically combat piracy. While rights holders have obtained some positive results working with the Economic Crime Suppression Division of the Royal Thai Police, after initial enforcement actions, outcomes against piracy remain largely non-deterrent. More helpfully, in 2024, rights holders achieved the first-ever full website blocking orders for domain name system (DNS) blocking. Importantly, the orders are dynamic to combat domain hopping, and Internet service providers (ISPs) are all implementing the orders. However, the time needed to procure these orders remains too long due mainly to the number of reviews of evidence and the lack of a certain timeline for Ministry of Digital Economy and Society (MDES) to draft its motion for the order. Further improvements to speed the process of obtaining and quickly implementing orders obtained through the Computer Crime Act (CCA), the law that established a judicial remedy to disable access to infringing content, are needed. After officially acceding to the WIPO Copyright Treaty (WCT) in 2022, the government is now reviewing proposed amendments to the Copyright Act to meet the requirements of the WIPO Performances and Phonograms Treaty (WPPT) with the goal of joining the treaty in 2026. IIPA urges the Government of Thailand to take advantage of this opportunity and the opportunity presented by the European Union (EU)-Thai Free Trade Agreement (FTA) negotiations to make necessary improvements to Thailand's legislative and enforcement framework, including enhancing injunctive relief under the copyright law to address online infringement more effectively. The Royal Thai Government should also remove market access barriers that negatively impact the creative industries.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Ensure enforcement officials increase the number of enforcement actions against commercial-scale digital piracy services and, critically, bring criminal prosecutions through to convictions.
- Clarify the criminal prosecution process, which remains excessively lengthy and lacks transparency, against commercial-scale piracy websites and ensure cases move expeditiously to trial and result in deterrent sentences.
- Improve the speed of obtaining and implementing CCA Section 20(3) orders by shortening the timeframe from application to issuance of the orders (if necessary through amendment of regulations) and ensuring ISPs comply swiftly with orders, including dynamic orders to address “hopped” domains.
- Encourage e-commerce platforms to implement effective measures to prevent distribution of infringing physical goods, including by repeat infringers.
- Act against rogue collective management organizations (CMOs), which falsely purport to administer public performance rights, and combine this enforcement action with regulatory reforms to change the criteria for CMO registration.

Legal Reforms

- Introduce legal reforms, including further amendments to the Copyright Act, to address several critical issues (e.g., providing injunctive relief, making IP infringement non-compoundable, improving the ISP safe harbor framework, improving protections for technological protection measures (TPMs) and rights management information (RMI), combatting theatrical camcording, improving CMO registration criteria, narrowing overbroad copyright exceptions,

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

and extending the term of copyright protection) to improve Thailand's copyright protection and enforcement framework.

Market Access

- Remove market access restrictions negatively impacting the creative industries, such as foreign ownership and censorship restrictions, screen quotas, television must-carry requirements, and over-the-top (OTT)/video-on-demand (VOD) regulations.

ENFORCEMENT

Prior IIPA reports on Thailand contain a more detailed discussion of piracy and enforcement issues. This report serves only as an update to those reports and is not to be considered an exhaustive review of issues.²

- **Ensure enforcement officials increase the number of enforcement actions against commercial-scale digital piracy services and, critically, bring criminal prosecutions through to convictions.**

Both U.S. producers and distributors, as well as local Thai producers and services, are harmed by online piracy services, which specifically target Thai users with Thai-language sites.³ Streaming unauthorized content is the most popular form of piracy, whether through streaming websites, apps, piracy devices, circumvention devices or software, or even through social media. Many websites serve as portals that allow users to download apps that provide access to pirated content, including the latest theatrical run motion pictures, television content, sporting events, and live streamed pay-per-view events and concerts. Many piracy websites have become lucrative platforms for advertising gambling services, and operators often use cryptocurrency and mule accounts, which make it difficult for authorities to track payments and uncover operators' identities.

The most popular streaming sites in Thailand are home-grown and operated from within the country, including *123-hd.com* (ranked 19th in Thailand according to SimilarWeb and received 332.2 million visits from Thailand between January and November 2024), *037hdmovie.com* (ranked 69th in Thailand according to SimilarWeb and received 118.2 million visits from Thailand between January and November 2024), and *320hd.com* (ranked 211th in Thailand according to SimilarWeb and received 108.8 million visits from Thailand between January and November 2024). BitTorrent indexing and tracker sites, cyberlockers, and BBS/forums also remain problematic. The popularity of peer-to-peer (P2P) networks and domestic BitTorrent sites are also significant piracy concerns. In February 2024, the Royal Thai Police Economic Crimes Division (ECD), with support from the Alliance for Creativity and Entertainment (ACE), raided and took down *Siambit.me*, the largest torrent tracker site in Thailand with an average of 5.5 million monthly visits. However, another torrent website, *Bearbit.co* (which received 22.79 million visits from June 2024 to November 2024) quickly took its place.

In Q2 2024, the top three stream-ripping sites were *SSYouTube.com* (3.2 million visits from Thailand), *savefrom.net* (1.5 million visits), and *Y2meta.app* (1.3 million visits). Unlicensed mobile apps such as Musi are also popular. Some of these services have been subject to website blocking orders or other litigation in some jurisdictions, yet no action has been taken in Thailand. Cyberlockers such as *Mega.nz* and *4shared.com* that egregiously or primarily facilitate access to infringing materials also remain a problem in Thailand. Illegal apps on smartphones are popular among Thai users seeking to access vast amounts of pirated content either for free or at a very low cost. These include apps for downloading infringing MP3 content. Increasingly, piracy websites are using content delivery networks and cloud services, making identification of website operators and server locations very difficult.

² See, e.g., IIPA, Thailand, 2024 Special 301 Report, January 30, 2024, available at <https://www.iipa.org/files/uploads/2024/01/THAILAND-2024.pdf>.

³ Notwithstanding the expanding availability of legitimate services for music and audiovisual materials, increasing access to broadband Internet, particularly on mobile devices, has led to escalating piracy of recorded music, motion pictures, television and streaming content, video games, published materials, and broadcasts. Legitimate services in Thailand for content include iTunes, Google Play Store, Netflix, Disney+, Hotstar, Amazon Prime Video, HBO Go, Viu, WeTV, iQIYI, TrueID, Deezer, KKBox, Spotify, YouTube, and AIS, among others.

Cooperation over the past few years between industry and the Police Cyber Taskforce (PCT), the ECD, and the Department of Special Investigations (DSI) has improved, resulting in some notable enforcement actions against several large piracy sites, such as *Siambit.me*, *037hdmovie.com*, *123-hd.com*, *24-hd.com*, and *i-moviehd.com*. While the initial outcomes have been positive, including forfeiture of some domains, enforcement actions have failed to result in deterrent outcomes against the pirate operators. Further, the prosecution process is too slow, as discussed below. As a result, there have not been significant reductions in piracy or needed deterrence, and Thai-language piracy sites and services continue to operate largely with impunity, unfairly competing with legitimate rights holders.

- **Clarify the criminal prosecution process, which remains excessively lengthy and lacks transparency, against commercial-scale piracy websites and ensure cases move expeditiously to trial and result in deterrent sentences.**

Legitimate online services are harmed by the increasing threat from copyright infringing websites. It is imperative that Thai authorities prioritize and expedite the prosecution process, ensuring that pirate website operators face timely and appropriate legal ramifications. In particular, the Royal Thai Government should swiftly prosecute commercial-scale streaming piracy sites and services, including the operators of *Movies2Free.com*, *i-moviehd.com*, *123-hd.com*, *Siambit.me*, *24-hd.com*, *New-hd.com*, and *Serie-day.com*. An example of the need for a more efficient prosecution process is *Movies2free*,⁴ which was shut down by the DSI in November 2019. After the enforcement action, the DSI announced that the piracy site was one of the largest in Thailand and had been generating US\$160,000 per month in advertising revenue alone.⁵ However, five years later, the case is still with the public prosecutor and has not yet progressed to the Courts. In another example, the ECD executed a raid against the operators of *Siambit.me* in February 2024, but the seized devices are still undergoing forensic analysis almost a year later. These delays highlight the challenges in the current system, in which forensic procedures and the prosecution process can extend over several years, hindering the effectiveness of legal action against such piracy operations. A commitment to robust enforcement, timely prosecutions, and appropriate deterrent penalties are essential to curtail current levels of piracy in the country.

Criminal cases move slowly through the criminal prosecution process, with cases frequently taking multiple years. For example, in May 2024, the Central Intellectual Property and International Trade (IPIT) Court issued a verdict against the operator of *We-Play.live*, imposing a fine of 25,000 baht (~US\$700) on the operator. The case began in May 2022, and it took two years until the operator was sentenced. Sentences handed down by Thai Courts also remain woefully non-deterrent, as exemplified by the insufficient fine in the *We-Play.live* case. More needs to be done to ensure that criminal cases are resolved quickly and that the sentences are sufficient to deter further operators from engaging in this criminal enterprise.

- **Improve the speed of obtaining and implementing CCA Section 20(3) orders by shortening the timeframe from application to issuance of the orders (if necessary through amendment of regulations) and ensuring ISPs comply swiftly with orders, including dynamic orders to address “hopped” domains.**

In a significant development that dates back to 2016, the Amendment to the CCA B.E. 2550 (2007), which entered into force in 2017, added IP infringement as a predicate crime in Section 20, permitting injunctive relief against ISPs to disable access to infringing websites. This was a promising reform, and in 2024 rights holders working together achieved positive results, with the first-ever full website DNS blocking order. While the case against piracy sites *i-moviehd* and *imoviehds* took seven months from initial application to the Economic Crime Suppression Division of the Royal Thai Police until MDES obtained the orders from the Criminal Court, this was in part due to drafting and evidential issues that arose in this first DNS blocking case. The orders were quickly implemented as to the first domain and later implemented as to the “hopped” domain, resulting in a 90% reduction in piracy traffic to the site. The fact that all major ISPs in Thailand have implemented the orders is notable and positive, and search engine service providers are now

⁴ *Movies2free* was the 15th most popular site in Thailand with 34 million visits in Q3 2019.

⁵ See <https://torrentfreak.com/police-shut-down-thailands-most-popular-pirate-site-following-hollywood-request-191108/>

removing the piracy site from search results.⁶ The orders are dynamic, meaning they can apply to a case in which the operators “hop” to a new domain. The dynamic part of the order is subject to a new “instruction” issued by MDES.

Rights holders have followed up the first case with two further applications, both of which have now been lodged with the government. One sits with the Department of Intellectual Property (DIP) and the other with MDES, which has indicated that it is handling many cases (not just CCA cases) and has a rather extensive backlog. IIPA urges the government to establish stricter timelines in the “Ministerial Regulations and Notifications of the Ministry” to ensure CCA cases involving ongoing harm to copyright holders are handled more expeditiously (e.g., considering that DIP already carefully reviews applications before forwarding to MDES to draw up a motion for the order, MDES should be limited to 7-10 days to act upon an application determined by DIP to be in good order).

- **Encourage e-commerce platforms to implement effective measures to prevent distribution of infringing physical goods, including by repeat infringers.**

The distribution of infringing physical products, including counterfeit CDs and digital storage devices pre-loaded with infringing music content, remains an issue on e-commerce platforms in Thailand. According to the Thai Entertainment Content Trade Association (TECA) report, the DIP took swift action against repeated infringers by cooperating with e-commerce platform Shopee, within two days after TECA sent the report to DIP regarding music products that infringed the rights of its members. DIP has provided good support to TECA for a range of activities, including work on site blocking for stream ripping, conducting anti-piracy workshops with TECA, assisting TECA and platforms with the Memorandum of Understanding on the Protection of Intellectual Property Rights (IPR) on the Internet, and working on repeat infringer and other infringement issues. However, repeat infringers are still able to distribute infringing products on various e-commerce platforms.

E-commerce platforms should implement effective measures to prevent the distribution of infringing products on their platforms, including by repeat infringers (including, for example, “Poohstudio1999”, which manifested itself across several platforms and using several derivative names like “poohstudio1976”). Authorities should, *inter alia*, leverage the existing Memorandum of Understanding on the Protection of IPR on the Internet for meaningful action by e-commerce platforms.

- **Act against rogue CMOs and combine this enforcement action with regulatory reforms to change the criteria for CMO registration.**

The industry has seen rogue CMOs falsely assert public performance rights for outdoor screenings in Thailand on behalf of rights holders. The music industry is also concerned that many operators of restaurants, bars, shops, and other commercial establishments have been harassed by “rogue” entities, despite having obtained licenses from legitimate CMOs and paid royalties for the use of sound recordings played on their premises. A proliferation of these “rogue” entities has caused serious market disruption, directly harming music rights holders, legitimate CMOs, as well as users in Thailand. Enforcement officials should proactively act against these rogue CMOs and, as discussed below, legal reforms are also needed to effectively address this problem.

LEGAL REFORMS

- **Introduce legal reforms, including further amendments to the Copyright Act, to address several critical issues (e.g., providing injunctive relief, making IP infringement non-compoundable, improving the ISP safe harbor framework, improving protections for technological protection measures (TPMs) and rights management information (RMI), combatting theatrical camcording, improving CMO registration criteria,**

⁶ Under Section 27 of the CCA, ISPs can be subject to fines (Baht 200,000 / US\$6,400 and a further daily fine of Baht 5,000 / US\$160) until they comply with the relevant blocking order.

narrowing overbroad copyright exceptions, and extending the term of copyright protection) to improve Thailand's copyright protection and enforcement framework.

On July 13, 2022, Thailand officially acceded to the WCT, effective October 13, 2022. After amending the Copyright Act in February 2022, the Government of Thailand undertook a review of the Copyright Act and consulted on an amendment bill to meet the requirements of the WPPT, with the goal of acceding to the treaty by the end of 2026. Despite feedback from rights holders, the proposed amendments remain broadly drafted, and in some respects are not consistent with the WPPT. The draft amendments also propose removing minimum penalties in the Act, which could result in non-deterrent penalties for copyright infringement. The proposal, if enacted, could send a troubling signal that copyright infringement does not have serious adverse economic impacts on rights holders, authors, and performers. The following are critical issues with the proposed amendments to the Copyright Act that should be addressed in subsequent drafts to ensure that the Royal Thai Government achieves its stated goals of modernizing its copyright law, complying with its international obligations, and fully implementing and adhering to the WCT and WPPT (collectively, the WIPO Internet Treaties).

- **Injunctive Relief:** To improve the effectiveness of enforcement against online copyright piracy, the draft amendments should provide 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 (analogous to the CCA remedy, which applies to all IP crimes). The current FTA negotiations between the EU and the Royal Thai Kingdom present a good opportunity to agree to disciplines in this area, since the EU proposal includes language based on Article 8.3 of the Information Society Directive of the European Union, providing for the possibility of "an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right."
- **Infringement a Non-Compoundable Offense:** IIPA urges the Royal Thai Government to amend the Copyright Act to ensure that IP infringement becomes a non-compoundable state offense, thus enabling the police to act on their own initiative (i.e., *ex officio*) without any requirement of a formal complaint from rights holders. In the age of online piracy, this ability for authorities to take ownership of investigations and cases is critically important.⁷
- **Service Provider Liability Amendments:** The 2022 amendments to the Act included helpful improvements to the intermediary liability framework, including requiring an effective notice-and-takedown mechanism and repeat infringer policies. Nevertheless, further improvements are still needed. First, as noted above, in line with the text being negotiated with the EU, the government should establish the possibility of "an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right." Second, and relatedly, the law should clearly establish an initial basis for liability of online service providers for infringements carried out by third parties using their services. This secondary liability provides legal incentives for online service providers to cooperate with rights holders to deter the unauthorized storage and transmission of copyrighted materials on their services. Without a clear basis for secondary liability, safe harbors (granting exemptions for such liability) would be unnecessary. Third, the eligibility criteria for safe harbors should be clarified to ensure that appropriate repeat infringer policies are an additional condition for safe harbor eligibility rather than an exemption to liability. Finally, the eligibility criteria for safe harbors from liability should include, in addition to the notice-and-takedown requirement, a requirement for ISPs to implement other measures demonstrated effective in preventing or restraining infringement and conditions that the service provider does not have actual or constructive knowledge of the infringing content and does not receive a financial benefit directly attributable to the infringing activity.
- **TPMs:** TPMs are critical for the success of services that are providing legal content to users in Thailand today, and they need to be protected. The 2022 amendments and related implementing regulations made several

⁷ In May 2022, the Supreme Court of India held that offenses under Section 63 of the Copyright Act, 1957 are cognizable and non-bailable offences. *M/s Knit Pro International v The State of NCT of Delhi & Anr.*, CRIMINAL APPEAL NO. 807 of 2022, Sup. Ct. India, May 20, 2022. Thailand should follow India's lead on this issue to fully modernize its system and provide the tools necessary to tackle online piracy.

improvements to TPMs protections in Thailand, including prohibiting acts of circumvention of TPMs and trafficking in circumvention technologies, devices, components, and services (e.g., enabling actions against stream-ripping websites or other such services). IIPA requests the government issue further regulations or guidelines on the provisions for TPMs to clarify that service, promotion, manufacture, sale, or distribution of piracy devices and applications/software/add-ons available thereon violate TPMs protections.⁸

- **RMI:** Exceptions to protections for RMI are overly broad and should be narrowed. For example, the blanket exclusion of educational institutions, archives, libraries, and non-profit broadcasting organizations from violating the RMI protections is inappropriate and unjustified.
- **Theatrical Camcording Provision Should Be Revised:** Thailand enacted anti-camcording legislation in 2014. However, the anti-camcording provision falls short because it requires a link between the act of theatrical camcording and a copyright infringement, instead of criminalizing the camcording act itself.⁹ Criminalizing the act of camcording, including audio-only captures, without requiring a link to copyright infringement, would empower law enforcement to intercept illegal recordings before they enter the online pirate ecosystem. These provisions should be revised to ensure that the possession of an audiovisual recording device in an exhibition facility with the intent to copy or transmit a whole or part of an audiovisual work (including the video, the soundtrack, or both) is prohibited, and that exhibition facilities are given standing to bring complaints. Those engaging in the act proscribed should be subject to interdiction by cinema employees and the police, immediate seizure and forfeiture of the equipment used and any unlawful copies made, as well as civil and criminal penalties.
- **Collective Management Provisions:** The current collective management and collection system for music is unwieldy and remains unclear, with many collecting bodies operating in the market. IIPA welcomes indications from DIP that it is keen to resolve this issue. However, the DIP proposal at this stage is only to introduce a voluntary code of conduct for CMOs, which is not a sufficient response to the long-standing challenge in the Thai market. The number of CMOs now stands at 35, with 13 of them confirmed to have applied DIP's code of conduct. Although DIP intends to certify and promote these qualified CMOs, there is no policy to prevent new CMOs from registering. The Copyright Act should therefore be amended to include provisions setting out certain principal conditions for CMOs to operate in Thailand, such as complying with a code of conduct that requires good governance, transparency, fair and accurate distribution, and of course actually representing the rights holders it claims to represent. Regarding the latter point, IIPA recommends that the Copyright Act be amended to provide that an entity wishing to act as a CMO must be registered with the Ministry of Commerce, must be authorized by rights holders, and must comply with the code of conduct. Registration criteria should be fair, objective, transparent, and reasonable and include the requirement for the CMO to operate in a transparent and non-discriminatory manner and in accordance with principles of good governance. In deciding whether to grant permission to a CMO to operate (i.e., register a CMO), the Ministry should consider the number of members, as well as the size of the catalogue of titles and rights under management, and should be entitled to refuse any application for registration or revoke any registration if the CMO does not satisfy such conditions. However, the Thai government should resist proposals to create, by government dictate, a single collection body. While voluntary cooperation between CMOs can be cost-effective and beneficial for participating CMOs and rights holders, experience shows that mandatory single collection bodies lead to inefficient and unaccountable structures.¹⁰

⁸ Piracy devices include media boxes, set-top boxes, or other devices that allow users, through the use of installed piracy apps and software, to stream, download, or otherwise access unauthorized content from the Internet. Such devices are still being purchased in malls and on e-commerce websites but are rarely sold with pre-installed infringing applications, making enforcement action and takedowns more challenging.

⁹ Thailand continues to represent a potential risk for illicit theatrical camcording, particularly in relation to illegal Thai audio tracks. A large number of Thai audio files are still being made and subsequently edited onto illicit movie versions. If effectively implemented, the Copyright Act provision that deems camcording an infringement of copyright could help, but this provision should be strengthened to adequately address the problem.

¹⁰ An example of a well-functioning voluntary joint organization is MPC Music Co. in Thailand, which is a joint licensing agency formed by two collective management organizations (CMOs), Phonorights (Thailand) Co., Ltd. (PNR) (for sound recording rights) and Music Copyright (Thailand) Co. Ltd. (MCT) (for musical works rights).

- **Exception for the Visually, Hearing, Intellectually, or Learning Impaired:** Copyright Act Number 4 B.E.2561 (2018) was published in November 2018 and entered into force in March 2019. The Act permits persons with disabilities who do not have access to copyrighted work due to impairment in vision, hearing, movement, intellect or learning, or other deficiencies to have equal opportunities to other persons to access, make copies, modify, or distribute the copyrighted work. DIP has issued a Ministerial Regulation on the details of authorized or recognized entities and how such copies may be distributed. The Thai exception goes well beyond the mandate of The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, which creates a limitation and exception for the benefit of the blind, visually impaired, and otherwise print disabled. That exception is mandatory for individual WIPO members that ratify the Treaty. From the music industry's perspective, in accordance with the Marrakesh Treaty, sound recordings should not be covered by the exception at all, and in the alternative, the exception should be properly defined and restricted in scope to apply solely to specific acts regarding specific works for the benefit of specific individuals, with adequate safeguards, and with equitable remuneration payable to rights holders. This exception should be amended or implemented in such a way that it faithfully implements the Marrakesh Treaty and does not conflict with the “three-step test” of the Berne Convention, WTO TRIPS Agreement, and WIPO Internet Treaties.
- **Inadequate Term of Protection:** Thailand should extend its term of copyright protection to align it with the international trend of 70 years after the death of the author, or, in cases in which term is calculated based on publication (such as sound recordings), to at least 70 years from publication. Unfortunately, the most recent amendments to the Copyright Act did not change the term of protection, which remains at 50 years. In the case of sound recordings, there are now at least 73 countries worldwide that provide for a term of protection of 70 years or more. Thailand is encouraged to act quickly to catch up with the new international standard of protection, or risk development of the Thai music market being adversely affected. Further, if the term of protection is not extended in time, some Thai classics from the 1970s—including the classics of Soontaraporn, Suraphol Sombatcharorn, and Paiboon Buth—will fall out of copyright protection, even though they are still widely consumed by the public. This will have a negative effect on local artists' income, especially those who have retired and rely on the royalties for a living.

MARKET ACCESS

- **Remove market access restrictions negatively impacting the creative industries, such as foreign ownership and censorship restrictions, screen quotas, television must-carry requirements, and over-the-top (OTT)/video-on-demand (VOD) regulations.**

Foreign Ownership Restrictions: Foreign ownership of terrestrial broadcast networks is prohibited in Thailand. Further, rules established in 2015 require National Broadcasting and Telecommunications Commission (NBTC) approval when a television license holder seeks to either invest more than 25% directly or more than 50% indirectly in another licensed company. This rule severely limits investment and creates significant barriers to entry for U.S. companies.

Screen Quota: Section 9(5) of the Motion Picture and Video Act (MPVA) allows the Film Board to establish ratios and quotas for foreign films. If implemented, such restrictions would create new barriers and reduce consumer choice. In August 2024 the Ministry of Culture (MOC) proposed replacing the MPVA with a new Film Law; the latest draft, publicly disseminated in September 2024, helpfully removes the screen quota. IIPA strongly encourages the Thai government to remove the screen quota in the final amendments.

Censorship Restrictions: The MPVA imposes onerous classification and censorship requirements on films. Thailand should remove these onerous requirements, including the 15-day period for obtaining ratings and censorship approval, the associated high costs for film ratings, and the severe penalties for failure to comply. The proposed new

Film Law would implement self-regulation for theatrical and OTT/VOD releases, and IIPA is continuing to actively monitor the progress of this draft Law.

Television Must-Carry Requirements: Recent media reports suggest the 2012 “must carry” rules—which require that the programs aired on free-TV be broadcast on any platforms (including satellite and Internet protocol TV (IPTV)) without conditions—will finally be reversed by the NBTC. Until this is done, the regulations raise important IPR issues, precluding the ability of rights holders to enter exclusive distribution arrangements in Thailand.

OTT/VOD Regulation: Various government agencies, including the NBTC, have publicly noted their interest in regulating OTT services as recently as August 2023, including the possibility of requiring streaming operators to set up a local presence to respond to government requests around content that the government finds objectionable (a form of mandatory content moderation) as well as to “promote” local content via local content investment obligations. These regulations, if enacted, would limit consumer choice, stifle business development, and add further burdensome barriers to market entry.

Network Usage Fees: The NBTC has publicly commented on the need for content providers to pay network usage fees. Such fees, if implemented, would undermine freedom of contract and prejudice the interests of content providers operating in the market.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

Many of the deficiencies in Thailand’s enforcement framework described above—including inadequate efforts to combat piracy, burdensome and inefficient civil and criminal procedures, and inadequate and non-deterrent civil and criminal remedies—run afoul of Thailand’s obligations under the WTO TRIPS Agreement enforcement provisions, including Articles 41, 42, 45, and 61.

UNITED ARAB EMIRATES

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that the United Arab Emirates (UAE) be placed on the Watch List in 2025.¹

Executive Summary: The UAE made legislative improvements to its copyright law in 2021. However, further amendments are necessary to fully implement the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet treaties) and ensure UAE's standards for copyright protection and enforcement meet international norms and best practices. The UAE government has supported establishing a music collective management organization (CMO) since 2021, and while delays are primarily due to structural government changes, it is not for the lack of political will. The Ministry of Economy (MoE) recently took a positive step towards establishing a music CMO by registering a local entity, the Emirates Music Rights Association (EMRA), and it is anticipated that EMRA's application for a license to undertake collective management will be issued imminently. Addressing these concerns and unharmonized copyright enforcement procedures are necessary to overcome market access barriers and weaknesses in enforcement that enable diverse methods of piracy to persist and prevent local and foreign rights holders from protecting and leveraging their creative works. IIPA urges the UAE to bring its laws and practices in line with international obligations, norms, and best practices.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Encourage more transparency and effective enforcement from federal and individual emirate-level enforcement authorities.
- Engage with intermediaries through the Telecommunication and Digital Government Regulatory Authority (TDRA) and the MoE to require effective action to deter infringement.
- Ban the importation of illicit streaming devices (ISDs).
- Harmonize requirements for enforcement with international norms.

Legal Reforms

- Revise the Copyright Law to fully implement the WIPO Internet treaties.
- Amend the Copyright Law to align the term of protection for works and sound recordings with international norms.
- Address inconsistencies between Executive Regulation No. 47/2022 and international standards and best practices.
- Provide additional mechanisms that ensure Internet service providers 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.

Market Access

- Enable rights holders to establish a music CMO and permit that CMO to commence meaningful operations in the UAE, while still allowing for rights holders to license music directly.
- Clarify residency requirements for online intellectual property (IP) enforcement systems.

ENFORCEMENT

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

- **Encourage more transparency and effective enforcement from federal and individual emirate-level enforcement authorities.**

IP enforcement in the UAE continues to be a long-standing challenge. This is primarily because IP enforcement occurs at the emirate level and each of the seven emirates has three separate IP enforcement entities—a police, an economic, and a customs entity—with unharmonized and often changing procedures. For example, in 2023, the Dubai Department of Economy and Tourism (DET), formerly the Department of Economic Development, suddenly stopped accepting copyright complaints through their electronic portal. Dubai DET claims they can no longer receive these complaints and instead refers these cases to Dubai Police. This abrupt new practice and similar issues across all emirates constitute significant challenges to copyright owners attempting to enforce their rights.

There is also limited IP enforcement coordination between emirates, even though cross-emirate IP crime is common. Until recently, the UAE's federal system played little role overseeing IP enforcement across emirates and any intra-emirate IP enforcement coordination between police, economic, or customs entities or coordination between entities in different emirates required working with the Emirates IP Association (EIPA), a non-governmental organization (NGO). Procedural and coordination challenges grow when UAE's IP enforcement entities must work with other agencies, including, for example, the TDRA to order Internet service providers (ISPs) to restrict websites based on criminal offenses and the UAE's Free Trade Zones (FTZs) to assist rights holders in attempting to seize pirated content or piracy devices in these areas. Additionally, some IP enforcement agencies are not allowed to correspond with organizations outside of the UAE, such as social media service providers, FTZs, or neighboring countries' IP enforcement entities, without a court order - a particular concern given that piracy operations are often transnational and UAE's FTZs are regional transshipment hubs. However, the appointment of the UAE's first Assistant Undersecretary of IP within the UAE MoE in 2023 was a welcomed development. IIPA and its members strongly encourage the Assistant Undersecretary of IP to harmonize IP enforcement procedures and promote more reliable, accessible, and transparent IP enforcement coordination across emirates, agencies, and neighboring countries.

There have been some positive IP enforcement developments in the UAE over the past few years. For example, in 2021, the Dubai Higher Criminal Court issued a judgment against an administrator of the torrent website *arabscene.org* to block the website because it exhibited exclusively licensed TV channels without permission. In addition, the administrator, a foreign national, was fined and deported out of the country. This case is significant because the website was hosted outside the UAE, setting a strong precedent for other similar offenders. In addition, criminal courts in Abu Dhabi and Sharjah have found defendants guilty in cases relating to piracy through Internet protocol TV (IPTV) apps. Dubai's IP enforcement entities have recently collaborated with the Alliance for Creativity and Entertainment (ACE), conducting five raids in 2024 against sellers of ISDs, also referred to as IPTV set-top-boxes, in Dubai's Dragon Mart. In June 2024, the MoE and the Campeonato Nacional de Liga de Primera División, more commonly known as "La Liga," signed an MOU to launch an 'Anti-Piracy Lab' project to block websites violating IP rights. Most recently, in October 2024, the International Federation of the Phonographic Industry (IFPI) was successful in its first website blocking application, which targeted the stream ripping site *y2mate.com*, one of the most popular pirate sites in the country.

Enforcement authorities were reluctant to act against infringement for a long time, but then the Prime Minister called on officials to cooperate as much as possible with companies to encourage investment. This call was misunderstood, however, and the effect was that enforcement authorities waived or reduced fines against IP violators. For example, the Dubai DET reduced fines by up to 50%. IP rights holders would like to see this reduction applied to complainants (the brand owners) instead of infringers. Additionally, the Dubai DET's failure to inspect markets absent a complaint from copyright holders encourages infringers to trade in illicit products, including ISDs containing IPTV apps for pirating paid TV channels.

- **Engage with intermediaries through the TDRA and the MoE to require effective action to deter infringement.**

UAE ISPs normally ask rights holders to contact TDRA (the governmental body that monitors the operations of the ISPs in the UAE) for enforcement actions against IP-violating websites. TDRA investigates and may order ISPs to implement website blocks. Additionally, in 2023, the MoE, which has the authority to instruct TDRA to restrict violating websites, began accepting copyright complaints directly through its online portal.²

The government has an important role to play in promoting piracy prevention efforts and should encourage ISPs to restrict access to illegal IPTV services and intermediaries that facilitate the operation of such services, such as (i) advertisement providers and payment providers that actively and intentionally support piracy sites and services; (ii) websites that offer gift cards or redeemable vouchers to buy or refill personal accounts to illegal IPTV services; (iii) helpdesk support numbers for these illegal services; and (iv) illegal virtual private network (VPN) Internet protocol addresses dedicated to streaming content to hybrid set-top boxes. *Etisalat* and *Du*, the two primary ISPs in the UAE, cooperate with rights holders to a limited degree when responding to notice and takedown requests. These ISPs currently have special platforms on their websites for reporting IP violations, but do not publish any statistics related to the takedown rates.³ Moreover, it takes the ISPs far too long, around 10-14 days, to take down infringing content after receiving a complaint from a rights holder. The MoE and TDRA must encourage ISPs to act more expeditiously and publish take down statistics. Finally, more transparency and procedural certainty is needed regarding how the MoE and TDRA implement their existing website blocking program. Addressing these issues would greatly improve the enforcement environment in the UAE.

- **Ban the importation of ISDs.**

The use of ISDs is an ongoing concern for copyright owners in the UAE. These devices can either receive the free-to-air (FTA) channels—which is a legal act—or pirated TV channels or access pirated video-on-demand (VOD) by installing certain IPTV applications. These ISDs are known to be commonly used for notorious pirate IPTV and VOD services, such as *UKTV Abroad*, *King-iptv.net*, and *Kingiptv.org*. ISDs and the channels or content they carry are marketed, promoted, and illegally sold to consumers in high volumes through several channels in the UAE, such as door-to-door, Internet sales, social media accounts, or small retailers, such as those in Dubai's Dragon Mart. Because the device's hardware is not necessarily illegal under current law, it is often difficult to prevent the importation and sale of these devices in the UAE. However, in practice, offenders often install infringing IPTV applications on devices after importation, including within the UAEs FTZs. Since the importation of these types of hardware is subject to approval from TDRA, TDRA should coordinate more closely with the Federal Authority for Identity, Citizenship, Customs & Port Security, and individual emirate-level customs authorities to inspect these devices and seize all ISDs entering the UAE or transshipped through its FTZs.

- **Harmonize requirements for enforcement with international norms.**

Dubai DET now requests UAE copyright registration certificates before allowing rights holders to proceed with any action for copyright infringement. This requirement is a detrimental change from its old policy, which permitted a copyright infringement case to be heard if the plaintiff had a copyright registration certificate in any country that is a member of the Berne Convention, and, as applied to Berne member authors and producers, is a violation of Article 5(2) of Berne and equivalent provisions, such as Article 20 of WPPT. Such restrictions limit the power of rights holders to protect themselves from infringement and hinder their ability to thrive in the UAE market.

LEGAL REFORMS

- **Revise the Copyright Law to fully implement the WIPO Internet treaties.**

² See UAE Ministry of Economy Website, <https://id.moec.gov.ae/>.

³ The special platforms for reporting IP violations include <https://www.du.ae/surfsafely> and <https://www.etisalat.ae/en/generic/contactus-forms/web-block-unblockn.jsp>.

The Decree-Law 38 of 2021 on Copyrights and Neighboring Rights introduced several improvements to the UAE's copyright legal framework, including criminalizing the acts of electronically storing illegal copies of copyrighted works (Article 40), which should allow for actions against cyberlockers hosted in the UAE. These cyberlocker services often provide infringing content to piracy sites and services. Consistent with the WPPT, Article 18 provides producers of sound recordings with exclusive rights of reproduction, distribution, rental, and making available to the public. Further, Article 18(5) provides sound recording producers with the exclusive rights of broadcasting and communication to the public. However, to ensure that the UAE's copyright legislation is fully compliant with the WIPO Internet treaties and international copyright norms and best practices, the UAE should make the following amendments to its copyright framework:

- **Limit the scope of copyright exceptions and limitations:** Confine the exceptions and limitations outlined in Article 22 to the three-step test, including: the private copying exception, libraries and archives exception, the exception for performance of a work in meetings with family members or by students in an educational institution, and the transient and incidental copies exception.
- **Provide adequate protections for technological protection measures (TPMs) and electronic rights management information (RMI):** Article 40 provides for civil and criminal liability for “[u]nlawfully disrupting or impairing any technical protection or electronic data aiming at regulating and managing the rights prescribed by this Decree-Law” and increased penalties for repeat offenders. While this is a welcome step, to meet the obligations of the WPPT, the UAE should add provisions, including definitions for “technological protection measures” and “rights management information,” to ensure adequate protections for TPMs and RMI.⁴
- **Clarify that registration of copyright works is voluntary:** Article 4 states that “registers of the Ministry shall be considered a reference for the data of the Work and its ownership.” It should be clarified that the registration of works is voluntary and not a formal requirement, consistent with international treaties including Article 5(2) of the Berne Convention and Article 20 of the WPPT, both of which prohibit formalities on both the enjoyment and the exercise of rights.
- **Clarify the jurisdiction of the Grievances Committee for Copyrights and Neighboring Rights (Grievances Committee):** Pursuant to Article 37, the Grievances Committee—which consists of one specialized judge and two specialists—established under the MoE has jurisdiction to “adjudicate grievances filed by the interested parties against the decisions issued by the Ministry.” However, the article states that the Grievances Committee’s decisions can be challenged only before the “Competent Court,” which is defined in Article 1 as the “Federal Court of Appeal,” instead of the First Instance Courts. Article 37 should be clarified to ensure: (i) the scope of jurisdiction of the Grievances Committee is limited to disputes between a CMO and its members and/or its licensees; (ii) the Grievances Committee shall hear and determine matters referred to it expeditiously; and (iii) parties may appeal the decisions on procedural grounds to the First Instance Courts.
- **Amend the Copyright Law to align term of protection for works and sound recordings with international norms.**

UAE currently grants authors copyright protection for a period of life-plus-50 years and producers of sound recordings protection for 50 years after publication, which is substantially less time than UAE's international counterparts. UAE should increase the term of protection for works and sound recordings in Article 20 from life-plus-50 years to life-plus-70 years for works or in cases in which term is calculated based on publication, to the term of 95

⁴ See Articles 18 and 19 of the WPPT requiring “adequate legal protection and effective legal remedies” against the circumvention of technological protection measures (TPMs) and the removal or alteration of rights management information (RMI) without the permission of rights holders.

years (but in any case, no less than 70 years) and for sound recordings from 50 years to at least 70 years from the date that the recording is made or, if published, from that date, in keeping with international norms.

- **Address inconsistencies between Executive Regulation No. 47/2022 and international standards and best practices.**

While the priority is for the UAE to establish a music CMO, Executive Regulation No. 47/2022 on Implementing Federal Decree-Law No. 38/2021 contains several provisions addressing collective management that should be amended to be consistent with international standards and best practices, while still allowing for rights holders to license music directly, including:

- **Amend the definition of collective management organizations (CMOs):** Amend the definition of “collective management organizations” in Article 1 to ensure: (i) CMOs are non-profit and owned or controlled by their member rights holders (whether local or foreign), so that rights holders are able to control the exercise of their rights and to ensure that the CMOs are operating according to good standards of transparency, accountability, and governance; (ii) rights holders are able to, without restriction, determine the scope (rights, uses, repertoire, and territory) and character (exclusive or non-exclusive) of the rights mandates they give to the CMOs; (iii) CMO tariffs are determined by the CMOs in negotiation with users (or their representatives), reflecting what would be negotiated between a willing buyer and willing seller; and (iv) rights holders have fair and balanced voting powers in their CMOs that reflect the value of their rights under management.
- **Extend the time for renewal of CMO permits:** Under Article 15(6), CMO permits are renewed annually. Instead, to provide the legal certainty that justifies the substantial investment and allows for the long-term planning required to set up a CMO, permits should be renewed only every three years, at a minimum.
- **Ensure CMO members have the power to determine CMO operating costs:** Article 15(10) states that a CMO “. . . may deduct a percentage of the total funds collected in return for managing the collection and distribution of the financial remuneration for use, provided that the deduction percentage does not exceed 25% of the total amounts collected. This percentage is only for administrative expenses, and the Ministry may reduce this percentage whenever it deems so.” However, it should be up to CMO management to budget, plan, and obtain the agreement of rights holders regarding acceptable and reasonable spending at the outset. The 25% administration cost cap should be removed.
- **Clarify registration of copyrighted works is voluntary:** Article 2 on copyright registration should clarify that the registration of copyrighted works is voluntary and not a formal requirement, consistent with international obligations that prohibit formalities on both the enjoyment and the exercise of rights, including Article 5(2) of the Berne Convention and Article 20 of the WPPT. Further, the data and documents requirements for an application of registration of a copyright work in Article 2(6), particularly the requirement for “a copy of the passport or identity card of each applicant, author, and transferee” in subsection h, should be removed, because they are burdensome and interfere with the enjoyment and exercise of rights.
- **Remove formalities regarding the importation and distribution of works:** Article 5 contains burdensome requirements for the importation and distribution of copyright works, particularly that the Copyright Register “shall contain all data regarding the names of importers and distributors and the rights related therein, including the document proving their rights to import or distribute works in the country, and data relating to their activities and the authorities that authorized them to import or distribute works as set out in the Register.” Such requirements should be removed, because they are incompatible with the WIPO Internet treaties and the Berne Convention.

- **Ensure compulsory licenses for the reproduction or translation of copyright works for educational purposes are appropriately narrow:** Article 7 states, “Any person may apply to the Ministry to obtain a license to reproduce and/or translate a work protected by law, in order to meet the needs of education of all kinds and levels, or the needs of public libraries or archives, and in accordance with the conditions set forth in this Decision.” Such a broad compulsory license violates rights holders’ exclusive rights, interferes with contractual freedoms, undermines legal certainty, and is outside the scope of the three-step test governing exceptions and limitations to copyright protections. Any compulsory license for reproduction or translation should be appropriately narrow and strictly conform to the Berne Convention Appendix.⁵
- **Provide additional 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.**

To complement the existing website blocking program operated by the MoE and TDRA, legislation should introduce additional mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites (both those hosted in the UAE and those hosted in other countries but available in the UAE) on a no-fault basis, upon rights holders’ applications to appropriate authorities. Such mechanisms would help tackle piracy and support the growth of the market for copyrighted works and sound recordings in the UAE.

MARKET ACCESS

- **Enable rights holders to establish a music CMO and permit that CMO to commence meaningful operations in the UAE, while still allowing for rights holders to license music directly.**

Since 2021, the UAE has supported establishing its first music CMO. While delays since are primarily due to internal changes related to the governmental oversight of IP protection and enforcement, it is not for a lack of political will. In 2023, the local entity EMRA was registered with the UAE Ministry of Community Development (MoCD) as the first UAE music CMO. After acquiring its MoCD registration, EMRA subsequently applied to the MoE to obtain a license to provide collective management services to music rights holders. While EMRA’s application remains pending, it is anticipated the application will be granted imminently and EMRA will be issued a license to begin the collective management of music rights holders’ broadcast and public performance rights. Granting this eventual music CMO a license also will allow rights holders to continue licensing music directly.

In May 2022, IFPI and the MoE signed an MOU to work together to support local recorded music, including by creating a copyright framework that aligns with international standards and enforcing, collecting, and protecting the rights of record producers. The music industry estimates that the revenue a CMO would collect from broadcasting and public performance of music in the UAE (such as in hotels, restaurants, shops, discos, bars, dance schools, and airlines) would be in the tens of millions of U.S. dollars if the government accredited a CMO and allowed such collection. Revenue generated by CMOs through the licensing of broadcast and public performance rights is an essential element in supporting the development of local artists and in developing the UAE as a hub for music production in the region.

- **Clarify residency requirements for online IP enforcement systems.**

Copyright holders may submit complaints directly to TDRA, and in 2023, the MoE established a new online portal for receiving copyright infringement complaints. Unfortunately, it remains unclear whether the MoE and TDRA require users of their services to be UAE residents and have access to UAEPASS, a digital identity solution launched

⁵ In 2004, when the UAE joined the Berne Convention, the government availed itself of the Berne Appendix. See “Berne Convention Members,” World Intellectual Property Organization, available at https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=15.

by the UAE government, allowing residents and citizens to securely access various government services online. Uncertainty regarding this residency requirement creates burdensome obstacles for copyright owners who are not UAE residents to submit infringement complaints thereby limiting access to the market.

URUGUAY

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Uruguay be placed on the Watch List in 2025.¹

Executive Summary: In November 2023, the Uruguayan Copyright Act was amended to introduce a right to a “fair and equitable” remuneration for performers for the communication and making available to the public of phonograms and recordings of musical works on audiovisual works. The drafters of this unclear amendment did not consult rights holders in the audiovisual and music industries or the Uruguayan Copyright Council. Subsequently, the Executive Branch of the Uruguayan government published a decree (Decree) that contained additional ambiguous provisions. The Administration failed to consult with stakeholders in creating the Decree, which unfortunately imposes remuneration rights for audiovisual authors that are inconsistent with provisions of the Copyright Act. Further clarification is necessary to ensure that creative industry stakeholders are not harmed by the new law in combination with the Decree.

PRIORITY ACTION REQUESTED IN 2025

Legal Reform

- Clarify that the newly enacted performers’ making available remuneration right is not subject to compulsory collective management and that audiovisual authors’ remuneration rights are subject to individual exercise pursuant to Article 29 of the Law of 2019.

LEGAL REFORM

- Clarify that the newly enacted performers’ making available remuneration right is not subject to compulsory collective management and that audiovisual authors’ remuneration rights are subject to individual exercise pursuant to Article 29 of the Law of 2019.

In November 2023, the Uruguayan Copyright Act was amended to introduce a right to a “fair and equitable” remuneration for performers for the communication and making available to the public of phonograms and recordings of musical works on audiovisual works. The amendment’s language was unclear, and industry was concerned that the implementing regulation(s) would define the right as an unwaivable and untransferable right to an additional remuneration to be paid by digital service providers (DSP). If the right were defined this way, the local collective management organization (CMO) would be able to make a claim on behalf of performers despite any contractual agreement that the performer might have with a phonogram or audiovisual producer. Subsequently, Spotify threatened to leave the Uruguayan market. As a result, in December 2023, the Executive published the Decree, which included a provision clarifying that the remuneration described in the copyright amendment will be paid by the producer of phonograms that have signed a contract with the corresponding performer. The Decree also contained a provision establishing that platforms will not be responsible for payment of any additional remuneration to performers. The Decree also established a Commission at the Ministry of Industries, Energy and Mining to facilitate communication between producers and performers. The Commission met in January 2024 but has not made any recommendations publicly. The Decree also introduced a sweeping change in the management of existing remuneration rights for the benefit of audiovisual authors under its proposed Article 5. Under Article 29 of the Law of 2019, scriptwriters and

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

authors could assert these rights individually or via a CMO. A Decree cannot override legislation; nevertheless, the local author's CMO, *Asociación General de Autores del Uruguay* (General Association of Authors of Uruguay, AGADU), immediately seized upon the language in Article 5 of the Decree, asserting a broad entitlement to collect remuneration including for the making available rights of all audiovisual authors. This inconsistency between the Decree and the underlying Copyright Act has introduced confusion, disrupting the market for distribution of U.S. audiovisual works for which remuneration is already paid via residuals under collectively bargained agreements between U.S. producers and authors of their works.

Further clarification from the Uruguayan government confirming the rights of authors and performers to manage their remuneration rights individually is needed. Additionally, clarification is necessary to define the parties which these remuneration rights, however exercised, will be enforced against, including streaming service platforms and users. It is critical that any additional implementing regulations do not impose unwaivable mandatory collective management.

APPENDIX B

ADDITIONAL CONCERNS IN OTHER KEY FOREIGN MARKETS

APPENDIX B – ADDITIONAL CONCERNS IN OTHER KEY FOREIGN MARKETS

AUSTRALIA

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

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

BELGIUM

Belgium transposed the European Union (EU) Directive 2019/790 on copyright and related rights in the Digital Single Market (DSM Copyright Directive) and SatCab Directive³ in 2022. The existing author and performer unwaivable remuneration right was extended to the new definition of retransmission and is subject to mandatory collective rights management for cable retransmission and for direct injection when authors and performers transfer their rights to audiovisual producers. This new definition includes simultaneous/live and unabridged retransmission of television or radio programs when carried out by a party other than the broadcaster, including via satellite, digital terrestrial, Internet Protocol Television (IPTV) networks, and mobile networks. This remuneration right was introduced without consultations with stakeholders or a proper impact assessment. Additionally, it covers live retransmission if it takes place in a controlled and secure environment for authorized users. Belgium went beyond what is prescribed in the Directive by introducing another mandatory unwaivable remuneration right for performers and authors that is paid by audiovisual and music on-demand services and, unless there is a collective agreement, also is subject to mandatory collective rights management (Articles 60-62). This adds a completely unnecessary step, which will be costly and bureaucratic to administrate, to the process for remunerating artists for the use of their recordings by online streaming services. Instead of benefitting Belgian artists, it jeopardizes the future of the Belgian music sector by damaging the ability of record labels to invest in Belgian artists and the country’s wider music sector. The law entered into force in 2022 and some of its provisions are being challenged before the Belgian Constitutional Court, which recently decided to refer thirteen preliminary questions to the Court of Justice of the EU.

BULGARIA

¹ See <https://www.ag.gov.au/rights-and-protections/copyright/copyright-and-artificial-intelligence-reference-group-cairg>.

² See <https://www.ag.gov.au/sites/default/files/2024-09/AGD-Questionnaire-4-September-2024.pdf>.

³ SatCab Directive is Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organizations and retransmissions of television and radio programs, and amending Council Directive 93/83 [2019] OJL130/82.

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

GERMANY

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

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

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

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

GUATEMALA

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

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

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

HONG KONG

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

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

JAPAN

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

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

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

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

infringing activity, to take measures demonstrated effective in preventing or restraining infringement, and to implement an effective repeat infringer policy; and (iv) requiring marketplaces and encouraging all relevant intermediaries to implement “know your business customers” (KYBC) policies to ensure they keep up to date and accurate information about their customers and to allow rights holders to obtain accurate information to protect their rights against direct infringers.

KENYA

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

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

- maintaining website blocking injunctions, which are available on a preliminary basis in the Copyright Act, and clarifying the availability of mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities;
- ensuring that the collective management framework and system reflects the essential characteristics of a CMO (that they are non-profit and owned or controlled by their member rights holders) and that CMO operations are in keeping with the principles of transparency, accountability, and good governance consistent with international standards and best practices;
- rejecting any proposal to introduce a statutory licensing scheme for ring back tones, as artists and rights holders should be allowed to freely negotiate fair commercial terms for the use of their recordings on the back of strong exclusive rights and effective measures to enforce their rights;
- introducing a rate-setting standard applicable to the licensing of collectively managed rights requiring that rates reflect the economic value of the use of the rights in trade (i.e., willing buyer/willing seller standard);
- providing deterrent civil and criminal penalties to combat piracy, including applying increased penalties for second and subsequent offenses and fines and imprisonment terms for criminal offenses, including for circumvention of TPMs, distribution of devices designed to circumvent TPMs, and removal/alteration of RMI; and
- clarifying the role of the proposed Copyright Tribunal, which should include hearing and determining matters referred to the Tribunal expeditiously and fairly, and clarification that rights holders may elect to bring claims to either the Tribunal or to the Courts.

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

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

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

⁶ See Berne Convention Article 5(2).

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

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

MALAYSIA

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

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

PERU

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

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

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

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

PHILIPPINES

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

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

SINGAPORE

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

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

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

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

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

SOUTH KOREA

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

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

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

⁸ Article 16.4.7(f), United States-Singapore Free Trade Agreement (2003), available at [sfta-fulltext-corrected-040115.doc \(ustr.gov\)](#).

⁹ See Summary of Key Changes to Prescribed Exceptions in Part 6, Division 1 of the Copyright Regulations 2021, Dec. 19, 2024, available at [Summary of Key Changes to Prescribed Exceptions in Part 6 Division 1 of the Copyright Regulations 2021.pdf](#).

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

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

TURKEY

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

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

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

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

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

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

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

UNITED KINGDOM

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

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

APPENDIX C

CHART OF COUNTRIES'

SPECIAL 301 PLACEMENT (1989-2024)

&

IIPA'S 2025 SPECIAL 301 RECOMMENDATIONS

**APPENDIX C: CHART OF COUNTRIES' SPECIAL 301 PLACEMENT (1989-2024)
AND IIPA 2025 SPECIAL 301 RECOMMENDATIONS**

**IIPA 2025 SPECIAL 301 RECOMMENDATIONS AND USTR 301 PLACEMENT 2024-2008
(AS OF APRIL/MAY OF EACH YEAR)**

COUNTRY	IIPA RECOMMENDATION 2025	2024	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008
ALGERIA		WL	WL	WL	WL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	WL
ARGENTINA	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL
ARMENIA																		
AUSTRALIA																		
AUSTRIA																		
AZERBAIJAN																		
BAHAMAS																		
BAHRAIN																		
BARBADOS		WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL					
BELARUS	WL	WL	WL								WL	WL	WL	WL	WL	WL	WL	WL
BELIZ																		
BOLIVIA		WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
BRAZIL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
BRUNEI DARUSSALAM														WL	WL	WL	WL	
BULGARIA		WL	WL + OCR	OCR					WL	WL	WL	WL	WL					
CANADA	WL	WL	WL	WL	WL	WL	WL	PWL	WL	WL	WL	WL	WL	PWL	PWL	PWL	PWL	WL

COUNTRY	IIPA RECOMMENDATION 2025	2024	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008
CHILE	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL
CHINA (PRC)	PWL	PWL	PWL + 306	PWL + 306	PWL + 306	PWL + 306	PWL + 306	PWL + 306	PWL + 306	PWL + 306	PWL + 306	PWL + 306	PWL + 306	PWL + 306	PWL + 306	PWL + 306	PWL + 306	PWL + 306
COLOMBIA	WL	WL	WL	WL	WL	WL	WL	PWL + OCR	WL + OCR	WL + OCR	WL	WL	WL	WL	WL	WL	WL	WL
COSTA RICA							WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
CROATIA																		
CYPRUS																		
CZECH REPUBLIC																	WL	WL
DENMARK																		
DOMINICAN REPUBLIC			WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
ECUADOR		WL	WL	WL	WL	WL	WL	WL	WL	WL	PWL	WL	WL	WL	WL	WL	WL	WL
EGYPT		WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
EL SALVADOR													OCR					
ESTONIA																		
EUROPEAN UNION																		
FIJI																	OCR	
FINLAND												WL	WL	WL	WL	WL	WL	
GEORGIA																		
GERMANY																		
GREECE							WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
GUATEMALA		WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
HONDURAS											OCR							
HONG KONG																		

COUNTRY	IIPA RECOMMENDATION 2025	2024	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008
HUNGARY																	WL	WL
INDIA	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL + OCR	PWL	PWL	PWL	PWL	PWL	PWL
INDONESIA	PWL	PWL	PWL + GSP	PWL + GSP	PWL + GSP	PWL + GSP	PWL + GSP	PWL + GSP	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	WL
IRELAND																		
ISRAEL													WL	PWL (9/12 to WL)	PWL	Status Pend- ing	PWL + OCR	PWL+ OCR
ITALY													WL	WL	WL + OCR	WL	WL	WL
JAMAICA							WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
JAPAN																		
JORDAN																		
KAZAKHSTAN																		
KENYA																		
KUWAIT					WL	WL	PWL	PWL + OCR	PWL+ OCR	PWL	PWL	WL + OCR	WL	WL	WL	WL	WL	WL
KRYGYZ REPUBLIC																		
LATVIA																		
LEBANON					WL	WL	WL	WL	WL	WL	WL	WL	WL	WL + GSP	WL + GSP	WL + GSP	WL + GSP	WL + GSP
LITHUANIA																		
LUXEMBOURG																		

COUNTRY	IIPA RECOMMENDATION 2025	2024	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008
MACAU																		
MALAYSIA						OCR	OCR	OCR							WL	WL	WL	WL
MEXICO	PWL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
MOLDOVA																		
MOROCCO	WL																	
NAMIBIA																		
NETHERLANDS																		
NEW ZEALAND																		
NICARAGUA																		
NIGERIA	WL																	
NORWAY														WL	WL	WL	WL	WL
OMAN																		
PAKISTAN		WL	WL	WL	WL	WL	WL	WL	WL	WL+ OCR	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL
PANAMA																		
PARAGUAY		WL	WL	WL	WL	WL	WL				WL + 306 + OCR	WL + 306 + OCR	WL + 306	306	306	306	306	306
PERU		WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
PHILIPPINES													WL	WL	WL	WL + OCR	WL + OCR	WL
POLAND																	WL + OCR	WL
PORTUGAL																		

COUNTRY	IIPA RECOMMENDATION 2025	2024	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008
QATAR																		
ROMANIA					WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
RUSSIAN FEDERATION	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL + GSP	PWL + GSP	PWL + GSP	PWL + GSP	PWL + GSP
SAN MARINO																		
SAUDI ARABIA					PWL	PWL + OCR	PWL	WL									WL + OCR	WL
SERBIA AND MONTENEGRO																		
SINGAPORE																		
SLOVAK REPUBLIC																		
SLOVENIA																		
SOUTH AFRICA	PWL		GSP	GSP	GSP													
SOUTH KOREA																		WL
SPAIN										OCR	OCR	OCR	OCR		WL	WL	WL	WL
SWEDEN																		
SWITZERLAND	WL						WL	WL	WL	WL								
TAIWAN	WL																	WL (then OFF due to OCR)
TAJIKISTAN								WL	OCR	OCR	WL + OCR	WL	WL	WL	WL	WL	WL	WL
THAILAND	WL	WL	WL	WL	WL	WL	WL	WL	PWL + OCR	PWL	PWL	PWL	PWL	PWL	PWL	PWL + OCR	PWL	PWL

COUNTRY	IIPA RECOMMENDATION 2025	2024	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008
TRINIDAD & TOBAGO		WL	WL	WL	WL	WL					WL	WL	WL					
TUNISIA																		
TURKEY		WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
TURKMENISTAN		WL	WL	WL	WL	WL	WL	WL	WL	WL	WL + OCR	WL	WL	WL	WL	WL	WL	WL
UNITED ARAB EMIRATES	WL					WL	WL	WL										
UKRAINE			SUSP	SUSP	PWL + GSP	PWL + GSP	PWL + GSP	PWL + GSP	PWL + GSP	PWL	PWL		PFC + 301	PWL	WL	WL	WL	WL
URUGUAY	WL																	
UZBEKISTAN			WL	WL	WL	WL	WL + GSP	WL + GSP	WL	WL	WL	WL	WL	WL + GSP	WL + GSP	WL + GSP	WL + GSP	WL + GSP
VENEZUELA		PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL
VIETNAM	PWL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
THE WEST BANK AND GAZA																		
YEMEN																		

**USTR 301 PLACEMENT 2007-1989
(AS OF APRIL/MAY OF EACH YEAR)**

COUNTRY	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989
ALGERIA																			
ARGENTINA	PWL	PWL	PWL	PWL + DS	PWL + DS	PWL + DS	PWL + DS	PWL + DS	PWL + GSP + DS	PWL + GSP	PWL + GSP	PWL + OCR	WL + OCR	PFC	PWL + OCR	WL	WL	WL	WL
ARMENIA						WL	WL	WL											
AUSTRALIA									WL	WL	WL	WL		WL	PWL	PWL	PWL		
AUSTRIA										OO	OO								
AZERBAIJAN			WL	WL	WL	WL	WL	WL											
BAHAMAS		WL	WL	PWL	PWL	WL + OCR	OCR												
BAHRAIN										WL	WL	WL	WL						
BARBADOS																			
BELARUS	WL	WL	WL	WL	WL	WL	WL	WL	WL	OO									
BELIZE	WL	PWL	WL	WL															
BOLIVIA	WL	WL	WL	WL	WL	WL	WL	WL	WL	OO	WL	OO + OCR							
BRAZIL	WL + OCR	PWL	PWL + GSP	PWL + GSP	PWL + GSP	PWL + DS + GSP	WL + DS + GSP	WL + DS	WL		WL	WL	PWL + OCR	SM	PFC	PWL	PWL	PWL	PWL
BRUNEI																			
BULGARIA		WL	WL	WL						PWL + OCR	WL + OCR	OO + OCR	OO						
CANADA	WL	WL + OCR	WL + OCR	WL	WL	WL	WL	WL + DS	WL + DS	WL	WL + OCR	WL + DS	WL + 301	SM		WL	WL	WL	WL
CHILE	PWL	WL + OCR	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL

COUNTRY	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989
CHINA (PRC)	PWL + 306	PWL + 306	PWL + 306	306 + OCR	306	306	306	306	306	306	306	PFC	WL	PFC	WL	WL	PFC	PWL	PWL
COLOMBIA	WL	WL	WL	WL	WL	PWL	WL	WL	WL + OCR	WL + OCR	WL	WL	WL	WL	WL	WL	WL	WL	WL
COSTA RICA	WL	WL	WL	WL	WL	WL + OCR	PWL + OCR	WL	WL	WL	WL	WL	WL						
CROATIA		WL	WL	WL	WL														
CYPRUS											OO	OO	OO	WL + GSP	WL + OCR	WL	WL		
CZECH REPULIC	OCR							WL	WL + OCR	WL	OO								
DENMARK								WL + DS	WL + DS	WL + DS	WL + DS								
DOMINICAN REPUBLIC	WL	WL	WL	WL + GSP	WL	PWL	PWL	PWL + GSP	PWL	PWL	WL	OO		GSP					
ECUADOR	WL	WL	WL	WL	WL			WL	WL	PWL	PWL + OCR + DS	WL			WL	WL			
EGYPT	PWL	PWL	PWL	PWL	WL	PWL	PWL	PWL	PWL	PWL	PWL	WL	WL	WL + OCR + GSP	PWL + OCR	PWL	WL	WL	WL
EL SALVADOR								OCR				WL + OCR	WL	WL + OCR + GSP	WL	WL			
ESTONIA										OO									
EUROPEAN UNION (formerly European Community)		WL	WL + OCR	PWL + DS	PWL + DS	PWL + DS	PWL + DS	PWL + DS	PWL + DS	PWL + DS	PWL	PWL	PWL	PWL	PWL	PWL	PWL		

COUNTRY	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989
FIJI																			
FINLAND																			
GEORGIA							OCR												
GERMANY										OO	OO	OO	OO	SM		WL	WL		
GREECE						WL	WL	PWL + DS	PWL + DS	PWL + DS	PWL + OCR	PWL + OCR	PWL + OCR	WL + OCR	WL	WL	WL	WL	WL
GUATEMALA	WL	WL	WL	WL	WL	WL	WL	PWL	PWL	WL	WL	WL	WL	WL + GSP	WL	WL			
HONDURAS										WL + GSP	WL	OO	OO	SM + GSP					
HONG KONG									OCR	WL + OCR	WL + OCR	OO + OCR							
HUNGARY	WL	WL	WL	WL	WL	PWL	PWL	WL	WL	OO	OO				PWL	PWL	WL		
INDIA	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL + DS	PWL + DS	PWL	PFC	PFC	PFC	PFC	PWL	PWL
INDONESIA	WL	PWL + OCR	PWL + OCR	PWL	PWL	PWL + OCR	PWL	WL	PWL	PWL	PWL + DS	PWL + DS	WL + OCR	WL	WL	WL	WL	WL	WL
IRELAND								WL + DS	WL + DS	WL + DS	WL + DS	OO							
ISRAEL	PWL	PWL	PWL	WL + OCR	WL	PWL + OCR	PWL	PWL	PWL + OCR	PWL	WL	OO	OO	SM					
ITALY	WL	WL	WL	WL	WL	WL	WL	PWL + OCR	PWL	PWL	WL + OCR	WL + OCR	WL	WL	WL + OCR	WL	WL	WL	WL
JAMAICA	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL									
JAPAN							OCR		WL	WL	WL	PWL + DS	PWL	PWL	WL	WL	WL	WL	WL
JORDAN									WL	WL + OCR	WL	OO	OO						
KAZAKHSTAN			WL + GSP	WL + GSP	WL	WL	WL	WL		OO									

COUNTRY	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989
KENYA																			
KUWAIT	WL	WL	PWL	PWL	WL	WL	WL	WL	PWL + OCR	PWL	WL	WL	OO						
KRYGYZ REPUBLIC							OCR												
LATVIA		WL + OCR	WL	WL	WL	WL	WL	WL											
LEBANON	PWL + GSP	PWL + GSP	PWL+ GSP	PWL + GSP	PWL + GSP	PWL	PWL	WL	WL	OO	OO	OO							
LITHUANIA	WL	WL	WL	WL	WL	WL	WL + OCR	WL											
LUXEMBOURG											WL + OCR								
MACAU							WL	WL + OCR	PWL	PWL									
MALAYSIA	WL	WL	WL	WL + OCR	WL	WL	PWL + OCR	PWL	OCR									WL	WL
MEXICO	WL	WL	WL	WL	WL	OCR			WL	OO	OO	OO							PWL
MOLDOVA								WL											
NAMIBIA																			
NETHERLANDS										OO									
NEW ZEALAND						WL	WL		WL							WL	WL		
NICARAGUA										OO	OO	OO							
NIGERIA																			
NORWAY																			
OMAN								WL	WL	WL	WL	WL	OO						
PAKISTAN		WL	PWL + GSP	PWL	WL	WL	WL	WL	WL	WL	WL	WL + DS	WL	WL	WL + OCR	WL	WL	WL	WL

COUNTRY	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989
PANAMA	WL + OCR									OO	WL + OCR	OO		SM					
PARAGUAY		306	306	306	306	306	306	306	306	PFC + 301	PWL + OCR	WL + OCR	OO	SM		WL			
PERU	306	WL	WL	WL	WL	WL	WL	PWL	PWL	WL	WL	WL	WL	WL	WL	WL			
PHILIPPINES	WL	WL	PWL + OCR	PWL	PWL	PWL + OCR	PWL	WL	WL	WL	WL	WL + OCR	WL	WL	WL	PWL	WL	WL	WL
POLAND	WL	WL	WL	WL + OCR	PWL	WL + OCR	WL	PWL	WL + OCR	WL	WL	WL	WL	WL + GSP	PWL + OCR	PWL			
PORTUGAL	WL											OO + DS							WL
QATAR						WL		WL	WL	WL	OO	OO	OO						
ROMANIA		WL	WL	WL	WL	WL	WL	WL	WL	OO	OO	OO	WL						
RUSSIAN FEDERATION	WL	PWL + GSP	PWL + OCR + GSP	PWL + GSP	PWL	PWL	PWL	PWL	PWL	PWL	PWL	WL + OCR	WL	SM					
SAN MARINO	PWL + OCR + GSP										WL								
SAUDI ARABIA		WL + OCR	WL + OCR	WL	WL	WL	WL	WL	WL	WL	WL	WL + OCR	PWL + OCR	PWL	PWL	WL	WL	WL	PWL
SERBIA AND MONTENEGRO (formerly Yugoslavia)	WL																WL	WL	WL
SINGAPORE								WL	WL	WL	WL	WL	WL	SM					

COUNTRY	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989
SLOVAK REPUBLIC (formerly Slovakia)			WL	WL	WL	WL	WL												
SLOVENIA								OCR											
SOUTH AFRICA									WL + OCR	WL		OO + OCR	WL + OCR						
SOUTH KOREA		WL	WL	PWL	WL + OCR	WL	PWL	PWL + OCR	WL + OCR	WL	WL	PWL	PWL	PWL	PWL + OCR	PWL	WL	WL	PWL
SPAIN	WL							WL	WL	OO				WL	WL + OCR	WL	WL	WL	WL
SWEDEN									WL	WL + DS	WL + DS								
SWITZERLAND																			
TAIWAN		WL	WL	PWL + OCR	PWL	PWL	PWL	WL	WL			OO + OCR	WL	WL	PWL	PFC	WL	WL	PWL
TAJIKISTAN	WL	WL	WL	WL	WL	WL	WL	WL											
THAILAND	WL	WL	WL	WL	WL	WL + OCR	WL	WL	WL	WL	WL + OCR	WL + OCR	WL	PWL	PFC	PFC	PFC + 301	PWL	PWL
TRINIDAD & TOBAGO	PWL																		
TUNISIA										OO									
TURKEY		PWL	PWL	PWL	WL	WL	WL	PWL	PWL	PWL	PWL + OCR + DS	PWL + DS	PWL + OCR	PWL + GSP	PWL + OCR	PWL	WL	WL	WL
TURKMENISTAN	PWL	WL	WL	WL	WL	WL	WL	WL											
UNITED ARAB EMIRATES	WL						WL	OCR	WL	WL	WL	WL	WL + OCR	WL + OCR	WL	WL	WL		
UKRAINE		PWL + 306	PFC + GSP + OCR	PFC + GSP	PFC + GSP	PFC + GSP	PFC + 301 + GSP	PWL	PWL	WL									

COUNTRY	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989
URUGUAY	PWL		WL	WL	WL	PWL	PWL	WL	WL	OO	OO								
UZBEKISTAN		WL + GSP	WL + GSP	WL + GSP	WL	WL	WL	WL											
VENEZUELA	WL + GSP	PWL	PWL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL + OCR	WL	WL	WL	WL
VIETNAM	PWL	WL	WL	WL	WL	WL	WL	WL	WL	WL + OCR	WL	OO	OO						
THE WEST BANK AND GAZA	WL							OCR											
YEMEN										OO									

KEY:

301: 301 Investigation
 306: Section 306 Monitoring
 PFC: Priority Foreign Country
 PWL: Priority Watch List
 WL: Watch List
 OO: Other Observations (an informal listing formerly used by USTR)
 SM: Special Mention
 OCR: Out of Cycle Review to be conducted by USTR
 GSP: GSP IPR Review ongoing, except Ukraine and Indonesia where GSP IPR review initiated June 2012
 DS: Dispute Settlement