



MPA

MPA Comments Regarding the 2025 National Trade Estimate Report on Foreign Trade Barriers

Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong, Hungary, India, Indonesia, Israel, Italy, Japan, Kenya, Malaysia, Mexico, The Netherlands, New Zealand, Philippines, Poland, Russia, South Africa, South Korea, Spain, Switzerland, Taiwan, Thailand, United Kingdom, and Vietnam

October 2024



October 2024

Filed via www.regulations.gov

Laura Buffo
Chair of the Trade Policy Staff Committee
United States Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Re: MPA Response to USTR's Request for Comments on Significant Foreign Trade Barriers for the 2025 National Trade Estimate Report (Docket: USTR-2024-0015)

Dear Ms. Buffo:

The Motion Picture Association (MPA) proudly represents one of our nation's most vibrant industries – the American motion picture, television, and streaming sector. Here, at home, and around the world, our industry delivers enormous economic value, drives innovation, promotes free expression, and serves as a global ambassador for the nation's creativity and dynamism. To that end, please find in the enclosed submission our industry's observations on significant trade barriers in priority foreign markets. MPA's submission is organized by region and includes specific comments on Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong, Hungary, India, Indonesia, Israel, Italy, Japan, Kenya, Malaysia, Mexico, The Netherlands, New Zealand, Philippines, Poland, Russia, South Africa, South Korea, Spain, Switzerland, Taiwan, Thailand, UK, and Vietnam.

The American motion picture, television, and streaming industry is a major U.S. employer that supported 2.74 million jobs and US\$242 billion in total wages in 2022. Nearly 376,000 jobs were in the core business of producing, marketing, and manufacturing of motion pictures and television shows. Another nearly 550,000 jobs were engaged in the distribution of motion pictures and television shows to consumers, including people employed at movie theaters, video retail and rental operations, television broadcasters, cable companies, and online video services. The industry also supports indirect jobs in the hundreds of thousands across 122,000 businesses, most of which are small companies that do business with the industry such as caterers, dry cleaners, florists, hardware and lumber suppliers, and retailers.

In 2022, the enduring value and global appeal of U.S. entertainment earned US\$17 billion in audiovisual (AV) exports. Moreover, this industry is one of the few that consistently generates a positive balance of trade. In 2022, the services trade surplus was US\$7 billion, or 4% of the total U.S. private-sector trade surplus in services.

The U.S. motion picture industry distributes its films, television shows, and streaming content to over 130 countries. With well over half of MPA member companies' revenue earned outside the U.S. each year, MPA has a strong interest in the health and sustainability of these international markets. Accordingly, MPA greatly appreciates USTR's interest in identifying significant trade



barriers that jeopardize the growth of legitimate commerce and impair U.S. global competitiveness.

The full potential of U.S. AV exports is inhibited by a range of market access barriers. Countries around the world, developed and developing, continue to maintain restrictive content quotas, advertising restrictions, and foreign investment limitations, traditionally targeting theatrical and pay-TV distribution channels. However, such restrictions are migrating into the online space, threatening the vitality of fast-growing business segments such as video on demand (VOD) and other over-the-top services. Local content quotas, discriminatory or excessive taxes, local content investment obligations, network usage fees (such as mandatory contributions, which can be variously defined by a range of online content to connectivity providers), and related measures have the effect of stifling business development, adding a burdensome barrier to market entry, and exacerbating online piracy. Such policies ultimately curb the ability of our industry to compete fairly and limit consumers' access to legitimate content.

MPA aims to expand the legitimate market and protect our member companies' content as it flows to consumers through a variety of traditional and new distribution channels. Legitimate online services allow global audiences to enjoy creative entertainment wherever, whenever, and on whatever device they choose. Consumer demand for high-quality content is driving this global digital trade, which helps support millions of American workers and thousands of jobs overseas.

As countries increasingly propose and implement barriers to digitally enabled services, the widespread availability of MPA member content through legitimate channels is placed in jeopardy. Open, free, and reciprocal digital trade is key to our industry's ability to compete globally and to continue offering billions of consumers access to content of their choice. Addressing and dissuading our international trading partners from adopting restrictive and often discriminatory measures is not only beneficial to U.S. industry but underpins good governance practices, global rule of law, and the exchange of information and ideas.

To ensure the continued existence of a thriving, open online marketplace, it is imperative that the U.S. government encourage countries seeking to regulate digital industry to use a light-touch regulatory approach, as heavy-handed measures can pose a threat to business development and act as a market access barrier. Further impeding MPA member companies' ability to operate in many important overseas markets is the global proliferation of content and linear channel theft. The theft and illegal dissemination of content and linear channels deprives creators of millions of dollars in fair remuneration that they would otherwise use to produce new content, invest in the legal distribution of services, and to employ American workers.

In tackling the scourge of content and channel theft, a constantly evolving threat, MPA continues to forge partnerships with key stakeholders in the online ecosystem, pursuing voluntary agreements and public policies that make it easier for legitimate content and distribution services to flourish on the internet. Online enforcement efforts are complicated when intermediaries fail to take adequate steps to ensure their services are not being used to facilitate copyright infringement. Meanwhile, we have in recent years seen emerging best practices, particularly in Asia-Pacific and European markets, as governments respond to online piracy through site blocking and notice-and-stay-down systems.

I hope you find the enclosed information helpful. The MPA offers its full assistance and cooperation toward combating the theft of intellectual property, securing effective copyright



MOTION PICTURE ASSOCIATION

protection, and ensuring a competitive global marketplace, including through mutually beneficial trade relationships.

Sincerely,

A handwritten signature in black ink, appearing to read "C. H. Rivkin".

Charles H. Rivkin
Chairman & CEO, Motion Picture Association



Reporting Format

As with previous years, the MPA has focused its trade barrier submission on those countries and issues where the association and its member companies are most actively engaged. Therefore, the countries included in this year's filing are commercially significant markets or potentially commercially significant markets.

Each year, MPA works under the aegis of the International Intellectual Property Alliance (IIPA) to recommend to the U.S. government those countries' policies and practices that fail to provide adequate and effective protection of intellectual property rights. With this in mind, MPA's Trade Barriers submission highlights principal concerns with countries' intellectual property regimes and defers to the [IIPA Special 301](#) filing for a comprehensive discussion of countries' adequate and effective protection of U.S. intellectual property.



MOTION PICTURE ASSOCIATION

About the MPA

The MPA serves as the voice and advocate of the American motion picture, home video, and television industries from its offices in Los Angeles and Washington, D.C. Our members are Amazon Studios LLC, Netflix Studios, LLC, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc.

For further information about this report, contact Charlie Schonberger, Manager of Federal Affairs and Trade Policy, 1600 Eye Street, NW, Washington, DC 20006. This document is protected by copyright. It may, however, be reproduced or quoted with appropriate credit.



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AFRICA

The film, television, and streaming industries hold significant economic potential for African economies. Established film and television industries in Kenya, Nigeria, and South Africa release a multitude of productions each year, available for viewing both locally and globally via streaming and broadcasting. However, across the continent, weak intellectual property protections and deficient enforcement hinder economic growth and limit opportunities for foreign investment.

Pirated copies of movies and television programs are widely available. With growing internet speeds, online piracy is an exponentially increasing problem in Africa in addition to physically pirated goods. An important factor is the social acceptance of the sale of pirated movies; rather than an illegal act, it is perceived as a means to earn a living like any other. In addition, consumers are attracted to cheap pirated copies given their low purchasing power and their unfamiliarity with the law, as well as the lack of adequate laws or enforcement. Several services operated and run from Morocco target mainly French-speaking markets. In Gabon the television operator, SatCon Africa, continues to rebroadcast pirated materials despite sanctions from Gabonese regulators. MPA asks the U.S. government to monitor for developments and encourage Gabonese enforcement authorities to uphold the rule of law.

To spur foreign investment and better enable local creators to capitalize on their works, countries in the region should seek to update their copyright frameworks to help address both the opportunities and the challenges of today's digital marketplace, including combatting the sale of physically pirated goods as well as pirated copyrighted materials available online. As a first step, governments should be encouraged to adopt and fully implement the WIPO digital treaties. These treaties are foundational to the legal infrastructure of digital trade, providing copyright holders with the full panoply of exclusive rights for the digital marketplace, as well as protections for technological protection measures (TPMs) which enable the range of online digital services and help guard against piracy. Notably, Tunisia and Uganda have joined the WIPO treaties since 2022. Moreover, governments should invest in end user education campaigns to enhance consumers' knowledge of these laws and the dangers of accessing pirated content (e.g., users' exposure to malware that can be transmitted online or via physical goods).

Nigeria passed a copyright bill in 2023. While this law should helpfully improve online enforcement procedures, it contains several highly problematic provisions including a compulsory license for public interest that would allow the Nigerian Copyright Committee to bypass the copyright owner and authorize use of a copyrighted work to promote public interest. This provision undermines contractual freedom and is incompatible with Nigeria's Berne and WIPO Copyright Treaty obligations.

Kenya has still not fully implemented the WIPO digital treaties, though it has over the past several years indicated its intention to do so. Kenya should amend the 2020 Intellectual Property Bill to implement the treaties including through express incorporation of the three-step test, adequate and effective protections for TPMs, and ensuring that the exclusive rights of both making available, and communication to the public are clearly defined. Another piece of legislation, the 2018 Anti-Counterfeit Act, entered into force in 2023. That act includes a mandatory IP recordation system for any goods protected by IP, including copyrighted works, and implicates both importation and distribution. However, this mandatory regime creates a formality and is incompatible with the Berne



Convention.

In South Africa, the highly concerning Copyright Amendment Bill and Performers' Protection Amendment Bill passed the National Council of Provinces and the National Assembly and was sent to the President for his assent, who instead chose to refer the Bills to the Constitutional Court. These highly problematic bills have drawn strenuous objections from both domestic and foreign rights holder because they would weaken protections for creative works, undermine creators' contractual freedoms, restrict rights holders' ability to produce and operate in the South African market, and bring South Africa out of compliance with international IP norms.

The African Continental Free Trade Area has the potential to support and bolster local creators and artists across the continent by promoting robust copyright protections and effective and modern enforcement tools. Unfortunately, the IP Protocol was adopted in 2023 without transparency or prior consultation with copyright stakeholders and many rights holders are concerned that the IP Protocol may not seize its full potential to bolster Africa's creative industries.



KENYA

MARKET ACCESS ISSUES

Family Protection Bill – In 2023, the Kenyan Parliament published the Family Protection Bill which prohibits homosexuality, same-sex marriage, and "unnatural sexual acts," and criminalizes the promotion, encouragement, advocacy, or funding of such activities. The legislation imposes significant penalties on both individuals and corporate entities involved in producing, marketing, advertising, or distributing materials that endorse or promote these activities and courts may, upon conviction, suspend an entity's license for up to one year or even cancel it entirely. Furthermore, if the prohibited activities target underage audiences, the penalties increase significantly.

INTELLECTUAL PROPERTY PROTECTION

Legislation

While Kenya has indicated its intention to ratify the WIPO digital treaties, it has yet to do so.

Mandatory Recordation System – In 2023, Kenya's mandatory recordation system entered into force. The Anti-Counterfeiting Act established recordation as a requirement for the importation of goods protected by any IP rights – trademarks, patents, copyrights, designs – into Kenya. The recordation process is cumbersome, introduces additional complexities and costs, and does not offer appropriate redress mechanisms. In addition, mandatory recordation is a formality incompatible with Kenya's obligations under the Berne Convention.



SOUTH AFRICA

MARKET ACCESS ISSUES

Broadcast Quota – In 2021, the Independent Communications Authority of South Africa (ICASA) reinstated local content quotas for television. This followed ICASA’s 2020 decision to fully exempt “television broadcasting service licensees” from compliance with local television content quotas during the COVID-related National State of Disaster.

“Must Provide” Requirements – In 2019, ICASA published its draft findings on the *Inquiry into Subscription Television Broadcasting Services*. This report suggests regulatory intervention in the pay-TV market to address perceived and alleged anti-competitive conduct from dominant market players. The report’s methodology and therefore its conclusions are flawed however, as ICASA failed to consider the impact of over-the-top (OTT) media services on the market. ICASA proposes a new licensing regime that would severely impact the contractual freedoms of rights holders to license their content, undermining their exclusive rights. MPA hopes that the South African government will ensure that any regulatory interventions into the pay-TV market are informed by international best practices, current market realities, and preserve the contractual freedoms of all parties concerned, all while developing a legislative and regulatory framework that is conducive to investment and growth.

Video on Demand 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 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. Within South Africa, licenses are required to distribute audio and audiovisual (AV) content, and unless exempted, audio and AV content services must apply for either a class or individual license. The regulator has the discretion to capture international services regardless of whether their national revenue exceeds the threshold. These licenses require the disclosure of income, user/subscriber numbers, and audience information. 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 is postponed to the next legislature and it is estimated that the bill could be published by the end of 2024 or early 2025.

Online VAT – South Africa currently levies a 15% VAT on the online selling of content, including films and television programming. As of 2019, income on services provided to South African businesses by foreign businesses is also subject to VAT.

DST Proposal – In 2023 South Africa published a DWP on Audio and AV Media Services and Online Content Safety that proposed a unilateral Digital Services Tax (DST). The measure would



impose a 2% turnover tax on digital platforms operating in the AV sector or a levy to fund the production of South African AV content. Such a unilateral DST conflicts with the OECD multilateral tax convention.

INTELLECTUAL PROPERTY PROTECTION

Enforcement

South Africa lacks the tools to meaningfully enforce against online piracy. Three main enforcement deficiencies are: the inability to act against foreign infringers who do not own assets in South Africa; the lack of no-fault injunctions to stop activity that facilitates piracy; and the lack of statutory and punitive damages for infringing parties. However, we are encouraged by the DCDT's proposal to introduce a site blocking and delisting mechanism under the Electronic Communications and Transactions Act (2002).

Legislation

Copyright Amendments – The Copyright Amendment Bill and the Performers' Protection Amendment Bill contain several concerning provisions that would introduce legal uncertainty on key issues, weaken protections for creative works, and impose severe limitations on contractual freedom, further deterring foreign investment in the film and television production industry. Moreover, multiple aspects of the provisions would place South Africa in violation of international copyright norms, and the bills' online enforcement remedies are inadequate. South Africa's creative industries have overwhelmingly and consistently opposed these bills since their initial adoption by South Africa's Parliament in 2019. In February 2024, the National Assembly adopted the bills, which were then sent to the President, who in October 2024 referred to the Constitutional Court.

The Cybercrimes Act – The Cybercrimes Act (CBA), No. 19 of 2020, was signed by the President in 2021, though only certain sections have entered into force. The CBA defines an Electronic Communication and Service Provider (ESCP) very broadly and imposes an obligation on ESCPs to report cyber offenses within 72 hours of becoming aware of them – failing to do so makes them liable to a fine – as well as extensive data retention requirements. The government should continue to consult on the scope and impact of the law.

The Films and Publications Amendment Act No. 19 of 2019 (FPAA) – The FPAA entered into force in 2022 expanding the Film and Publication Board's (FPB) mandate to that of a content regulator. This means that the FPB now has the authority to issue, renew, and revoke licenses for commercial online content distribution and to adjudicate consumers' content complaints. It is encouraging that the FPAA enables the FPB to accredit foreign classification systems and allows distributors to self-classify. However, the FPB is advancing proposals to vastly increase the current "per content title tariff cap" and to implement a new tariff which would dramatically increase annual license fees, potentially discouraging increased online content distribution in South Africa.

Indigenous Knowledge Act No. 6 of 2019 – The Government invited public comments on draft regulations to implement the Protection, Promotion, Development and Management of Indigenous Knowledge Act No. 6 of 2019 (IK Act) in 2023. Questions remain around how it would be practically implementable and key problematic areas remain unaddressed, most notably in respect of the registration process, the possibility to lodge oppositions to registrations, the impact on



existing IP laws and rights, and whether it applies to pre-existing works. The penalties are completely disproportionate and do not provide meaningful guidance on what would constitute infringement. Such uncertainty could discourage and disincentivize the commercial use of certain works in South Africa. The Department of Science and Innovation has yet to respond to stakeholder submissions filed in 2023. MPA encourages further engagement and consultation on the IK Act and draft regulations.



ASIA-PACIFIC

The Asia Pacific region's dynamic markets continue to present significant growth opportunities for MPA members. However, too often, the full potential of these markets is hindered by market access restrictions and/or inadequate copyright protection and enforcement.

Market access barriers for the region's theatrical, television, and streaming industries take several forms, including content quotas, foreign investment limitations, and dubbing and advertising restrictions. Local screen and content quotas applied to theatrical and/or pay-TV businesses in Australia, China, Indonesia, Malaysia, South Korea, Taiwan, and Vietnam limit consumer choice and often contribute to piracy by restricting the licensed supply of content; further detailed in the South Korean market in the *Policy + The Rise of K-Content* research report. Further, foreign ownership and investment restrictions, including those in effect in China, India, Malaysia, Philippines, Taiwan, Thailand, and Vietnam, limit U.S. industry's contribution to the growth of local creative economies. Advertising, dubbing restrictions and burdensome censorship requirements throughout the region make it more difficult for U.S. companies to monetize and distribute content.

Governments in the region have applied content quotas and other restrictive regulations to traditional distribution channels for decades and have proposed such restrictions for the online over-the-top (OTT)/video on demand (VOD) marketplace. The application of these restrictions to the OTT/VOD marketplace will limit consumer choice, stifle business development, and add a burdensome barrier to market entry in this fast-growing segment. Some governments in the region – such as the Australian government – are considering mandating that VOD services invest in local content, which would contravene Australia's bilateral trade obligations to the U.S. Other governments in the region – including the governments of Indonesia, Taiwan, Thailand, and Vietnam – are either considering or have already implemented local presence requirements. Furthermore, the governments of India and Indonesia have repeatedly expressed reservations about making the WTO e-commerce moratorium permanent, which would disrupt the global consensus on not imposing duties on electronic transmissions and inject uncertainty and instability into the online marketplace, including for OTT/VOD services.

MPA strongly opposes the imposition of network usage fees on content service providers. Such fees, currently under consideration by South Korea's 22nd National Assembly, would undermine freedom of contract, prejudice the interests of content providers operating in the market, and violate Korea's bilateral trade obligations to the U.S. Thailand's National Broadcasting and Telecommunications Commission has also expressed interest in imposing such fees on content providers. Additionally, there have been calls to establish a network usage fee by some Indian internet service providers and Australian telcos.

Tax is also a challenge in the region. The entertainment tax in Malaysia and the Indian Local Body Taxes on theater admissions, which are above and beyond the Federal Goods and Services Tax, have resulted in ticket price disparities, limiting the growth of the theatrical industry in those markets.

Censorship regimes of some Asia-Pacific economies, such as China, remain opaque, unpredictable, and slow, often resulting in *de facto* discrimination against foreign content. MPA encourages countries using such regimes to shift to industry self-regulation and classification based on



international best practices. Countries should provide clear guidelines for self-classification, and these guidelines should be transparent and consistent, establish an expeditious process, and ensure equal treatment of all content regardless of origin.

In addition to market access issues, intellectual property theft is a constantly evolving threat to MPA's member companies in the Asia-Pacific region, particularly given the rapid proliferation of operators of pirate online streaming and pirate Internet Protocol Television services, as well as "Piracy-as-a-Service" (PaaS) offerings from Asia-Pacific based operators. PaaS constitutes a suite of 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 development of PaaS services is just one example of the scale, sophistication, and profitability of modern online commercial copyright infringement. The emergence and development of PaaS services have become a key concern of the motion picture industry and a top priority for its anti-piracy efforts.

Another related and major problem is the proliferation of illicit streaming devices (ISDs) and apps, sold by resellers in physical marketplaces and online through e-commerce platforms, often misleading consumers into thinking their offerings are legitimate. ISDs and apps offer unauthorized access to dozens of pay-TV channels or streaming services, large volumes of on-demand movies and television series, and/or live streaming events that are made available without authorization. Because there may not always be indication on the devices themselves that the manufacturers had an unlawful purpose in making them, other criteria (such as the way they are marketed by distributors and resellers) is often the key to addressing this problem. Copyright and enforcement laws in some markets are often not well equipped enough to tackle these devices and apps. Malaysia, Singapore, and Taiwan have helpfully outlawed the manufacture of and trafficking in ISDs and related apps. However, continued collaboration among rights holders, governments, and other stakeholders in the online ecosystem will be necessary to address this growing regional problem. MPA supports efforts by APEC economies to discuss and address this persistent challenge.

MPA urges governments in the region to enact effective laws and regulations to protect copyrighted content on the internet, consistent with international treaties, regional agreements, and bilateral trade agreement IP chapters. The 1996 WIPO Internet Treaties include a robust "communication to the public," and "making available" right for online transmissions, as well as prohibitions against the act of trafficking in devices used for the circumvention of tools that protect copyrighted works in the online market. To this end, MPA encourages Thailand to fully implement these important protections for copyrighted works. India has acceded to the WIPO Copyright Treaty and should fully implement the treaty, notably by strengthening protections against circumvention of access and copy control technological protection measures.

In addition, Asia Pacific governments should ensure that their legal framework is updated to effectively ensure against online piracy. Laws should include provisions designed to encourage meaningful removal of piracy listings and content by intermediaries participating in, and profiting from, the use of their online services to locate pirated materials. Payment processors and online advertising services should do their part by restricting money flows and advertising revenues to piracy services, which would deplete their sources of income; other intermediaries, such as domain name registrars and registries, alternative DNS services, and reverse proxies, should take



responsibility for pirates using their services to operate.

Site blocking, often through no-fault injunctive relief, is an established best practice to reduce online copyright infringement. This highly effective anti-piracy tool allows governments to disable access to copyright infringing websites, thereby reducing piracy site visits, and increasing access to legal services. Countries employ different methods based on the statutory authority, including judicial injunctive relief and administrative orders. This remedy has been proven in the region to reduce piracy visitation of up to 99% to the sites in which access has been disabled and is also shown through economic studies to increase legal consumption by up to 8%. In addition, in recent years, search engines have agreed to remove piracy domains from their search results, which has led to a 25% bonus in decreasing piracy visitation to sites when compared with site blocking alone.

With the rise and increasingly wide usage of generative AI technologies, certain markets, notably Japan and Singapore, have passed expansive text and data mining (TDM) exceptions in their copyright laws. These exceptions allow use of online data (including from copyrighted works) to train AI datasets, including both commercial and non-commercial uses, in an overly broad manner (i.e., inconsistent with the three-step test). Japan has provided some helpful clarity on its position around lawful access of copyrighted works with respect to its TDM exception. Singapore should similarly provide clarity around the scope of its provision and provide rights holders the capacity to opt-out in an effective and non-burdensome manner.

The global norm for the term of copyright is 70 years after the death of the last surviving author, and 70 years for subject matter in which term is determined from date of publication. More than 90 countries throughout the world have adopted terms of protection in this range. As countries throughout the region look to bolster their creative industries, attract foreign direct investment, and avoid discriminatory treatment of their own works, they should extend their terms of protection in line with international best practice. Indonesia, Malaysia, New Zealand, Philippines, Taiwan, Thailand, and Vietnam should extend their terms of protection in accordance with global norms.

Recognizing the strong links between organized crime and copyright infringement throughout the region, MPA appreciates U.S. government's efforts to secure copyright infringement as a predicate offense under organized crime laws or money laundering laws. The Budapest Cybercrime Convention should be ratified throughout the region, offering tools such as asset forfeiture as well as information sharing to assist civil case preparation. Australia, Japan, the Philippines, and Sri Lanka are parties to the convention and New Zealand and South Korea are observers.

Some Asia Pacific markets, including South Korea and the Philippines, are considering proposals that would legislate or implement statutory additional remuneration rights in copyright law for authors, directors, performers, and screenwriters. Such proposals would create considerable uncertainty around individual market compensation practices and future costs, curtail freedom of contract, and have a potentially significant chilling effect on investment in the screen sector, leading to negative outcomes for consumers (including harming the diversity of content and higher prices for end-users). South Korea and the Philippines should avoid further consideration of such problematic provisions in their proposed revisions of copyright laws.

Illicit camcording is no longer the issue that it used to be in the Asia-Pacific region, although it remains problematic in certain markets. In 2011, APEC Members agreed on *Best Practices* that encourage the enactment of effective policies and laws to address camcorder piracy, including



legislation that criminalizes unauthorized camcording in theaters and encourages cooperation among cinema owners to detect and remove those engaged in this highly damaging activity. Implementation of these APEC recommendations would continue to help many of these markets curb illicit camcording in the region.

Pay-TV piracy, a longtime challenge, is now often interconnected with other forms of online piracy in the region. Some illegal websites now specialize in the unauthorized online retransmission of a slate of television channels through pirate web portals. Increasingly, many rights holders face the theft of their live broadcast's signals, including live sporting events. Laws should be updated to address this new threat.

U.S. FTAs with Australia, Singapore, and South Korea have provided an important means to enhance intellectual property rights protection with key Asia-Pacific trading partners. These agreements have historically tended to eliminate burdensome market access barriers, benefitting both U.S. industry and the local creative economy. Further, these binding and enforceable agreements have been essential to warding off harmful policy proposals and ensuring that U.S. companies continue to be able to enjoy a fair and level playing field. MPA takes note of the strong intellectual property disciplines codified in trade agreements forged by New Zealand with the government of the United Kingdom and separately with the EU, including novel but important provisions on no-fault "injunctive relief" against third parties over whose services infringement occurs. MPA strongly supports the negotiation of trade agreements that improve the protection and enforcement of copyright, augment market access, and foster a healthy online marketplace for copyright materials.



AUSTRALIA

MARKET ACCESS ISSUES

Broadcast Quota – Under Section 9 of the Australian Broadcasting Authority’s Content Standards, and as reaffirmed in the 2016 Broadcasting Services Standard, 55% of all free-to-air television programming broadcast between 6:00 a.m. and midnight must be of Australian origin. In addition, under Section 102 of the Broadcasting Services Amendment Act, pay television channels that include more than 50% drama programs in their schedules are required to spend 10% of their total drama programming expenditures on new Australian/New Zealand programs. Although the U.S.-Australia FTA capped broadcast quotas for analog TV at the existing 55% level, and capped sub-quotas at existing levels, these limitations still pose a barrier to market entry. Moreover, Australia reserved the right to extend these quotas to digital broadcast TV, though the obligation can apply to no more than three multiplexed channels of any current broadcaster.

Over-The-Top/VOD Local Content Obligations – 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. Such a mandate would be violative of Australia’s FTA commitments to the United States. As of September 2024, 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.

Network Usage Fees – Australian telco Optus has publicly urged digital platforms to make a “fair contribution” to telecommunication capacity and costs. Such a contribution, if mandated, would restrict trade and freedom of contract.

INTELLECTUAL PROPERTY PROTECTION

Enforcement

Australia has developed excellent tools to fight online piracy, including effective laws allowing for no-fault injunctive relief for internet service providers (ISPs) to disable access to piracy services, and online search engine providers to remove pirate domains from their search results. Rights holders have succeeded in obtaining dozens of court orders directing ISPs to disable access to thousands of piracy domains, resulting in significant reductions of visits to pirate sites, by upwards of in the 95% range, and increases in visits to legitimate VOD services, of anywhere from 5-8% as a causal result of such court orders. Australian courts have now also ordered the disabling of access to numerous notorious pirate brands and to content delivery services like pirate cyberlockers. The efficacy of this approach is evident in the migration of heavy piracy users to legal paid VOD services and the voluntary cooperation of online search engine providers to delist



piracy sites from their search results.

Legislation

Copyright –The Albanese Government has identified five areas for possible copyright reform: orphan works, remote and online learning, a quotation exception, a possible extension of the educational statutory license to certain online content, and the copyright implications of artificial intelligence. The Attorney-General’s Department convened a series of Copyright Roundtables with stakeholders in 2023 to discuss these areas and continues work on potential reforms.



CHINA

MARKET ACCESS ISSUES

Import Quotas/Revenue Share – Notwithstanding China’s commitment under the 2012 U.S.-China Film MOU to permit an additional 14 “enhanced format” foreign revenue-sharing films into its market annually, and despite their majority-domestic film market share, China still maintains an official quota of 34 foreign revenue-sharing films per year. Furthermore, China committed that in 2017 the country would make a meaningful increase in compensation, as the current 25% U.S. share of revenue is far below comparable markets and the international norm. Also, in practice, distributors are deducting ticket distribution fees before calculating the U.S. studio share, reducing the actual allocation to less than 25% of revenue. To date, a new MOU has yet to be concluded.

Government Film Importation and Distribution Monopoly – The China Film Administration (CFA), which formed in 2018 and replaced the State Administration of Press, Publication, Radio, Film and TV (SAPPRFT), still permits only one film importer and two distributors of foreign films, both of which are state-owned companies: China Film Group and HuaXia Film Distribution Company Ltd. While China affirmed in the Film MOU that any properly licensed Chinese enterprise may distribute imported films, CFA has yet to approve any new private distributors. CFA and China Film Group also determine the release dates and length of theatrical runs of foreign films, often restricting the ability of U.S. producers to obtain the full commercial value of films.

Blackout Periods During Peak Seasons – In order to prevent competition against domestic films released during peak movie-going periods, the Chinese government has historically implemented a “blackout” during which no new foreign imported films may be released. Such blackouts typically occur either during national, school, and summer holidays, or coincide with political events. Restricting the release of new foreign imported titles during peak season and preventing titles from releasing in China day-and-date with the rest of the world drives down theatrical revenues and contributes to increased unauthorized consumption with consumers visiting piracy websites and services for foreign blockbuster titles. While it is encouraging to see a few foreign titles releasing day-and-date during peak season in 2023, this remains an exception rather than a norm. Foreign producers, including U.S. producers, should have the freedom to select release dates.

Screen Quota – Under State Council regulations, public screening of foreign films must not exceed one-third of total annual screen time.

Film Development Fund – In 2016, the former SAPPRFT issued a notice allowing the refund of a percentage of the Film Development Fund collections to cinemas that report favorable annual box office receipts from the screening of Chinese films. Under the notice, if 66% or more of a cinema’s total annual gross box office comes from Chinese films, that cinema will receive a 50% refund of the money paid toward the Film Fund for Chinese films. This refund incentivizes cinemas to screen more Chinese domestic films, further disadvantaging foreign films’ ability to compete in the Chinese market.

Online Video Restrictions – The Chinese Government has issued several regulations that further restrict the online media space. Websites and video on demand (VOD) operators must obtain permits and limit online distribution of foreign content to 30%. The 30% foreign content cap is



further limited by country and genre, so effectively, U.S. content is restricted to around 10-13% in real market terms. The content review process allows only two windows each year for online distributors to submit content for registration and censorship review and restricts content review by provincial authorities. Further, it requires foreign TV series to be submitted as complete seasons, compared with the global market practice of per-episode submissions. Before submission, it also requires foreign titles already premiered in the home country to have a rating score of more than 6 out of 10 on the online rating website Douban or IMDb. These rules have substantially reduced the number of U.S. film and TV programs licensed in China and have resulted in delays in the availability of film and TV series, effectively curtailing day-and-date releases; the lack of availability can exacerbate piracy because piracy services are not hampered by delays. China's online video policies increasingly create uncertainties and barriers and have disrupted the growth of and access to the country's online video market.

Censorship – The CFA and the National Radio and Television Administration (NRTA), their local branches at the provincial level, and Chinese Central Television perform various censorship functions related to film, video, television, and online content. Piracy websites and services freely and easily move unauthorized content into the market with no censorship concerns or delays. China should consider the adoption of an age-based classification system that would help the growing Chinese film industry's integration into the international classification system and eliminate the advantage uncensored pirate content has over legitimate market players. China should also shorten the content review process to provide certainty of release, increase frequency of content review windows, remove the burden of resubmitting film and TV programs that have already been approved, and establish a fast-track system for content review under special circumstances. A transparent, predictable, and expeditious content review process would reduce barriers to entry and attract investment. In 2022, the NRTA issued a new system of administrative licensing for domestic online audiovisual (AV) works, essentially applying the same rules and standards already in place for censorship of theatrical and online content. This reflects a further tightening of government oversight for online AV works and the push for a higher standard of censorship for the online content industry in China.

In 2023, the revised Anti-Espionage Law, first introduced in 2014, came into effect. The revisions significantly broaden the scope of what constitutes “espionage” and gives 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. This broadened definition potentially raises uncertainties even under friendly collaborations.

Foreign Investment Restrictions – China maintains a prohibition on foreign investment in film importation, distribution, and production companies, despite the pledge by the Chinese Government, as part of their Five-Year Plan on Economic Development (aimed at attracting foreign investment), to widen market access and promote fair competition. China also prohibits foreign investment in pay-TV/online audio-visual program services and television, including in



television production companies. Foreign investment partnerships are also prohibited in online video platforms. China’s 2024 Negative Investment List, which will take effect in November 2024, failed to relax these investment restrictions. Such foreign investment restrictions limit the ability of U.S. content creators and distributors to compete in China’s AV market.

Television Quotas – If the proposed 2018 administrative provision on the importation and dissemination of foreign AV programs on broadcast television is passed, it will replace the 2004 regulations and raise the limits on foreign TV and film programming from 25 to 30% of total airtime and maintain the ban on foreign programming during prime time between 7:00 pm and 10:00 pm. Currently, foreign TV series are generally limited to 50 episodes per year. China restricts foreign animation to no more than 40% of total airtime and importers of foreign animation must produce a like amount of domestic animation. Furthermore, foreign content on pay-TV cannot exceed 30% of daily programming on a domestic pay-TV channel. China further prohibits the retransmission of the entirety of a foreign channel on pay-TV other than in hotels with a three-star or higher rating. China should remove or relax these provisions and proposals in NRTA’s ongoing implementation plans.

Local Printing/Duplication Requirement – China continues to require that digital film “prints” be replicated in local laboratories. This scenario impedes U.S. rights holders’ ability to control the print quality and to trace sources of camcording piracy.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Illegal downloading and streaming of MPA member company films remains a serious concern in China. The National Copyright Administration of China (NCAC) has initiated special enforcement campaigns every year since 2005. However, rights holders would welcome increased transparency and clarity regarding the progress of enforcement efforts against targets referred to in the NCAC campaign. Furthermore, the NCAC’s administrative sanctions are not enough to deter persistent piracy through websites, apps, and related services. Piracy over cloud storage services (or cyberlockers), such as *Baidu Wangpan*, remains prevalent with links to unauthorized content disseminated through popular Chinese social media platforms, piracy linking sites, and e-commerce platforms. A recent decision against *Baidu Wangpan* is a promising development for rights holders, as the service was held secondarily liable for not ensuring “stay down” of infringing content notified to it. Nonetheless, damages were lowered to a non-deterrent amount, a common issue in civil litigation in China, and *Baidu Wangpan* was not required to remove the infringing content from its servers. More needs to be done so that such services will assist rights holders more effectively in the fight against piracy. China’s authorities should also continue to focus on infringing websites, illicit streaming devices (ISDs), and apps – including the facilitation of infringing content being distributed on social media and cloud storage platforms – which threaten the continued growth of legitimate business. Enforcement against unauthorized content made available through social media and e-commerce platforms is also challenging, with many such platforms imposing burdensome and onerous procedural and documentary requirements. Such requirements, coupled with the voluminous number of listings and slow processing of complaints, create practical difficulties for rights holders in removing such unauthorized listings.

ISDs and Apps – China is a leading source for the manufacture and trafficking/export of devices that permit the installation of third-party, pre-loaded, or post-purchase infringing applications. This



illegal business practice allows consumers to easily access pirated content, even when the devices and therefore the infringing activity is geo-blocked in China itself. Many of the illegal Internet Protocol Television services advertised to customers worldwide are bundled or pre-loaded on devices originating from China and the Chinese companies and individuals facilitating such activities should be held to account. Because of China's enforcement deficiencies, rights holders are deterred from bringing action against pirate services in Chinese courts, especially when they are geo-blocked in China but are causing widespread harm outside of China. In addition, enforcement against pirate apps is a challenge, due to their availability on various third-party app stores. These stores are not as amenable to intermediary outreach efforts by rights holders, when compared with more reputable app repositories.

Mini-VOD Cinemas and Chains – The continued existence of unregulated “mini-VOD” locations that show unauthorized AV content continues to cause significant problems in China. Despite regulations on mini-VOD cinemas and chains which entered into force in 2018, thousands of these entities are still operating in different cities across China without proper licenses and are routinely screening U.S. content without authorization. During a 2019 Chinese government crackdown, four illegal theatrical camcording syndicates were uncovered, and subsequent criminal investigations revealed that most illegal camcorder copies were destined for mini-VOD theaters. In 2019, CFA clarified that mini-VOD cinemas and chains are classified as entertainment premises and licensing is based on screening rights (not online VOD rights). Rather than trying to legitimize the operations of these facilities, China should penalize or shut down these businesses if they are found to have violated the Copyright Law.

Furthermore, when Chinese entities contract for the rights to distribute film and television titles in various home video formats, the differentiation between rights for home use or public use is often ignored. As a result, U.S. content is frequently used for unauthorized public performances. For example, some Chinese pay-TV operators or digital licensees distribute U.S. content to hotels for public viewing without permission.

Enforcement

Criminal enforcement efforts have seen some improvement in the past couple of years, although cases can be burdened by evidentiary requirements such as the imposition of thresholds demanding large numbers of infringed titles. Examples from the past year include a criminal prosecution which led to a conviction in China over a notorious piracy website targeting Japanese users called *B9Good*, and criminal prosecutions against a subscription-style websites *Shenlan* and *Coco*.

Civil litigations are brought more often against major Chinese piracy services. Damages in these cases, however, tend to be relatively non-deterrent and the lack of broad injunctive relief leaves these services operating with damages and lawsuits simply the cost of doing business.

In an ongoing effort to combat piracy, China has been operating its annual “Sword Net” anti-piracy campaign for over 19 years. While the campaign has produced some good results in the past (such as the YYETS, DiYiDan, and other criminal referrals), there is a need for greater transparency, including providing rights holders with timely and detailed information regarding the process and the results of administrative action, and more consistent treatment of actioned cases instead of varied results across provinces. Furthermore, the NCAC appears to decline 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.

The 2024 anti-piracy campaign will focus on AV works, theatrical films, and short videos, among other types of content. It will also aim to regulate copyright compliance of browsers, search engines, and cloud storage services. While China has stated its intention to increase administrative enforcement efforts, penalties remain low, and unless the source of the piracy can be definitively established in China, deterrence has been difficult to achieve. In the meantime, rights holders have continued to take steps to protect their rights in China where possible, including through civil litigation and voluntary outreach with e-commerce platforms.

Legislation

Strengthening the Protection of Intellectual Property Rights – In 2019, the Chinese government released a set of guidelines that set out enforcement goals, including agreeing to reduce criminal thresholds, applying punitive damages for intentional copyright infringement with serious circumstance, and providing a mechanism to disable access to infringing websites. The government has passed several regulations, guidelines, opinions, and judicial interpretations, many of which touch on important enforcement and judicial functions (including, e.g., increasing criminal penalties, preservation orders, and calculation of damages in internet piracy cases). The government should continue to ensure effective implementation of legislative and enforcement measures.

Copyright Law amendments entered into force in 2021, introducing several general enforcement improvements, including by increasing maximum statutory damages and creating stronger presumptions against infringement defendants. China should speed up the revision and promulgation of “Implementing Regulations of the Copyright Law”, in accordance with the Copyright Law amendment. Meanwhile, judicial documents (including new legal interpretations and procedural guidelines) from the Supreme People’s Court coming into force from 2020-22 also improve the position of rights holders generally by clarifying, strengthening, and/or streamlining the application of copyright and other IP laws with respect to civil and criminal enforcement actions brought in Chinese courts.

China should also eliminate the distinction between crimes of entities and individuals. A draft judicial interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate released in 2023 for public comments eliminated the distinction between entities and individuals, and we look forward to the final version entering into force. China should also criminalize internet offenses that may lack a demonstrable profit motive but nonetheless damage rights holders on a commercial scale; more fairly balance criminal liability with the greater harms caused by online piracy by lowering the 500-title threshold for internet piracy such that a single episode in a television/VOD series is counted as one title; and extend the term of protection in line with the global norm. The government should also make the act of illegal camcording in cinemas subject to civil, administrative, and criminal remedies.

E-Commerce Law – In 2018, the Standing Committee of the National People’s Congress passed the final version of the China E-Commerce Law that took effect in 2019, providing a broad legal framework to regulate China’s fast-growing e-commerce sector. The new Law applies to online transactions of physical goods and/or provision of services. The required standard of knowledge for a platform operator to act is that the platform “knows or should know” that the good is infringing. It



is critical that the new E-Commerce Law supports rights holder action to prevent the illegal trafficking of piracy and circumvention devices on e-commerce platforms.

In 2020, the State Administration of Market Regulation (SAMR) issued a Guiding Opinion on strengthening regulatory standards and compliance of online live marketing practices, including compliance with the E-commerce Law, to protect consumer rights against infringing activities. In 2021, the SAMR proposed a draft amendment to the E-Commerce Law for public comments, which allowed the revocation of platforms' licenses if they fail to take necessary measures against vendors that are found to have infringed intellectual property rights. China should include unauthorized online broadcasting of movies, TV dramas, TV programming, sports events, other audio-visual works, and sale of audio-visual products and/or provision of services that enable unauthorized access to copyrighted audio-visual works as part of the scope of illegal activities of online marketing practices.



HONG KONG

INTELLECTUAL PROPERTY PROTECTION

Enforcement

Internet Piracy – Illegal streaming websites and the easy availability of illicit streaming devices (ISDs) in physical marketplaces remain concerns in Hong Kong. Due to the absence of case law interpreting the improved amendments to the Copyright Ordinance, copyright holders face uncertainty in obtaining effective civil relief in relation to illegal video streaming on online platforms. The government is also not particularly willing to engage in criminal enforcement of intellectual property crimes, specifically the sales of ISDs.

Legislation

In 2022, the Hong Kong Special Administrative Region Government amended and updated its Copyright Ordinance, including improvements to combat online infringement. MPA urges the HKSAR Government to continue its efforts to strengthen copyright protections.

Censorship – In 2021, Hong Kong amended and published its film censorship guidelines under the Film Censorship Ordinance (Cap. 392). This was followed by legislative amendments to the Ordinance which came into effect in 2021. The revised guidelines have an expanded scope to include censorship of films based on “national security grounds” under the HKSAR National Security Law. The uncertainty regarding the interpretation of the revised guidelines is a concern for international film exhibition in Hong Kong.

TDM Exception – In July 2024, the Hong Kong Intellectual Property Department asked for public consultation on Copyright and Artificial Intelligence, including a proposed text and data mining (TDM) exception. If the Hong Kong Government were to proceed with a new TDM exception, it must contain safeguards for rights holders including lawful access, the ability to opt-out in an effective and non-burdensome manner, and clear copyright transparency provisions.



INDIA

MARKET ACCESS ISSUES

Broadcast Regulations – The Indian government 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 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 competitive ability to attract foreign direct investment (FDI) in the sector.

Foreign Ownership Restrictions – 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 over-the-top (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.

Network Usage Fees – Internet service providers (ISPs) in India have publicly called for content providers to pay them a network usage fee. The final Telecommunications Act does not expressly include content providers (e.g. OTT/video on demand [VOD] service providers) within its scope, leaving the commercial relationship between content providers and ISPs to market dynamics. However, ISPs and trusted service providers continue to call for network usage fees and TRAI's intervention in the OTT market even though such proposals would restrict trade and freedom of contract.

Taxes – In 2017, India rolled out a national unified Goods and Services Tax (GST). Cinema tickets are subject to a GST rate of 12-18%, depending on ticket price. However, Local Body Entertainment Taxes (LBETs) collected by state governments were left out of the GST, prompting state governments (Tamil Nadu, and Kerala) to tax entertainment products (including cinema tickets) over and above the 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. In September 2024, despite local industry opposition, the state of Karnataka approved a 1- 2% cess on all movie tickets and OTT/VOD subscriptions on top of the GST. The state should avoid double taxation and subsume all local taxes into the national GST system.

Customs Duties on Electronic Transmissions – The Government of India has repeatedly expressed reservations about renewing the WTO e-commerce moratorium. This places India out of step with regional and international best practices. The imposition of duties on electronic transmissions would stifle the growth of India's expansive market for creative digital content and related services and raise prices for consumers.



INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Internet piracy is widely regarded as the greatest threat to the growth of the film and television industry in India. The scale of internet piracy in India is very large, with some of the world’s most egregious cyberlockers, streaming, and torrent sites being controlled and operated from within India.

Camcording Piracy – Unauthorized theatrical camcording of films is an ongoing challenge for rights holders in India, and criminal referrals against suspects have unfortunately not resulted in meaningful steps to deter such activities. The 2023 amendment to the Cinematograph Act should help with enforcement.

Enforcement

India remains one of the world’s most challenging major economies with respect to the protection and enforcement of IP, in no small part due to the absence of a centralized and nationally coordinated enforcement department, with enforcement instead being carried out by state-level police officials. Intellectual property crimes remain a low priority for national and state enforcement agencies.

The Telangana Intellectual Property Crime Unit, which launched in 2016, has not been as active recently. The Maharashtra IP Crime Unit (MIPCU), formerly the Maharashtra Cyber Crime Unit, has been active since 2017. However, other than one enforcement action in 2021 against pirate service Thop TV, there do not appear to have been other similar actions undertaken by the MIPCU. It is hoped that the MIPCU sees an influx of trained personnel and that anti-piracy actions are given greater priority within Maharashtra Cyber, the larger entity under which the MIPCU operates. Having similarly focused cyber-crime units in other states would be a major step forward toward protecting the country’s creative industries and reducing rampant levels of online piracy.

The seminal 2019 Delhi High Court decision in the *UTV v 1337x et Ors* litigations established permanent site blocking as a reasonable and proportionate remedy to curtail online infringement in India. That seminal precedent has been followed by numerous court decisions resulting in the blocking of thousands of domains and with improved speed of implementation and breadth of coverage. The 2019 orders were later that year made “doubly dynamic,” meaning new variations of the same piracy service can be blocked quickly and efficiently. In 2022, rights holders achieved a new milestone in India, obtaining orders allowing for a domain to be blocked because of its association with a pirate brand. Therefore, rights holders are now able to obtain orders directing the disabling of access to pirate brands like ThePirateBay, as well as the disabling of access to content delivery services like pirate cyberlockers. In 2023, the Court once again improved on its positive precedent, making the orders “dynamic+” meaning rights holders could rely on future titles to maintain blocking orders if necessary, and further, domain name registrars were ordered to “lock and suspend” domains ordered blocked as well to provide right of information details about the pirate operators. Rights holders have also obtained the cooperation of online search engine providers to delist piracy sites from their search results, which creates a further reduces piracy when compared with blocking alone. Finally, the Delhi High Court is beginning to grant orders to address two of the latest and virulent forms of piracy of audiovisual content: pirate Internet Protocol Television services and live sports piracy streaming sites.



In 2020, in a case involving copyright in educational videos, the court directed Telegram to disclose details of users uploading pirated content - a precedent that may aid the film and television industries. In another case, the court directed intermediaries who had transacted with a movie piracy app to submit details of the piracy app operators they had transacted with.

In March 2024, a group of Plaintiffs including MPA members filed a lawsuit against *Doodstream* in the Delhi High Court. *Doodstream*, with at least 40 known associated websites, was the largest illegal video hosting service in the world. *Doodstream* received massive traffic of at least 2.69B visitors across the various *Doodstream* domains 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 2024, and the Defendants have failed to comply with the court's orders to date. Contempt proceedings are ongoing. The case illustrates the importance of granting prompt interim reliefs as well as effective and meaningful enforcement of the Court's orders once granted to stem ongoing infringement.

Legislation

Anti-Camcording Legislation – The Parliament passed the Cinematograph (Amendment) Bill in 2023 and the Cinematograph Act, 1952, was subsequently amended. The Bill introduces penalties against unauthorized recording in an exhibition hall of a film or part of a film, including transmission of an infringing copy of a film/part of a film or abetting of such activity. This 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. MPA applauds passage of the Bill. However, as part of the implementation process, a potentially troubling development saw Notices issued by the Ministry of Information and Broadcasting which established 12 officers in nine cities (“Nodal Officers”) to receive complaints of copyright infringement (under the Cinematograph Act) against intermediaries. While this would normally be a welcome development, MPA notes that the new complaints process appears to be open to any third party, with only discretionary ability for the Nodal Officer to hear from the applicant with proof they have a proper interest (which could subject the process to abuse).

WIPO Treaty Implementation – India acceded to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty in 2018. However, India has yet to fully implement its obligations under these treaties, especially with respect to protection against unlawful circumvention of technological protection measures. The Government of India should amend the Copyright Act to fully comply with the WIPO Internet Treaties.



INDONESIA

MARKET ACCESS ISSUES

Film Law – In 2023, the Indonesian government expressed its intention to amend the 2009 Film Law (though no draft or timeframe has been shared), which contains a 60% local screen quota and prohibits imported films from being dubbed into local language. In 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 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.

Customs Duties on Electronic Transmissions – 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, when enforced, would severely disadvantage 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 WTO e-commerce moratorium on customs duties for electronic transmissions. Heightening this concern, the Government of Indonesia has expressed 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.

Censorship Restrictions – In 2015, the Indonesian Broadcasting Commission’s (KPI) notified platform operators regarding pre-censorship and classification requirements for programs on all TV channels. 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.

Problematically, pressure continues from agencies such as KPI, as well as the Indonesian Censorship Board, to broaden their mandates and apply similar strict censorship and classification requirements on over-the-top (OTT)/video on demand (VOD) services, including proposed June 2024 amendments to the Broadcasting Law which would expand the remit of the KPI from TV channels to OTT/VOD. These recent amendments were proposed without consultation with appropriate Ministries such as Communications and Informatics (KOMINFO), or any period of public consultation. As of September 2024, the problematic amendments have not been passed. However, such requirements, if reintroduced, 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 business.



OTT/VOD Regulations –Ministerial Regulation 5 (MR5) came into effect in 2020. MR5 requires domestic and foreign OTT/VOD service providers to register, comply with content takedown requests from authorities, and grants law enforcement authorities access to electronic systems and data. In 2022, KOMINFO temporarily blocked some 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 on the regulation of curated content services such as OTT/VOD services.

INTELLECTUAL PROPERTY PROTECTION

Enforcement

Internet Piracy – Digital piracy in Indonesia remains a serious concern, with the piracy landscape dominated by groups operating several infringing sites/services, like Indoxxi, LK21 and Bioskoperen. The criminal groups behind these sites, which are notorious for piracy and believed to be based out of Indonesia, continue to operate these sites by routinely “hopping” domains or through hundreds of copycat domains or IP addresses.

In 2023, cooperation between the Directorate General of Intellectual Property (DGIP), Korean Ministry of Culture, Sports, and Tourism and the Korean National Police Agency, led to the arrest of three suspects behind the *TVDOL* illegal Internet Protocol Television service. While this was a welcome development, more sustained and ongoing enforcement needs to be done to combat online piracy including acting against the notorious services mentioned above. Piracy apps and services targeting the local market, such as *LokLok*, also remain a concern.

Under the revised Copyright Act, and Regulations Nos. 14 and 26 of 2015, rights holders have successfully petitioned the Indonesian government to order internet service providers to disable access to many thousands of infringing domains, which has had a positive impact on the marketplace for legitimate services. In recent years, the process and speed of obtaining blocking orders have improved, to the point that rights holders are now getting verification meetings relatively quickly. The processes could be further improved by ensuring dynamic site blocking that would more effectively address syndicated piracy networks which try to avoid government blocking orders by routinely changing domains and employing other techniques such as redirection and dedicated IP addresses.

Legislation

The DGIP has considered a partial revision of the Copyright Law (2014), While revision is welcome in principle, the direction of planned reform is far from clear.

The overbroad exception to the making available right should be deleted. The Government should further clarify the rights of making available and communication to the public. Consistent with international best practices, any collective management organization must be voluntary, transparent, and governed by rights holders, without interference by Indonesia’s government. Any revisions should also set forth clear principles of secondary copyright liability; improve protections for technological protection measures and rights management information; and extend the term of



copyright protection for works to life of the author plus 70 years. The government should also issue clear guidelines and regulations on illegal camcording and live-streaming piracy, including expressly outlawing these activities and prioritizing a decrease in these illegal acts.

Additionally, in considering a partial revision, any new exceptions or limitations (including mandatory collective management of rights or statutory licenses) must be confined to the three-step test, consistent with Indonesia's international obligations (e.g. Article 13 of the WTO TRIPS Agreement). Imposing collective management or statutory licenses regarding uses of exclusive rights that are individually licensed would be inconsistent with the three-step test. On copyright ownership in films, in accordance with best international practices, the copyright should reside with the producer who is best positioned to exploit the film commercially, unless there is an agreement to the contrary.



JAPAN

INTELLECTUAL PROPERTY PROTECTION

TDM Exception – 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 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 stated that it does not apply if the action would unreasonably prejudice the interests of the copyright owner considering the nature or purpose of the work, or the circumstances of its exploitation, it did not expressly distinguish between use for commercial or non-commercial purpose, nor does it expressly require lawful access to the works in question. It was also not clear what activities are encompassed by the non-personal enjoyment carveout. The lack of clarity and certainty around Article 30-4 meant it might permit the use of unlawfully accessed copyright material as the source for text and data mining (TDM) activities. Following continuous advocacy by a range of industry stakeholders, the Agency of Cultural Affairs helpfully released official guidance in May 2024 around Japan’s TDM exception, noting that exercise of the TDM exception does not apply in cases that would unreasonably prejudice the interests of rights holders, and further clarifying respect for lawful access protections, including technological protection measures, including in AI training use cases.

Internet Piracy – Piracy continues to be a priority issue in Japan. According to the Cabinet Office’s IP Promotion Plan 2024 announcement in July 2024, internet piracy cost the Japanese economy approximately 2 trillion yen (US\$13.3 billion) in 2022, five times the amount from 2019. Meanwhile, research from the University of Electro-Communications Photonic Systems Solutions Inc. indicates that, including all audiovisual (AV) piracy sites, there were 1,594 piracy sites with more than 100,000 visits per month, with an average of about 440 million monthly piracy visits in 2023.

Legislation

Copyright Legislation – In 2021, the Japanese Diet amended Article 63(5) of the Copyright Act to include a presumptive license for simultaneous/delayed transmission of broadcasts over the internet, as well as for services such as time-shifted or “catch-up” viewing, which cannot be considered as a retransmission and implicates the far more valuable exclusive right of making available. The amendment and implementing guidelines entered into force in 2022. The presumption of online simultaneous/delayed transmission of broadcasts over the internet and presumptive license of catch-up rights for such broadcasts is an inappropriate taking of rights (if the rights holder does not specifically reserve such rights) and adversely impacts voluntary licensing and appropriate compensation, for each form of transmission, whether simultaneous, repeat broadcast, or making available services such as “catch-up.”

In 2023, the Government unfortunately also passed amendments to the Copyright Act to establish a system similar to extended collective licensing. The Agency for Cultural Affairs is now working on implementing regulations, and the new system must be implemented by 2026. MPA opposed the introduction of extended collective licensing as it interferes with freedom of contract and well-established licensing models for AV works. The new system also does not leave any opt-out provision for rights holders and introduced several unclear definitions/conditions. The Government



should address these concerns through further regulations.



MALAYSIA

MARKET ACCESS ISSUES

Broadcast Quota – Malaysia requires that broadcast stations, through broadcast licensing agreements, devote 80% of terrestrial airtime to local Malaysian programming. Broadcast stations are also banned from broadcasting foreign programming during prime time. Such quotas fail to incentivize investment in quality content and unfairly restrict U.S. exports of television programming.

Cinema Entertainment Tax – The entertainment tax for theater admissions imposed at the state government level (25% of the gross ticket price) is among the highest in the region and limits the growth of the theatrical industry by artificially increasing box office prices. Malaysia should remove the tax or reduce the rate.

Foreign Ownership Restrictions – Malaysia imposes a 30% limit on foreign investment in cable and satellite operations through licensing agreements. Foreign investments are also prohibited in terrestrial broadcast networks.

Screen Quota – Malaysia requires each cinema to screen at least two local films for two weeks each per year. Although exhibitors have some flexibility to reduce the screening time for local films when those films underperform at the box office, the requirement is unnecessary and remains an obstacle to commercial business.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Internet piracy and the use of illicit streaming devices (ISDs) and apps remain problematic in Malaysia. The ecosystem around ISDs and related apps, including illegal Internet Protocol Television services, such as “SVI Cloud” and “EVPad,” continues to proliferate in Malaysia. Streaming devices that are preloaded with infringing apps and enable subscription access to a wide array of live channels and video on demand content are readily available via online and physical marketplaces. More concerted efforts against the operators and distributors of such ISDs and apps is necessary to address the harm.

The government has made significant progress through site blocking, although improvements are needed, including blocking entire sites (including all subdomains which are under the control of the same piracy operators) and dynamic blocking to address sites evading blocks. MPA looks forward to working with the government to continue progress on these issues in 2025.

Enforcement

Beginning in 2016, rights holders have successfully been able to obtain administrative orders directing internet service providers to block access to thousands of pirate domains. However, leadership has become more conservative to the point they are now refusing to block entire domains and are only blocking specific subdomains, even when those can change intermittently and are run by the same pirate operators. In addition, the lack of a dynamic approach to site blocking means rights holders must continually apply for blocking against the same egregiously online pirate locations and sometimes even the same domains. The government should improve



these processes, following the international best practice of blocking all sub-domains, and should also implement a dynamic approach to blocking.

There have additionally been some improvements in enforcement against ISDs and apps. In 2022, new anti-ISD amendments to the Copyright Act came into force which have already been implemented by the government, although resultant enforcement action has been lacking.

Legislation

Copyright Amendments – 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 ensure that internet service providers should only be exempted from a court order for monetary relief, and not the current complete exemption from copyright infringement liability.



NEW ZEALAND

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Online piracy in New Zealand remains a problem, with a recent study by NZ on Air showing an increase in the streaming and torrenting of TV series through overseas websites among the crucial 15-34-year-old cohort rising from 30% in 2021 to 47% in 2023. Also, illicit streaming devices such as pre-installed applications that allow consumers to stream unauthorized live TV channels or video on demand content into homes via an internet connection have boomed in popularity in recent years. Several well-established distributors of these products cater specifically to the New Zealand market. MPA urges the government to enact legislation to deal with this increasingly threatening form of piracy.

Legislation

Copyright Act Amendments – In recent years, the Ministry of Business, Innovation and Employment released several sets of objectives for copyright reform that would drastically undermine copyright and contractual freedoms and include overly broad exceptions to copyright. The Government’s focus has helpfully shifted to implementation of New Zealand’s copyright obligations under its UK and EU trade agreements, although the Government could revisit these reforms. Both agreements provide that online service providers can be required to disable access to infringing content (see for instance Article 17.82 in UK NZ FTA). MPA strongly encourages the New Zealand government to implement these FTA obligations.



PHILIPPINES

MARKET ACCESS ISSUES

Foreign Ownership Restrictions – Foreign investment in mass media, including film distribution and the pay-TV and terrestrial broadcast sector, is prohibited under the Philippines Constitution of 1987. However, 40% foreign direct investment is allowed in the telecom sector. Disparate treatment of these related network-based industries discourages business development in a capital-intensive sector. These restrictions impede investment in innovative and creative sectors, limit consumer choice, and favor domestic investors. Such restrictions are also outdated in the digital and internet era, which has upended traditional definitions and structures in the “mass media” industries. Such restrictions should be removed.

Taxation – Film companies doing business in the Philippines are subject to some of the highest taxes in the Asia-Pacific region. Foreign companies are burdened with a 30% income tax on net profits, a 5% withholding tax on gross receipts chargeable to income tax liability, and a 10% tax on the distributor’s share of the box office. A municipal license tax of 0.75% of a company’s prior year gross receipts is also imposed on motion picture companies. Moreover, the Philippines imposes a tax on all related advertising materials and royalty remittances. The combined effect is an oppressive tax regime that harms the continued development of a legitimate audiovisual (AV) marketplace.

Screen Restrictions – During typical film festivals, such as the annual Metro Manila Film Festival in December, only local independent films are allowed to screen. Such restrictions without flexibility limit screen time for U.S. films during peak annual movie-going times and depress investment in the sector by limiting the ability of cinema owners to program their theaters according to market demand.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – The Philippine government has recognized that online piracy is a major threat to both the local and international AV sectors and has made noticeable efforts to implement a more robust intellectual property enforcement regime. The IP Office of the Philippines (IPOP) and Senators in the Philippine Congress have supported passage of a legislative site-blocking regime. A voluntary site-blocking MOU framework was rolled out in 2023. Applications are made to IPOP, which then orders a site to be blocked, whereupon, under the authority of the National Telecommunications Commission, the internet service providers (ISPs) initiate blocking. Earlier this year, MPA was the first complainant to obtain a site blocking order against 11 domains associated with the notorious YTS network of piracy sites, under the voluntary site-blocking regime. However, piracy apps and services targeting the local market, such as *LokLok* and *HiTV*, remain a concern.

Legislation

IP Code Amendments – Draft IP Code amendment bills have been introduced in Congress, although due to recent reshuffling in the Senate, it is unclear which bills will survive or need to be reintroduced. There had been introduction of a stand-alone site blocking bill that would have allowed for an administrative no-fault injunctive remedy to require ISPs to disable access to infringing



websites, beyond the IPOPHL site-blocking MOU. MPA encourages the government to enact a mandatory legislative no-fault site blocking remedy so that rights holders will be better positioned to enforce against online piracy and exercise their rights, as well as to support the growth of the legitimate AV industry. This will complement the voluntary site blocking mechanism that the IPOPHL has successfully enacted together with the National Telecommunications Commission and ISPs.

Other draft IP legislation contain several problematic provisions which should be removed or revised. These include an unjustified extended collective licensing mechanism that does not comply with the Berne three-step test; a problematic provision on additional remuneration for performers for subsequent communications or broadcasts, which interferes with freedom of contract and established contractual and licensing arrangements; and the open-ended fair use provision in Section 207 which could create unnecessary uncertainty, litigation, and conflicting decisions. The Government should also extend the term of protection for sound recordings and AV and other works to at least 70 years in keeping with the international standard.



SOUTH KOREA

MARKET ACCESS ISSUES

OTT/VOD Levy - In July 2024, a bill was introduced in the National Assembly calling for the extension of an existing levy on pay-TV services into the Broadcasting and Communications Development Fund to also cover over-the-top (OTT)/video on demand (VOD) services. Such proposals would have unintended consequences on the streaming market and are unnecessary in the absence of any evidence to show there is a market failure that requires such aggressive government intervention.

Screen Quotas – In 2006, in relation to the U.S.-Korea FTA (KORUS) negotiations, the Korean government agreed to reduce its screen quota of requiring exhibition of Korean films to 73 days per year. Over 16 years later, amidst rapid development of its cultural industries and the success of many Korean film and television productions internationally, now is the time for Korea to show leadership in the region, trust the choices of its consumers, and further reduce or eliminate its screen quota particularly with respect to premium-format screens. Unfortunately, several bills have been introduced in the recent past that would further restrict the legitimate market.

Advertising Restrictions – Korea limits the maximum total duration of advertisements aired, regardless of the type of advertisement, to an average 17% of program duration and no more than 20% of any specific program’s duration. In-program advertising is limited to one minute of advertisement per airing of the program, with the balance of advertising appearing prior to and following the program. Additionally, Korea maintains a protectionist policy that prohibits foreign retransmitted channels from including ads for their market.

Network Usage Fees – In 2020, the National Assembly passed the Telecommunications Business Act Amendments (Articles 22-7), which require content providers to take responsibility for “network stability” and consumer demand. The Enforcement Decree does not mandate content providers to pay a network usage fee to ISPs. However, proposals continue to be raised in the National Assembly that would force content providers to pay 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 and raise KORUS compliance concerns. Korea should avoid unnecessary intervention with respect to the commercial relationship between content providers and internet service providers (ISPs), apply light-touch regulation to OTT/VOD services, and ensure consistency with its KORUS obligations. In addition, the Ministry of Science and ICT is working to enact a new law, the Management and Support for Stability of Digital Services, which would consolidate service stability requirements from multiple laws into a single comprehensive law. The Digital Service Stability Act could result in more burdens for U.S. companies.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Korea has a major stake in ensuring adequate and effective protection of copyright online. Over the past few years, Korean rights holders have become more active in protecting their content, and the government has stepped up efforts to disable access to thousands of piracy sites and torrent trackers. Still, the market remains flooded by services like TVWiki



which are agile in circumventing such orders by the Korean Communications Standards Commission. In 2023, two Korea Constitutional Court decisions confirmed the constitutionality of site blocking. In addition to encouraging the Government to continue its administrative site-blocking, search engines should do their part in delisting/removing search results for blocked piracy sites.

Legislation

Korea should continue to ensure that its copyright law provides strong protection for content creators, while upholding the principle of freedom of contract. Legislators continue to have proposed problematic amendments to Korea's Copyright Law that would create statutory remuneration rights for directors, authors (including scriptwriters), and performers. These additional remuneration rights would allow directors and performers, all of whom have already assigned their rights for compensation, to claim additional compensation for exploitations of their works. These proposals would undermine the freedom of contracts and have a dramatic chilling effect on investment in the audiovisual industry. Furthermore, these amendments risk contravening KORUS Article 18.4.6 (freedom of contract for copyright rights holders). MPA urges the government not to weaken Korea's copyright framework and ensure consistency with Korea's international treaty obligations.



TAIWAN

MARKET ACCESS ISSUES

Foreign Investment Restrictions – The Cable Radio and Television Law limits foreign direct investment in a domestic cable television service to 20% of the operator’s total issued shares. Foreign investment in satellite television broadcasting services is also restricted to no more than 50%. Such investment restrictions limit U.S. companies’ ability to compete fairly and inhibit the pay-TV industry’s potential growth.

Pay-TV Price Cap – In 1990, Taiwan set a rate cap for basic cable TV service, which has never been adjusted to keep up with inflation. This cap has hindered the development of the cable TV industry.

Local Content Quotas – Taiwan requires that terrestrial TV stations broadcast at least 50% locally produced drama programs between 8:00 pm and 10:00 pm, and that local satellite TV channels broadcast at least 25% locally produced children’s programs between 5:00 pm to 7:00 pm, as well as at least 25% locally produced drama, documentary, and variety programs between 8:00 pm and 10:00 pm. Further, a cable TV service must provide at least 20% local programming in its channel line-up. These discriminatory conditions limit consumer choice, undermine the growth of the pay-TV sector in Taiwan, and restrict U.S. exports.

OTT/VOD Regulations – The National Communications Commission (NCC) continues to actively consider a draft Internet Audiovisual Services Act (IAVSA). The draft IAVSA would obligate foreign over-the-top (OTT)/video on demand (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 prominence obligations and associated penalties for noncompliance. Such requirements, if implemented, would stifle business development, and add a burdensome barrier to market entry.

DISA Draft – A draft Digital Information Services Act (DISA) put forward by the NCC was met with widespread disapproval from stakeholders and was shelved in 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. While the draft remains shelved, we understand it could be revived.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Online piracy remains a serious problem in Taiwan.

Enforcement

The MPA recognizes attempts by local authorities to take enforcement action, including a raid in 2023 against the largest distributors of *SVICLOUD* PDs in Taiwan, where over 1,000 illicit streaming devices and equipment were seized and seven suspects were arrested, and more recently a raid against the illegal IPTV Service *Qing Tian TV APP*.



While the Taiwanese courts have delivered positive results in recent years, court cases can drag on, and sometimes the remedies and/or penalties meted out are not sufficiently deterrent. The government has been more proactive in combating piracy websites and services when the operations have a nexus to Taiwan and have recently made positive pronouncements regarding the Taiwanese government's determination to target such infringing sites and services, and some criminal raids and prosecutions have ensued.

The criminal prosecution against an egregious piracy website *GIMY* led to some of the largest penalties meted out in Taiwan to date, but the suspended sentence was a disappointing reminder of the generally non-deterrent aspect of criminal penalties in Taiwan. At the same time, the *GIMY* domains remain online at the time of the submission. We are hopeful that future actions will lead to more deterrent results and a permanent takedown of the notorious piracy streaming service.

The Taiwanese government indicates site blocking may be available under the "Response Policy Zone" mechanism, this is an ancillary order to a criminal investigation and a standalone remedy should be adopted to provide greater permanence, clarity, certainty, and efficiency of approach. The clear remaining enforcement gap is the absence of a clear site blocking remedy.

Legislation

Taiwan should extend the term of protection to the international standard of life of the author plus 70 years (or 70 years from publication), provide clear guidelines that unauthorized camcording of motion pictures in theaters is illegal, and implement a no-fault remedy to disable access to infringing sites.



THAILAND

MARKET ACCESS ISSUES

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. The Ministry of Culture (MOC) proposed replacing the MPVA with a new Film Law in August 2024 and is currently consulting with stakeholders. The September 2024 draft helpfully removes the screen quota.

Censorship Restrictions – The MPVA also 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 MOC is currently consulting on a new Film Law which would implement self-regulation for theatrical and over-the-top (OTT)/video on demand (VOD) releases.

Television Must-Carry Requirements – Recent media reports suggest the 2012 “must carry” rules, requiring that the programs aired on free-TV must be broadcast on any platforms (including satellite and IPTV) without conditions, will finally be reversed by the NBTC. Until this happens, 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 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.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Internet piracy remains a serious problem in Thailand, with several websites, amassing large traffic numbers in Thailand, and harming the market for MPA members as well as the local Thai audiovisual industry. Rights holders have supported actions in recent months by the Police Cyber Taskforce, the Royal Thai Police Economic Crimes Division (ECD), and the



Department of Special Investigations. Notably, in February 2024, the ECD, with support from the Alliance for Creativity and Entertainment, raided and took down *Siambit.me*, the largest torrent tracker site in Thailand which averaged 5.5 million monthly visits. Continued close collaboration between local law enforcement and industry is particularly key to tackling the issue of piracy in Thailand, which is somewhat unique in Asia with a high proportion of home-grown piracy services and operations.

Enforcement

In 2017, the Royal Thai Government amended the Computer Crime Act (CCA) to include the establishment of a mechanism to disable access to copyright infringing sites. Rights holders obtained the first full website blocking order requiring DNS blocking from the Thai Criminal Court in July 2024 against the notorious piracy site *i-moviehd*. The order has now been implemented by all the major internet service providers (ISPs) in Thailand. The next step is to address what happens when a site hops to a new domain, which is covered by the order, but not implemented fully by all the major ISPs yet. It is important to ensure that these orders are timely and effectively implemented by the appropriate intermediaries.

Rights holders observe that criminal cases move slowly through the criminal prosecution process, with cases frequently taking multiple years. Moreover, sentences handed down by the Court remain non-deterrent. As an example, in May 2024, the Central Intellectual Property and International Trade Court issued a verdict against the operator of *We-Play.live*, imposing a fine of 25,000 baht (roughly US\$700) on the operator. The enforcement action in the case took place in May 2022. It is imperative that Thai authorities prioritize and expedite the prosecution process ensuring that pirate website operators face timely and appropriate legal ramifications. A commitment to robust enforcement, timely prosecutions, and appropriate deterrent penalties are essential to curtail current levels of piracy in the country.

Legislation

Copyright Legislation – MPA continues to urge the Thai Government to amend the Copyright Act to ensure that intellectual property infringement becomes a non-compoundable state offense, thus enabling the police to act on their own initiative without any requirement of a formal complaint from rights holders.

Unfortunately, Copyright Act amendments, which entered into force in 2022, did not include a standalone provision allowing the court to order an ISP to suspend access to a specific online location with the primary purpose/effect of infringing or facilitating the infringement of copyright. While the CCA includes a site blocking provision, it would be useful for the Copyright Act to include a remedy for no-fault injunctive relief for copyright infringement which allows ISPs to disable access to third party infringing sites, consistent with global best practice.

The government should also issue regulations on the protection of technological protection measures (TPMs) to clarify that the service, promotion, manufacture, sale, or distribution of piracy devices and applications/software/add-ons available thereon violate TPMs protections. Additionally, Thailand should extend its term of copyright protection to align it with the international trend of life plus 70 years.



VIETNAM

MARKET ACCESS ISSUES

Screen Quotas – Under Cinema Law/Decree 54 (2008), Vietnam requires that at least 20% of total screen time be devoted to Vietnamese feature films. In 2022, Vietnam passed Cinema Law amendments that entered into force in 2023, replacing Decree 54. Instead of the 20% screen quota, which was never implemented, the amended Law/Decree 54 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 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.

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.

OTT/VOD Regulations – In 2022, amendments to Decree 06 were promulgated as Decree 71, expanding the scope of existing pay-TV regulations to include over-the-top (OTT) services. Most concerning is a licensing scheme that requires a local presence or joint venture in addition to onerous censorship provisions for any video on demand (VOD) service that offers content not considered to be “films” (which would be regulated under the Cinema Law). This licensing scheme is short of industry expectations and could indirectly contribute to online infringement.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Online piracy remains rampant in Vietnam, and the country is host to some of the most egregious and popular piracy sites and services in the world that target a global and English-speaking audience. Recent criminal actions give some hope that the government is starting to prioritize the anti-piracy fight, but sustained, concerted efforts are key to tackling the digital piracy



issue in a meaningful way. To date, Vietnamese-based piracy sites have caused significant damage to both the domestic and international market and their continued operation with impunity makes Vietnam a haven for piracy.

Enforcement

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*, *myflixxr*, and *aniwave*. Domains controlled by this syndicate drew more than 6.7 billion visits between January 2023 and June 2024. *Vidsrc.to*, a notorious video hosting provider operated by the same individuals, was also taken down, impacting hundreds of additional dedicated piracy sites. While the takedown of the sites is a positive development, it is important now 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.

Vietnamese Courts had another notable development when they handed down the first criminal convictions for copyright offences since the Penal Code was amended in 2015 to include copyright offences. This included the conviction by the Hanoi People’s Court of the *BestBuyIPTV* pirate service, and the conviction by the Quang Binh Province People’s Court of the *bilutvt.net*, *tvhayh.org*, and *hlss.pro* services. While these first criminal convictions are undoubtedly a positive development, both convictions only resulted in suspended sentences against the operators. The MPA encourages the Vietnamese Government to revise the penalties which 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.

Another growing problem involves illicit streaming devices and streaming applications, as they are cheap and easy to use, provide a range of unauthorized content, and are available from online retailers as well as physical stores. While consumer preferences have moved towards streaming options, downloading torrent sites remains a fallback.

The Authority of Broadcasting and Electronic Information/Ministry of Information and Communications now enforces a decree granting it the authority to order internet service providers (ISPs) to disable access to infringing websites in Vietnam. While a useful step forward, that the high costs make it challenging for U.S. rights holders to employ.

Legislation

Amended its to the IP Law entered into force in 2023. While there were some improvements, the amended IP Code retains an inadequate term of protection for copyrighted works and does not provide for a term of protection for all copyrighted works in line with the international trend of 70 years after the death of the author. The amendments also include certain definitions that depart from the WIPO Performances and Phonograms Treaty and may cause unnecessary confusion. The introduction of an ISP liability regime is welcome, but the safe harbors are too broad and the protections for technological protection measures fall short.



Notwithstanding the recent actions against several piracy operators, MPA would like to see the government follow through on criminal referrals based on clear objective criteria used to evaluate cases. The government's announcement of the establishment of specialized IP courts beginning in early 2025 is a welcome development, and MPA is hopeful this will encourage a cadre of well-informed judges in IP and copyright issues and pave the way to better outcomes in civil suits, even when it is difficult or impossible to fully identify the pirate operators. This development, plus an increased focus on criminal enforcement, can help spur more effective criminal procedures and punishments to deter online piracy operators and send a general deterrent message to operators or consumers in Vietnam against copyright infringement.



EUROPE

The rules under the two landmark pieces of legislation governing digital services in the EU, the Digital Services Act (DSA) and the Digital Markets Act (DMA), entered fully into force in 2024. Together, these regulations form a set of rules applicable across the EU, with the aim of creating a safer and more open digital space. The EU also adopted the EU AI Act in 2024, a horizontal regulation legislating the use of AI systems and models in the EU. In 2021, the EC launched an audiovisual (AV) stakeholder dialog to enhance availability and cross-border access to AV content and in 2023, the EC launched AV stakeholder dialogs, focusing on how intellectual property rights are retained and exploited by European producers and authors. The subjects of both these consultations are critical to the business of MPA members.

MARKET ACCESS ISSUES

European Content Quotas – The updated Audiovisual Media Services Directive (AVMSD) entered into force in December 2018, and all Member States have now at least partially transposed the directive. The 2018 AVMSD updates the 2007 and 2010 AVMS directives, which in turn replaced the 1986 Television Without Frontier Directive.

The updated AVMSD requires video on demand (VOD) services to reserve at least a 30% share in their catalogues for European works and ensure prominent placement of those works on services targeting EU audiences. This new quota provision maintains the country-of-origin principle, which means that VOD services must comply with the rules of the jurisdiction in which they are established in the EU. The directive also allows EU Member States to require media service providers (both linear and non-linear) targeting their audiences to contribute financially to the production of European works and/or local AV production funding schemes, even if a media service provider falls under the jurisdiction of another EU Member State. More than half of EU Member States have either completed, or are in the process of completing, the legislative process obligating media service providers targeting their territory to either invest in the production of domestic works and/or contribute a percentage of their turnover to a national film fund. Disproportionate investment obligations, coupled with excessive sub quotas for works of original national expression – and in some cases the absence of a thematic or niche AV services exemption – could fuel an inflationary trend in production costs and work against the objective of supporting and attracting foreign investment and opening the market to new entrants. The local content quota obligations for linear services remain unchanged: broadcasters are required to reserve, where practicable and by appropriate means, much of their transmission time for European works, excluding the time allocated to news, sports events, or advertising.

Network Usage Fees – The EC published a White Paper on *How to master Europe’s digital infrastructure needs?* in February 2024 which examined the future of regulation for the connectivity market. The paper recognizes that there are currently no issues that warrant regulatory intervention on the IP interconnection market, and that “there are very few known cases of intervention (by a regulatory authority or by a court) into the contractual relationships between market actors.” Nonetheless, there are persistent calls to institute network usage fees in the EU, such as those seen in the *European Declaration on Digital Rights and Principles for the Digital Decade* published in 2023.



INTELLECTUAL PROPERTY PROTECTION

Overall, the EU IP Directives provide a satisfactory level of protection for rights holders. In several cases, however, certain Member States have failed to correctly implement key provisions of the Directives, thereby undermining the spirit and letter of the legislation.

Enforcement Directive (IPRED) – This directive establishes an EU-wide minimum standard for certain civil procedures, including the right to ask internet service providers for information (Right of Information – ROI), and the availability of injunctive relief against such intermediaries to prevent and stop copyright infringement. These tools are invaluable for combating internet piracy. However, some Member States, such as Poland and Germany, have not implemented IPRED’s Article 11 in a way that allows dynamic injunctions. Moreover, the Court of Justice of the European Union’s (CJEU) decision in 2020 (C-264/19 *Constantin Film Verleih*) on ROI impedes enforcement. The CJEU applied an extremely narrow interpretation of the law – granting rights holders only a claim to the name and postal address of infringers – and not to additional critical identifying data such as e-mail or IP addresses. Each Member State must now expressly permit the release of this information. The Commission’s carrying out a study to assess the application of IPRED, including ROI and dynamic siteblocking remedies. This study is expected to be published in November 2024.

Electronic Commerce Directive/Digital Services Act – The 2000 E-Commerce Directive (ECD) provides a general legal framework for internet services in the Internal Market. The Directive establishes rules on commercial communications, establishment of service providers, electronic contracts, liability of service providers, codes of conduct, out-of-court dispute settlements, and enforcement. The Directive fully recognizes the country-of-origin principle and expressly requires Member States not to restrict the freedom to provide information society services from a company established in another Member State. Article 5 of the ECD requires that information society providers identify themselves by providing clear details about their business and whereabouts on their website. However, the Article is not enforced by Member States and businesses that have the intention of profiting from illegal content and infringing IP rights do not comply with this obligation and do not suffer any consequences.

The DSA entered fully into force in February 2024, replacing all the ECD’s liability provisions and complementing them with new due diligence obligations for online intermediaries. The DSA introduced a more stringent set of due diligence obligations for Very Large Online Platforms and Very Large Online Search Engines. The CJEU has developed a workable test for attributing liability based on whether the intermediary is “active” or “passive,” and this test was codified in a DSA recital. Regrettably, the DSA failed to include a “stay-down” mechanism; the “Know Your Business Customer” provision is limited to online marketplaces; and it missed an opportunity to provide a meaningful tool to fight the broad range of illegal activities online. The Commission is working on modernizing the EU’s MOU on Counterfeiting and will convert it into a code of conduct under the DSA.

Although the ECD and DSA allow monitoring obligations in specific cases, differentiating between general and specific monitoring has proven difficult. It would be helpful to codify the European Court’s decision in C-18/18 – *Glawischnig-Piesczek* – that a ban on general monitoring does not preclude an injunction to remove content identical and equivalent to the content in question, and on a worldwide basis. It remains to be seen how national courts will apply these



principles.

NIS2 Directive – The Network and Information Security (NIS) Directive was the first piece of EU-wide legislation with the goal of achieving a higher common level of cybersecurity across Member States. Its implementation proved difficult, and in January 2023 the legislation was expanded by NIS2 to oblige more entities and sectors to take measures improving cybersecurity across the EU. The NIS2 Directive includes new obligations for top-level domain name registries and entities providing domain name registration services to collect and maintain accurate and complete domain name registration data while also providing entry to it to legitimate access seekers. While the Directive’s recitals state that their verification processes should reflect current industry best practices, further guarantees are needed during national transposition to make sure that the verification obligation is sufficiently effective and that rights holders are granted access to registration data, which is essential for copyright enforcement. Several Member States, including Bulgaria, Germany, Sweden, and Poland, are proposing to limit legitimate access seekers to public authorities. The deadline for transposition is in October 2024, but there is indication that some Member States may miss this deadline.

Recommendation on Live Piracy (LPR) – In 2023, the Commission adopted a recommendation to combat online piracy of sports and other live events. The LPR confirms not only the need for dynamic and effective tools to address online piracy, but also encourages Member States to increase the actions rights holders can take with a broad range of intermediaries. The LPR seeks to foster collaboration between different stakeholders in the online ecosystem and increase national authorities’ expertise. The European Union Intellectual Property Office (EUIPO) has drafted key performance indicators to monitor the application of the LPR in 2024 and will assess its impact by November 2025.

Recommendation on Combatting Counterfeiting and IPR Enforcement – In March 2024, the EC adopted a recommendation on measures to combat counterfeiting and enhance the enforcement of intellectual property rights. The recommendation encourages rights holders who are signatories of the EU’s MoU on Counterfeiting to apply for the status of “trusted flagger” under the above-mentioned DSA. It also highlights the value of accurate and complete domain name registration data for IPR enforcement and recommends good practices for top level domain (TLD) name registries and entities providing domain name registration services. In addition, it encourages TLD name registries and entities providing domain name registration services to recognize any natural or legal persons who make a request for a right to information pursuant to the Enforcement Directive as legitimate access seekers under the above-mentioned NIS2 Directive. The recommendation also includes the fostering of the use of dynamic injunctions, ensuring the right of information for IP enforcement, and ensuring the granting of appropriate damages. The EC will assess the effects of the recommendation by March 2027 and decide whether additional measures are needed at the EU level.

EU Copyright Directives (2001 and 2019) – The principal objectives of the 2001 Information Society Directive (InfoSoc) were the harmonization and modernization of certain aspects of copyright law in the digital age. This included the implementation and ratification by the EU and its Member States of the 1996 WIPO Internet Treaties.

InfoSoc contains an exception for private copying that, if interpreted incorrectly, could violate the TRIPS/Berne 3-Step test. In some countries, the provisions regarding the private copy exception



are too broad. Of specific concern is the German private copy exception, which expressly permits the beneficiary of an exception to use a third party to make the copy.

InfoSoc also establishes legal protection for technological protection measures (TPMs) necessary for the protection of copyrighted material in the digital environment. However, this protection is undermined by some Member State's intervention in regulating the relationship between technological measures and exceptions. Moreover, some countries fail to provide appropriate protections for TPMs. Germany and Luxembourg do not provide adequate sanctions against the act of circumvention and preparatory acts facilitating circumvention. Finland and Sweden do not provide adequate protection against the act of circumvention. Article 6(4)(1) of the 2001 Copyright Directive provides that Member States can only put in place appropriate measures to ensure the benefit of the exception "in the absence of voluntary measures taken by rights holders" and "to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject matter concerned."

Article 8(3) of InfoSoc also requires availability of injunctive relief against intermediaries whose services are used by a third party to infringe copyright, even where an intermediary's activities may be exempt from liability under the ECD. Some EU Member States have either not implemented Article 8.3 of InfoSoc or have done so incorrectly. Poland is a prominent example where Article 8.3 has not been implemented in national legislation. In Germany the courts ruled that the urgency requirements for obtaining preliminary injunctions are not available for sites which are known to the applicant longer than one month. Consistent implementation of existing EU law by all Member States is critical, especially for a provision as central to effective enforcement as Article 8.3.

The 2019 Directive (2019/790), also referred to as the Digital Single Market Copyright Directive, introduced two new exceptions to the reproduction right to enable text and data mining tools to crawl content: one covering academic content for the purpose of scientific research and the second covering content that is made freely available online. These exceptions have become particularly relevant in the recent discussions around AI. Notably, the EU AI Act (Regulation (EU) 2024/1689 laying down harmonized rules on artificial intelligence), which entered into force on 1 August 2024, refers specifically to Article 4 of the 2019 DSM Copyright Directive. The Directive also includes two updates to existing exceptions: one extends the illustration for teaching exception to cover digital and cross border uses, and the other extends acts of preservation to include digitization.

The Directive further clarifies that certain content sharing platforms perform an act of communication to the public, and therefore, absent authorization from the relevant rights holder, are liable for copyright infringement (Article 17). However, content sharing platforms are not liable if they can demonstrate that they have made their 'best efforts' to either obtain an authorization or prevent the availability of pre-identified content, take down notified content, and ensure that such content stays down. This provision also contains obligations proportional to the size, age, and popularity of the service. EU Member States which have transposed Article 17 unfaithfully risk diluting copyright protection by introducing overly broad exceptions for users when they upload copyright protected works (e.g., as has occurred in Austria and Germany).

The Directive also introduced several provisions that may interfere with contractual freedom and well-established market practices. It provides a new provision on appropriate and proportionate



remuneration for authors and performers for the exploitation of works they contributed to; it imposes onto licensees an obligation to annually report on revenues and remuneration due; and it provides that authors and performers may renegotiate agreements if the remuneration originally agreed upon turns out disproportionately low compared to the revenues, to name a few examples. Finally, the Directive introduces a revocation mechanism for authors and performers whereby they may revoke their licensed or transferred rights if a work is not exploited after a reasonable time.

When transposing the 2019 DSM Copyright Directive, several EU Member States-Bulgaria, Croatia, Greece, Lithuania, and Portugal -introduced provisions overturning the CJEU’s Decision in the Atresmedia case (*Atresmedia v AGEDI and AIE*, Case C-147/19, EU:C:2020:935); a contravention of EU law. The Atresmedia case was referred by the Spanish Supreme Court in a suit originally filed against the broadcaster, Atresmedia, by two collective management organizations (CMOs) representing music producers and music performers in Spain respectively. These CMOs asserted claims for remuneration against Atresmedia in connection with the pre-existing sound recordings that had been incorporated or synchronized into AV works that were subsequently communicated to the public by that broadcaster. The CJEU ruled that sound recordings, once fixed in AV works, cease to be sound recordings, or phonograms, and instead become part of the AV work itself and do not trigger the remuneration right detailed in Article 8(2) of the Related Rights Directive. The legislation proposed by the five member states cited above amounts to a double payment and, clearly thwarts the CJEU decision, undermining the CJEU’s authority.

Data Protection Rules – The General Data Protection Regulation (GDPR) became enforceable in 2018. It strengthens and unifies data protection for all individuals within the EU, but also addresses the export of personal data outside the EU. The GDPR raises concerns on the use of certain personal data in copyright enforcement. In the 1995 Data Protection Directive, rights holders relied on Article 13, which provided derogations to the rules on data processing, referring to the respect of the “rights and freedom of others.” The GDPR still provides such a derogation to the rules on data processing (Article 23); however, it is subject to very strict and defined conditions. In 2021, the EC published guidelines on Article 23 which analyze the derogation criteria and observed that derogations must pass a necessity and proportionality test.

In 2016, the Commission adopted a directive on the processing of personal data by police and judicial authorities against criminal offenses in parallel to the GDPR. This directive aims to improve the exchange of information, help fight crime more effectively, and provide standards for the processing of data of people who are under investigation or have been convicted.

The Commission published its second report on the application of the GDPR in July 2024. The report observes the need for increased enforcement of the GDPR and data protection authorities’ proactive support of stakeholders’ compliance efforts,



BELGIUM

MARKET ACCESS ISSUES

Broadcast Quotas – The Flemish community and the Federation Wallonia-Brussels (FWB) both transposed the 2010 Audiovisual Media Services Directive. Broadcasters reserve much of their transmission time for European works (excluding time allotted to news, sports events, games, advertising, teletext services, and teleshopping). Both regions mandate a 10% quota for independent production where possible and Wallonia has a 35% quota for French-speaking Belgian productions.

Investment Obligations – In 2024, a new law increasing financial obligations gradually up to 9.5% for all media service providers depending on their turnover entered into force. Additionally in 2024, the Flemish Parliament adopted a law increasing the 2% financial obligation for domestic and non-domestic video on demand services who must invest in audiovisual (AV) works to up to 4% calculated in a staircase model. The direct contribution is accompanied by more burdensome restrictions, some of which relate to IP ownership limitations. The FWB text, set to come into force in January 2025, is being challenged before Belgium's Constitutional Court.

INTELLECTUAL PROPERTY PROTECTION

Enforcement

Belgium's broad legal definition of counterfeiting allows for extensive enforcement options, supported by effective cooperation between authorities and rights holders. However, enforcement is reactive, focusing on detection rather than prevention. Furthermore, many rights holders are dissuaded from enforcing their rights due to high-cost recovery and legal barriers, such as the burden of proof for commercial activity. Belgian police and customs authorities are still hampered by significant shortages in personnel and resources which undermines enforcements efforts. Opportunities to improve enforcement include innovative initiatives like Blockathon (a competition aimed at using blockchain technology to fight counterfeiting) and enhanced international cooperation.

Legislation

EU Enforcement Directive – Belgium implemented the Enforcement Directive in May 2007. The implementation provides several benefits for civil action against piracy, but the right of information can only be applied after the judge has found that an infringement has been committed. In practice this requires hearings first on the merits. As a result, there are significant delays before the judge orders the provision of the information. Such losses of time and resources represent a significant burden for rights holders.

EU DSM Copyright/SatCab Directives – Belgium transposed the DSM Copyright and SatCab Directives 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 they transfer their rights to AV 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 networks, and mobile networks. It also covers live retransmission if it takes place in a controlled and secure environment for authorized users. However, online on-demand, broadcasting, replay, or streaming, is excluded. Belgium went beyond what is prescribed in the Directive by introducing a mandatory unwaivable remuneration right for performers and authors paid by AV and music on-demand services and, unless there is a collective agreement, is subject to mandatory collective rights management (Articles 60-62). The new Belgian law implementing the DSM directive entered into force in 2022. Some of the law's provisions are being challenged by operators before the Belgian Constitutional Court, which recently decided to refer some of the provisions to the European Court of Justice.

A Royal Decree, to implement the DSM Directive, entered into force in June 2024 and improves protections for rights holders online.



FRANCE

MARKET ACCESS ISSUES

Screen Quota – France maintains government-sponsored inter-industry commitments that are quasi-statutory and limit the screening of a movie to four screens in the case of a 15-screen theater.

Release Windows – France mandates the chronology of how cinematographic content is released. The industry agreement on media chronology was last updated in 2022. However, several international and local stakeholders have argued that the current chronology agreement lacks flexibility, that the statutory theatrical release window is too long, and that such a complex media chronology regime exacerbates piracy. In April 2024, the French National Centre of Cinema organized a meeting to update the industry agreement on media chronology, which expires in February 2025. To date, no other meeting has been organized despite this deadline.

VOD Investment Obligations/EU 2018 AVMS Directive – In 2021, the French government established a complex legislative framework which requires domestic and non-domestic video on demand (VOD) services targeting French audiences to invest in original French productions per the EU 2010 Audiovisual Media Services (AVMS) Directive. The law sets out an investment obligation of at least 15% (for television VOD services) and up to 20-25% (for streaming VOD services) of their net annual French revenues. The precise rate depends on the release windows that services choose – the sooner the window, the higher the rate. The new law also imposes significant sub-quotas (up to 75%) for commissioned independent productions and works of original French expression. The legislative framework also does not provide an exemption for thematic or niche AV services.

Subsidies – The French government provides extensive aid and subsidies to assist local film productions and distribution. The film industry, domestic and foreign, must contribute to funds through dues levied on distributors, exhibitors, exporters, newsreel producers, dubbing studios, broadcasters, and, as of 2019, international VOD platforms financially registered abroad targeting viewers in France.

Film Rental Terms – The law limits the gross box office revenues remitted to the film distributor to a maximum of 50%. Film distributors should have the freedom to negotiate film rental terms based on market conditions.

Protection of AV Catalogues – In 2021, France published a law which obliges anyone seeking to acquire French audiovisual (AV) works to seek continued exploitation so that French audiences and authors/performers will continue to benefit from the continuous distribution of the work. The law includes a burdensome process for the transfer of AV work and AV catalogues.

INTELLECTUAL PROPERTY PROTECTION

Internet piracy remains a source of concern in France, with illicit streaming being the most popular form of piracy.

DSM Copyright Directive – France’s transposition of the DSM Copyright Directive goes beyond



MOTION PICTURE ASSOCIATION

what is prescribed and includes – irrespective of the nationality of the author – a provision on the immediate application of French law for authors of musical works in an AV work for the exploitation on French territory.



GERMANY

MARKET ACCESS ISSUES

Film Fund Levy – Pursuant to the Film Support Act, companies exploiting feature films must pay a portion of their revenues to the German Federal Film Board to help fund local film productions, as well as other film related expenditures, such as marketing, research, or cinema renovations. There are ongoing discussions for legislation to renew this regime and extend this beyond 2025.

Investment Obligation – As part of the 2024 overhaul to the German film funding system, the Ministry of Culture proposed a 20% investment obligation for domestic and foreign video on demand (VOD) services based on their revenues in Germany. A 70% sub-quota for German language productions has been proposed, and further sub-quotas for cinematographic works and for independent producers are being considered.

Production Incentives – To receive a production incentive from the German Federal Film Fund, there is a mandatory exclusive theatrical window, which diminishes the freedom to decide how to exploit the work. Further, the production incentive for serial, non-theatrical content is essentially unattainable for bigger foreign projects because of the cultural test's high thresholds. A major revision is currently being discussed.

Tax Liability on Trademarks Registered in Germany – The current process poses a disproportionate administrative burden for rights holders. Trademark registration requires non-German licensees to deduct withholding tax in the case of a limited-term licensing of a right, pay the corresponding tax, and then file a tax return with the German tax office unless the non-German licensor applies for a tax exemption. This exemption is usually granted if the licensor resides in a country with which Germany has a double tax treaty. The compliance burden alone of preparing any of the disclosure filings is significant, even if no resulting tax payments need to be made. This procedure takes months and – in many cases – years with disproportionate administrative efforts.

License Fees Taxation – The addition of license fees is increasingly being addressed in tax audits. While in some regions courts have put an end to this practice, there is still a risk that the authorities might assert that such license fees should be added to the respective fee debtors for trade tax purposes.

INTELLECTUAL PROPERTY PROTECTION

Illicit streaming sites, illicit streaming devices, and Internet Protocol Television subscription services are the primary piracy concerns in Germany.

Enforcement

While it is possible for rights holders to obtain an injunction under civil law, injunctions against website operators and hosting providers are title-specific, which is of limited use against online sites that facilitate copyright infringement on a massive scale.

Furthermore, the German courts ruled that while preliminary relief is title-specific, the urgency



requirements for obtaining preliminary injunctions are site-specific and that any new infringement of new content on the same website does not cause a new urgency. This creates a wide gap in rights holders' protection and unreasonably delays legal protection as preliminary injunctive relief is simply not available for any piracy website of which the applicant is aware for longer than one month. This unhelpful jurisprudence is being challenged before the German Constitutional Court.

The German Federal Court of Justice (BGH) confirmed in 2022 that it considers the subsidiarity requirement as consistent with EU law, i.e., Article 8(3) and recital 59 of the 2001/29 Directive, which was re-introduced by the German legislator in the transposition of the Digital Services Act in May 2024. According to the BGH, if it has no information on the infringer, the rights holder must take action to obtain such information from any hosting provider based in the EU (or in a country with "equivalent legal protection"), either on a voluntary basis or by suing the EU hosting provider under German law. Also, the BGH rejects dynamic blocking requests as inadmissible. This ruling is also currently being challenged before the German Constitutional Court. In an April 2024 decision, the Appeal Court in Munich pushed the subsidiarity requirements even further by requesting rights holders file court action against a hosting provider located in Russia.

The "Clearing Body on Copyright on the Internet" (CUII) is a self-regulatory body established by rights holders and internet service providers (ISPs) in 2019. The CUII works with the Bundesnetzagentur (the German networks regulator), as well as the German Federal Cartel Office, and aims to avoid unnecessary court proceedings, allowing DNS blocks to be implemented faster and more effectively. Several websites have been blocked via the CUII mechanism since 2020. In 2024, CUII is making encouraging progress. The number of currently blocked domains via CUII is at an all-time high. In total, the CUII has issued a blocking recommendation for 21 websites (with regular updates); an additional 6 applications have not yet been decided.

Legislation

Copyright Act Revision – The 2021 transposition of the EU DSM Copyright Directive weakened exclusive rights and copyright protection. Broad new exceptions for copyright protected works on Online Content Sharing Service Providers were introduced, interfering with legitimate exploitation of works and likely violating international copyright treaties and the EU Information Society Directive. The amendments are being challenged before the Federal Constitutional Court in two separate cases.

Germany's private copy exception is too broad and may violate the TRIPs three-step test, as there is no exclusion of copying by third parties.

The legal framework for technological protection measures (TPMs) also remains inadequate. Germany should provide specific civil remedies for illegal acts relating to the circumvention of TPMs and provide for the seizure, delivery, and destruction of illicit circumvention devices.

NIS2 Directive Implementation – German's draft implementation proposal follows a very limited approach by narrowing the scope of legitimate access seekers to authorities and indicates that registries do not need to have a complete and accurate database of registrant/WHOIS data, nor do they need to engage in any verification or accuracy obligations, resulting in an ineffective process.

EU Enforcement Directive Implementation – Rights holders contemplating legal action against



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internet pirate operators face difficulties in identifying the culpable parties due to restrictions imposed by Germany's data protection law. Further, the right of information is circumscribed in practice because many ISPs reject information requests, asserting that the data is simply not available and that they are not permitted to retain the data.



HUNGARY

MARKET ACCESS ISSUES

Broadcast Quotas – As permitted under EU law, Hungary has a minimum 30% European works quota for VOD services and at least 10% must be Hungarian works.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Piracy via direct download, streaming, and peer-to-peer platforms is the biggest piracy concern in Hungary.

Enforcement

Although the provisions of the EU's copyright related Directives – including the 2001 Copyright Directive (Directive 2001/29/EC) and the 2004 Law Enforcement Directive (2004/48/EC) – have been incorporated into Hungarian copyright law, the effectiveness of copyright enforcement still leaves much to be desired. It remains to be seen whether the recently amended rules regarding the copyright liability of online content-sharing platforms (Act No. XXXVII of 2021) will result in a higher level of protection for rights holders. Moreover, Hungary's copyright liability exemptions discourage rights holders from initiating actions to obtain relief from internet service providers.

Criminal enforcement is a persistent challenge for rights holders in Hungary, although there has recently been a significant improvement in the professionalism of the tax authority's online copyright and related rights infringement team – which has investigation competency in criminal online copyright proceedings – in assessing copyright legal issues.

Legislation

Restrictions on AV Services and Films Displaying LGBT+ Content – Following the amendment of the Hungarian Media Act in 2021, audiovisual (AV) services and films presenting LGBT+ content are in the highest restriction category, regardless of whether they are presenting sexual content or merely presenting the subject matter in a factual context. The categorization of films is carried out by the National Film Office under the Media Authority and is required on all media service providers. Because of the amendment to the Hungarian Media Act in January 2024, this restriction will apply not only to traditional linear media service providers, but also to all service providers, including online film content providers under Hungarian jurisdiction.



ITALY

MARKET ACCESS ISSUES

The Italian Consolidated Audiovisual Media Services Act sets out burdensome rules on programming quotas and investment requirements for linear and non-linear services. The quotas have numerous sub-quotas that are highly prescriptive, complex, restrict the commercial freedom of local industry players and limit consumer choice.

Broadcast Quotas – As requested under EU law, 50% of eligible broadcast hours (i.e., the overall amount of broadcasting time, excluding time allotted to news, sports events, games, advertising, teletext services, and teleshopping) must be European content. Commercial Italian TV channels must devote at least 16.6% of eligible hours to Italian works (25% for the public service broadcaster) with additional sub-quotas regarding programs for minors.

VOD Quotas – Domestic non-linear providers must reserve at least 30% of their catalogues for European works produced within the past five years, with at least 15% of the catalogue's titles dedicated to Italian works produced by "independent producers" within the past five years. The five-year requirements do not apply to transactional video on demand (VOD). Further, as requested under EU law, non-linear providers subject to Italian jurisdiction must give prominence to EU works.

Broadcast Investment Obligation – Commercial broadcasters must annually invest 12.5% of their revenues into the production of "independent" European works. 50% of this share (i.e., 6.25%) is reserved for Italian works produced within the past five years. In addition, 3% of that 12.5% of revenues is reserved for Italian cinematographic works produced by independent producers. Of this 3%, 75% must be devoted to feature films produced within the past five years. The national public broadcaster RAI is not subject to the same investment quotas.

VOD Investment Obligation –The Italian Single Audiovisual Act was revised in April 2024 and VOD providers must now devote 16% of their annual net revenues generated in Italy to the production of European works. Seventy percent of that investment obligation must be reserved for strictly Italian works produced by independent Italian producers within the past five years. A further sub-quota, 3% of the total investment obligation, must be reserved for cinematographic works of Italian original expression produced by independent producers.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – The Italian market suffers from the excessive use of streaming piracy and torrent sites. In recent years, MPA members have witnessed an increase in unauthorized Internet Protocol Television services and the distribution of infringing content links via instant messaging apps.

Camcording Piracy – Italy is a source of significant audio source-theft, in which individuals record local audio tracks in theaters and then match them with existing illegal video camcord copies to create unauthorized copies of films in theatrical release. Video source-theft has also become a significant issue, especially for day and date releases. It is extremely complex for law enforcement to seize an unauthorized live recording while it is being made in a theatre. As such, the audiovisual (AV) industry has consistently called for stronger and more effective enforcement of rules. Article



3 of Maccanti-Mollicone Anti-Piracy Law 93/2023 harmonized camcording penalties with copyright infringements penalties and requires public awareness and education efforts.

Legislation

The Italian government’s transposition of the DSM copyright directive includes several concerning elements including on transparency and omission of important safeguards.

E-Commerce Directive Implementation – Decree 70/2003 implementing the E-Commerce Directive establishes that takedown procedures are subject to a prior notice by the “relevant authorities.” This reference to an intervention by an undefined judicial or administrative authority is contrary to the E-Commerce Directive. However, the Italian courts ruled that prior notice by the relevant authorities is only required for access and caching providers, but not for hosting providers.

Maccanti-Mollicone Anti-Piracy Law 93/2023 – The Anti-Piracy Law came into force in August 2023 and provides for full dynamic DNS and IP blocking by the Italian Communications Regulatory Authority (AGCOM). The law also provides for the possibility of delisting orders with search providers. In addition, it provides for abbreviated precautionary measures, disabling access to illegal live and time-sensitive AV content (before or at latest during the live broadcast/first release).

AGCOM issued a regulation requiring rights holders, collective management organizations, independent management entities, and AV media service providers (including those authorized in another EU Member State) to contribute 0.03% of their annual income in Italy to fund AGCOM’s activities, and particularly the Piracy Shield. MPA urges the Italian government to use state funds to support AGCOM’s activities, rather than rely on private industry.

Anti-Piracy Measures – AGCOM Resolution No. 189/23/CONS (Live Sports Regulation) allows for the “immediate” blocking of illegally broadcasted live sports and similar events. AGCOM plans to issue a consultation in 2024 with the aim to extend this “Piracy Shield” to other AV content.

In October 2024, the Italian government approved additional anti-piracy measures via (Omnibus) Decree 2024/143. These new provisions will strengthen and extend AGCOM’s blocking powers but appear to criminalize ISPs for failure to report piracy activities. It is unclear how these provisions will be implemented. MPA applauds the Italian government for the strong intervention to combat piracy and encourages, in coordination with ISPs, a balanced application of these measures.



THE NETHERLANDS

MARKET ACCESS ISSUES

Broadcasting Quotas – As prescribed under EU laws, Broadcasters must reserve at least 50% of their transmission time for European works, 10% of which must be allocated for European works by independent producers. At least one third of this must not be older than five years, excluding time allotted to news, sports events, games, advertising, teletext services, and teleshopping as prescribed by the 2010 Audiovisual Media Services Directive.

VOD Quotas – The Netherlands imposes a 30% European works catalogue quota for video on demand (VOD) services.

VOD Investment Obligation – The law mandating VOD service providers to invest 5% of national revenues either into Dutch works or into the Dutch film fund entered into force in January 2024. This law applies to VOD services with an annual turnover of at least €10 million within the Netherlands. The law includes a 60% sub-quota for independent productions, as well as makes the presence of Dutch and Frisian language compulsory in all productions. This presence can be met through having at least 75% of the original screenplay be written in Dutch or Frisian, and/or the main characters express themselves at least 75% in Dutch or Frisian. If one of those criteria is not met, the scenario must be based on an original literary work in Dutch or Frisian, or the main theme must be related to Dutch culture, history, society, or politics.

DSM Copyright and SatCab Directives – The Netherlands has transposed the DSM Copyright and SatCab Directives mostly verbatim. However, specifically regarding retransmission, authors and performers retain an inalienable proportional right to equitable remuneration subject to collective management when their exclusive rights are transferred to the producer, as is already the case in the Dutch law for cable retransmission and all other forms of communication to the public (with the exclusion of on demand exploitations). This provision is not prescribed in the EU Directives. Since the transposition of the DSM Copyright Package, this right also applies to direct injection and retransmission by means other than cable. The implementing law of 2021 also extends the beneficiaries of this right to “equitable remuneration” from the main authors and actors to all.

INTELLECTUAL PROPERTY PROTECTION

The Netherlands houses both locally oriented pirate internet sites aimed at various language regions and international English language pirate sites, mostly through co-location. These are removed upon notice from the private Dutch copyright protection foundation, BREIN. Dutch hosting providers similarly host servers for illegal Internet Protocol Television (IPTV) services. Several cyberlockers are hosted in the Netherlands and hosting providers refuse to take them offline if cyberlockers have a notice-and-takedown policy. Further, the Netherlands still has one of the highest numbers of unauthorized IPTV service users in Europe.

Enforcement

In practice, Dutch police and public prosecutors only consider acting against internet piracy when illegal turnover reaches a certain financial threshold, although they do respond to official requests



for assistance in criminal investigations by foreign law enforcement. Government policy is that rights holders are responsible for civil enforcement, and that criminal enforcement will be considered only as a last resort. Criminal copyright infringement, even in the case of for-profit uploaders/sellers, is not enough. As a result, nearly all enforcement efforts are carried out by rights holders collectively through the BREIN Foundation. The first criminal case was initiated in 2023, and while this is a positive development, it remains wholly insufficient to rely on criminal enforcement.

When it comes to civil enforcement, BREIN continues to face opposition from intermediaries, especially access providers, particularly in cases that involve an attempt to obtain contact details of commercial scale infringers. However, after BREIN secured a final blocking order of The Pirate Bay after 11 years of proceedings in 2020, Dutch ISPs agreed to a covenant whereby a court order for blocking an infringing website directed to one ISP will be executed voluntarily by the other ISPs. Blocking – both DNS and IP address-blocking – is dynamic, enabling updates by BREIN to address target websites changing domains without further court orders.



POLAND

MARKET ACCESS ISSUES

Broadcast Quotas – Domestic broadcasters must dedicate over 33% of their quarterly broadcasting time to programming produced originally in Polish, and at least 50% of their quarterly broadcasting time to European programming, excluding time allotted to news, sports events, games, advertising, teletext services, and teleshopping; 10% of this must be by independent producers. In addition, half of that 10% must be produced within the last five years.

Mandatory Financial Contributions – Starting in 2022, VOD services, must contribute 1.5% of revenues from the Polish market to the Polish Film Fund. This levy also already applied to broadcasters, cable providers, and box office revenue.

VOD Quotas – As prescribed under EU law, domestic video on demand (VOD) services must allocate at least 30% of their catalogues to European works and ensure the prominence of those works.

Foreign Ownership Restrictions – Poland limits non-EEA ownership in a broadcasting company to 49%. A broadcasting license may be granted to a foreign person, or a subsidiary controlled by a foreign person, whose registered office or permanent place of residence is located in EEA.

INTELLECTUAL PROPERTY PROTECTION

Internet piracy is a serious concern in Poland. Operators of well-known infringing websites in Poland are often overt and readily identified by the public.

Enforcement

Law enforcement engagement on IP infringement cases in Poland is extremely inconsistent and wholly inadequate. Many cases are stuck or dropped without justification. Polish courts are seriously backlogged, and sentences are not sufficiently deterrent.

The creation of specialized IP courts has not brought about needed improvements. MPA remains concerned that the police will lose interest in working with rights holders because of languishing court cases and disappointing sentences. Furthermore, civil actions against pirate services are ineffective due to the slowness of the legal process in Poland. As an example, Polish film makers obtained a court order in 2015 against the Chomikuj.pl content hosting platform in relation to the availability of infringing copies of Polish movies, requiring that Chomikuj.pl implement various measures to prevent the availability of infringing content. This decision was confirmed by the Krakow appeal court in 2017 and went further on appeal before the Supreme Court, which issued a decision only in 2022.

Legislation

InfoSoc Implementation – Poland has not implemented Article 8.3 of the 2001 Information Society Directive (InfoSoc). Online service providers whose main purpose is to engage in or facilitate the



infringement of intellectual property rights often establish their operations in countries outside the EU with less robust intellectual property law enforcement, or otherwise operate in complete anonymity, making it impossible to locate them or tie them to a specific country. For example, the operator of the Polish infringing site Chomikuj.pl sold their assets to an entity located in Belize. Such situations can be addressed by no-fault injunctions with intermediaries, a remedy made possible by Article 8.3 of InfoSoc and confirmed by Court of Justice of the European Union (CJEU) jurisprudence to be a proportionate and effective remedy (see CJEU, C-314/12, March 2014, UPC Telekabel v. Constantin). Consistent implementation of existing EU law by all Member States is critical, especially for a provision as key to enforcement as Article 8.3. Lacking this 8.3 implementation, in conjunction with the lack of enforcement, is very problematic.

DSM Copyright and SatCab Directives – The Polish parliament adopted the law transposing the DSM Copyright and SatCab Directives. The latter entered into force in September 2024. The transposition goes beyond the Directive by extending the remuneration rights of co-authors and performers of audiovisual (AV) works under Article 70 of the Polish Copyright Law to making available and on demand use of AV works and subjecting those remuneration rights to mandatory collective management.



RUSSIA

MARKET ACCESS ISSUES

In 2022, in response to sanctions imposed on Russia following the invasion of Ukraine, the Russian government adopted several restrictive measures targeting foreign investors from “unfriendly” jurisdictions. The measures include an obligation for the foreign shareholders of Russian joint-stock and limited liability companies to obtain governmental approval for any deals involving their shares. In addition, there have been several proposals for the introduction of compulsory licenses for the works of rights holders from "unfriendly" countries. As of September 2024, none of the draft laws have been adopted. However, the State Duma is still considering the possibility of adopting such amendments.

Foreign Ownership Restrictions – The Mass Media Law prohibits foreign and Russian legal entities with foreign participation from mass media entities or broadcasters (including through a third party) from owning more than 20% of the capital of an entity that participates in the establishment of a mass media entity or broadcaster.

Ownership restrictions also apply to over-the-top (OTT) services. Foreign ownership of OTT services is limited to 20%, provided that the number of Russian subscribers is less than 50% of those services total audience (i.e., the rule targets services with mostly non-Russian audiences). Foreign participation above 20% is subject to government review and approval.

Advertising Ban on Pay-TV – Russia bans advertising on pay-TV channels. While the law has no practical effect on state-owned television channels, it has a significant impact on cable and on-demand services.

Discriminatory VAT – The 1996 Law on State Support of Cinematography provided a VAT exemption for films granted a national film certificate. National film certificates are those given to Russian-made films. Any legal entity distributing a domestic film is exempt from VAT provided that such entity is a cinematography organization. As part of its accession to the WTO, Russia obligated itself to provide national treatment for taxes on similar products. The government of Russia appears to violate this obligation as it is currently applying a VAT to non-Russian films and not to domestic films. Russia raised its VAT from 18 to 20% in 2019.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – While Russia remains host to several illicit sites that cater to English-speaking audiences, negatively impacting markets worldwide, many pirate sites have moved to foreign hosting locations after several legal reforms that allow rights holders to seek injunctions through the Moscow City Court. Infringement on Russian social media platforms – such as VK and OK – remains a significant concern to rights holders.

Illicit Theatrical Screenings – Following Russia’s invasion of Ukraine, many international companies suspended operations in Russia. Since then, the theatrical market has seen a drastic increase in the number of illegal screenings of international cinematographic content organized in theatres across the country. and most cinemas now openly show unlicensed content. The Ministry



of Culture generally condemns such practices, but is reluctant to take a proactive, systematic approach to preventing them. It conducts sporadic inspections, and several cinemas have been fined for showing films without a certificate, but it doesn't address the issue of copyright infringement directly.

Enforcement

Russia needs to increase its enforcement activity well beyond current levels to provide adequate and effective enforcement against IPR violations – including deterrent criminal penalties – consistent with its WTO obligations. However, in conflict with these obligations, in June 2024 the President signed into law amendments to the Criminal Code, which raised the threshold for criminal liability for copyright infringement five times compared to the previous version of the Code. This move makes it more difficult to initiate a criminal investigation.

Russia should take steps to improve the effectiveness of and increase the number of criminal IPR cases focused on digital and source piracy and establish a systematic approach to prevent unlicensed exhibition of motion pictures in theaters.

Also, at present, there are no legally mandated notice and takedown procedures to remove links to infringing content from search results. In lieu of laws mandating compliance with notice and takedown, the representatives of the largest Russian internet companies and Russian rights holders signed the MOU for cooperation in intellectual property rights protection in the digital era in 2018. The MOU introduced a procedure to remove the links to the infringing content from search results at the rights holder's request. The MOU's objective was to develop a law that would regulate search engines' obligations to remove links to infringing websites from search results. However, the MOU is voluntary, has excluded rights holders, and applies only to its parties. The draft law that would replace the MOU and convert its provisions to obligatory requirements entered the parliamentary process in 2021 and while there is no hearing date, it remains on the Duma agenda.



SPAIN

MARKET ACCESS ISSUES

Broadcasting Quotas – As required by EU law, linear services must reserve 51% of their broadcasting time for European works, with half of that 51% devoted to content in any of the official languages of Spain and 10% to independent productions. Half of the 10% for independent productions must be no more than five years old.

VOD Quotas – Video on demand (VOD) services established in Spain must reserve at least 30% of their catalogues for European works, with half of these in any of the official languages of Spain. For the works that must be in any of the official languages, a minimum of 40% must be reserved specifically for works in one of the official languages of Spain's Autonomous Communities, taking into account their population weight and reserving at least 10% for each.

Investment Obligation – Spain maintains investment obligations for linear and on-demand services. If revenues are over €50 million, there is an obligation to invest 5% in European audiovisual (AV) works. Services can comply with this obligation through the direct finance of European works' production by indirectly acquiring the rights of finished works, and through a contribution to the national film fund or to the fund for the promotion of cinematography and AV works in different co-official languages. A minimum of 40% of the 5% investment in AV works must be reserved for cinematographic works of independent producers in any of the official languages of Spain. There is a 70% sub-quota for independent productions, of which 15% is reserved for official languages other than Spanish, based on population weight and reserving at least 10% for each of them. Of this sub quota, a minimum of 30% must be allocated to AV works directed or created exclusively by women.

The new AV law also establishes that both domestic and non-domestic linear and non-linear services shall contribute 1.5% of their annual gross turnover generated in Spain to the Spanish public broadcaster RTVE. This 1.5% contribution may not exceed 20% of the total income planned for each year for the RTVE Corporation. Free-to-air linear television AV communication service providers shall pay 3% of their annual gross turnover, not exceeding 15% of the total annual income anticipated by RTVE.

Screen Quota – For every three days that a non-EU country film is screened, one EU film must be shown. This quota is reduced from four to one if the cinema screens a film in an official language of Spain other than Castilian and shows the film at all sessions of the day in that language. Non-observance of the screen quotas is punishable by fines. These measures ignore market demand for U.S. and non-EU country films and hinder the development of Spain's theatrical market. The Spanish Government increased the screen quota in 2020 to 30%, linking it to subsidies for movie theatres. Both quotas concurrently exist.

Public Subsidy Scheme – The method for awarding subsidies for films and short films is based on a points-based cultural test. The scale was modified to award an extra-point to producers who choose to distribute their movies through independent Spanish film companies, which can make a significant difference in the allocation of funding.



INTELLECTUAL PROPERTY PROTECTION

Illicit theatrical camcording remains a concern for rights holders in Spain. Streaming piracy sites, Internet Protocol Television (IPTV) subscription services, and torrent sites are commonly used in Spain to access infringing content.

Enforcement

Spanish courts issue dynamic siteblocking decisions (including “pirate brand” decisions), with monthly updates sent directly to the internet service providers (ISPs). Additionally, the efficiency of the administrative siteblocking process continues to improve. Also, enforcement against camcording, illegal websites, and IPTV services has improved in recent years.

Legislation

DSM Copyright Directive – The government intends to complement its transposition of the DSM Copyright Directive by publishing a royal decree in 2024 which transposes Article 12 to enable AI licenses through extended collective licensing (ECL). However, this would be inconsistent with the Directive (via criterion in Article 12), because among others, there is no market failure. For audiovisual (AV) content, the use of ECLs would conflict with how rights holders normally exercise their rights, and it would undercut how AV rights holders extract economic value from their content.

EU E-Commerce Directive – Spain’s E-Commerce Law creates a limitation on liability for ISPs that goes beyond the standard permitted by the EU E-Commerce Directive. The law fails to correctly implement the constructive knowledge standard and confers liability only based on “effective knowledge.” In addition, Spain does not require ISPs to respond to any take-down request that is not accompanied by a court order.

Spanish Data Protection Law – This law does not allow a civil party to collect and process infringers’ IP addresses on the basis that such addresses are personal, confidential data.



SWITZERLAND

MARKET ACCESS ISSUES

Broadcasting Quotas – Broadcasters must reserve half of their transmission time for European works where practicable.

VOD Investment Obligation – In 2024, a 4% local content investment obligation for video on demand (VOD) services based on Swiss revenues entered into force.

VOD Quota – Switzerland imposed a 30% quota for European works for VOD services targeting Switzerland beginning January 2024.

Reporting Obligations – Service providers must comply with overly complex and detailed reporting obligations on their catalog offerings, as well as the actual demand for/usage of films and TV series on their services. This obligation includes detailed rules on reporting formats (including using of uncommon ISAN numbers), which creates a significant administrative burden.

INTELLECTUAL PROPERTY PROTECTION

Switzerland lacks meaningful remedies and effective enforcement against online copyright infringement, in particular against foreign-based piracy sites. This is fostered by the doctrine of legal private use of content from illegal sources, and a lack of action by access providers to block access to such offers. This is particularly concerning, as this dearth of enforcement coupled with Switzerland’s robust technical infrastructure has made it an attractive host for sharehosting (wherein multiple website operators share a single server that hosts their websites, allowing a significant decrease in their monthly server rental costs compared to a private server) and hosting illegal sites. Recent amendments to the Swiss Copyright act enacted in 2020 have not yet had a visible effect on such activities and may need to be tested in court cases to become operative.

Unique Distributor Clause – Exploitation of a film in any media, including VOD, now requires a single distributor to maintain exclusive control over all language versions in Switzerland. This is accompanied by laborious registration and reporting duties. This “unique distributor clause” provision in the Film Act lacks clarity regarding the extent of “grandfathering” protection for existing contractual film rights. This heavy-handed amendment interferes with internationally well-established licensing practices.

Enforcement

It is crucial to introduce efficient and practicable enforcement instruments for intermediaries, particularly targeting access providers and local data center operators. Moreover, Switzerland needs to introduce efficient, practicable instruments to identify the owners of domains (in particular, Switzerland-administered top-level domains) in cases of abuse and begin to enforce rights against such abuse.

Also, it is important for Switzerland to introduce reasonable, efficient rules of platform liability related to platform-based mass content offerings. In fact, Switzerland has never introduced reliable



rules for internet service providers (ISPs) liability and has not adopted practices that have become standard elsewhere in Europe and beyond.

Legislation

Copyright Legislation –Switzerland’s copyright law remains inadequate, lacking crucial enforcement mechanisms. Critical provisions of Switzerland’s enforcement regime, a stay-down duty for hosting providers and the legal justification for processing personal data such as IP addresses, contain vague legal concepts, lack clarity, and will likely require court decisions lasting several years and high costs to remove the ambiguities and become effective. Data processing for purposes of out-of-court or civil law enforcement, such as cease-and-desist letters and injunctions, also is burdened with legal uncertainty.

Swiss law still allows circumvention of technological protection measures for purposes permitted by law, including the inappropriately wide private use exception. In combination, these protection deficits leave the Swiss marketplace largely unprotected against cross-border piracy services. It is critical that Switzerland complies with the Berne Convention/TRIPs, WIPO Internet Treaties, and internationally acceptable enforcement standards. Necessary minimum changes include ensuring broader liability under Swiss law for parties who facilitate, encourage, and profit from widespread infringement; engaging ISPs, including access providers, in the fight against online piracy; affirming that current law does not permit copying from unauthorized sources; and implementing adequate civil and criminal enforcement tools including access blocking.

In addition, Switzerland lacks reliable, abuse-proof standards and limits for orphan works licensing, “scientific research” uses, internal documentation/information copying, and educational uses. The open, undetermined, and unlimited wording of these provisions permits excessive, abusive interpretation thus creating substantial loopholes in protection against emerging new commercial use cases in conflict with the three-step test.

Furthermore, Switzerland needs to introduce appropriate limitations to permitted private use such as diligence standards or a legal source requirement for private users and limits on third-party commercial services permitted under private use.



UNITED KINGDOM

MARKET ACCESS ISSUES

VOD Catalogue Quota – The UK imposes a 30% quota for European Works in video on demand (VOD) catalogues and related prominence requirements.

Media Act 2024 – In 2024, The Media Act 2024 received Royal Assent. The Act contains provisions providing the communications regulator, Ofcom, with new regulatory powers to draft and enforce a Code for “Tier 1” VOD providers. It extends regulation to providers that, while they may not be headquartered in the UK or make editorial decisions in the UK, are nonetheless made available to the UK public. Ofcom plans to publish a report on the state of the UK VOD market by the end of 2024, which will serve as the basis for the Secretary of State to designate “Tier 1” VOD services.

Freedom of Movement – The free movement of people, goods and services previously enjoyed by European and UK citizens moving between the UK and the EU ended 2021. This has added some friction to the process of producing audiovisual content in the UK following the absence of a specific agreement covering the movement of cast, crew, and equipment between the UK and the EU for productions in the UK-EU Trade and Cooperation Agreement. The UK government continues to pursue bilateral discussions with individual EU Member States to try to reduce cost and bureaucracy around cross-border working and movement of goods and equipment.

INTELLECTUAL PROPERTY PROTECTION

Online piracy of film, television, and sports in the UK occurs primarily via streaming piracy sites and apps, illicit streaming devices (ISDs), and Internet Protocol Television (IPTV) subscription services.

Organized criminal gangs are increasingly involved in the importation, configuration, and marketing of ISDs and apps. MPA appreciates the Border Agency’s increased interest in tackling this problem.

Enforcement

UK courts issue dynamic siteblocking decisions (including “pirate brand” decisions and decisions against illegal IPTV services), with monthly updates sent directly to the internet service providers.

Legislation

TDM Exception – The newly elected Labour government has recently indicated that it will consult on legislative proposals addressing the use of copyrighted materials to train AI models. The government should ensure that any approach it identifies does not restrict contractual freedom, and that if it were to proceed with a new text and data mining (TDM) exception, the exception must contain safeguards for rights holders including lawful access, the ability to opt-out in an effective and non-burdensome manner, and clear copyright transparency provisions.



ISRAEL

MARKET ACCESS ISSUES

Draft Media Bill – In 2023, Israel’s Minister of Communications published the “draft Memorandum of the Communications (Broadcasting) Law 2023.” The draft law maintains an unnecessary and problematic investment obligation on medium and large sized content service providers (2% and 4% respectively). This requirement would be in violation of Israel’s obligations under the US-Israel FTA. The bill represents an unprecedented intervention into sports broadcasts that undermines exclusive property rights and restricts competition. The bill also prohibits news exclusivity and fails to properly protect and preserve copyright in content by mandating a compulsory license without compensation to rights holders for the retransmission of broadcast channels through a streaming application. There is also potential for extreme and unlimited authorization to collect confidential commercial secrets without it being warranted and without proper reservation of rights.

In July 2024, Israel’s Minister of Communications published a related bill which aims to provide free access to nearly all linear broadcasts. This would result in a "must-buy" rule for local broadcasters. Additionally, the inclusion of catch-up functionality would be compulsory without compensation to the broadcasters.

Competition Authority – Israel’s Competition Authority launched a consultation in 2023 on whether a collective management organization (CMO) representing Israeli audiovisual producers can secure an exemption from Israeli competition law enabling the CMO to collectively license the exclusive rights of individual producers to certain foreign entities for exploitation in Israel and abroad. The broad grant of rights to this CMO, which includes all forms of exploitation including linear broadcasting and on-demand streaming, would also encompass future works.

INTELLECTUAL PROPERTY PROTECTION

Draft Performers Bill – The Ministry of Justice decided in 2024 to support a performers’ bill based on an MP’s proposal and since then the parliament responsible committee has organized several hearings with stakeholders. There is a risk that this bill affects contractual freedom and imposes retroactivity of the law.



WESTERN HEMISPHERE

Our industry's largest foreign markets in the Americas – Brazil, Canada, and Mexico – each pose a unique set of challenges for U.S. media and entertainment exports. MPA has seen that policies impacting market access in these territories can sometimes proliferate across the region, impacting the global policy framework.

MPA members face local content quotas throughout the hemisphere. Brazil has raised its screen quota in recent years and recently imposed sub-quotas on large theatrical releases. Brazilian lawmakers are also exploring the imposition of quotas on the over-the-top (OTT) market. In Mexico, there have been legislative attempts to impose local content quotas on both theatrical and OTT distribution channels via the Federal Telecommunications and Broadcasting Law or through amendments to the Federal Cinematographic Law. In contrast, MPA applauds Argentina's recent revocation of its screen quota.

Canada maintains a web of discriminatory and outdated content quotas for broadcast and pay-TV that artificially inflate the total spend on Canadian programming. In 2022, legislation was reintroduced to reform the Broadcasting Act via Bill C-11 (Online Streaming Act), which received Royal Assent in 2023, and now provides the Canadian Radio-television and Telecommunications Commission (CRTC) with the explicit power to regulate non-Canadian digital services delivered over the internet, including those provided by MPA members. The Online Streaming Act also granted the CRTC the power to make regulations that would impose discoverability, financial, and reporting obligations to support the Canadian broadcasting system. In 2023, the CRTC launched a series of public consultations over three phases to implement the Online Streaming Act targeting late 2024 for implementation of its policy decisions.

The U.S. motion picture and television industry also faces barriers in the form of foreign ownership caps and advertising restrictions. For example, Brazil, Canada, and Mexico all maintain foreign investment limitations in their broadcasting or pay-TV markets. Further, Mexico and Argentina impose strict advertising limitations on pay-TV channels.

Beyond traditional market access barriers, our industry also faces *de facto* trade barriers in the form of widespread content piracy. While hard goods piracy persists throughout the Americas, online piracy is the primary barrier and priority for the motion picture and television industry. Of particular concern is piracy from illegal Internet Protocol television (IPTV) services, such as MagisTV, that provide unauthorized telecommunication signals/channels and video on demand content to a global audience. Although Brazilian enforcement authorities have deployed important raids against online content piracy in recent years, namely Operation 404 against illegal digital content, these actions have not sufficiently addressed the issue. MPA encourages Brazilian regulators, including the Brazilian Film Agency (ANCINE), to immediately implement the site-blocking provision enacted in 2024 through Federal Law #14.815, which empowers the agency to enforce copyright on a larger scale.

Another regional threat in Latin America and Canada is the proliferation of illegal streaming devices (ISDs). These devices are popular throughout the region and are a leading vehicle for the online piracy of audiovisual material, especially in Brazil, where ISDs continue to proliferate in the market



despite several notable enforcement efforts, such as inspections and seizures by the Brazilian Telecom Agency in the past year.

Organized criminal online piracy and piracy release groups that release the first sources of pirated content have been identified in Argentina, Brazil, Chile, Ecuador, Guatemala, Mexico, and Peru. These groups are overtly profit-driven and use different distribution channels to release illicit content online. In general, they also have a close association with hard goods operators. Moreover, over the past several years, Latin American release groups have extended their operations outside the region, recruiting operatives in the United States and Russia. It is imperative that countries' legal and enforcement frameworks promote accountability and rule of law and create incentives for intermediaries to cooperate with rights holders in combating this ongoing problem.

Theatrical camcording as a source of piracy is a persistent problem in Latin American cinemas, although progress against this crime is improving overall. Anti-camcording legislation is a critical tool to assist local law enforcement efforts against camcord piracy. Some countries, such as Argentina and Canada, have legislative frameworks that have fostered effective enforcement against this damaging source of piracy. Brazil's recently enacted Federal Law #14.815, when implemented, will enable ANCINE to enforce against this form of source piracy. MPA also commends Peru for its recent Criminal Code modification that will provide authorities with a more efficient tool to sanction camcording violations. Meanwhile, in 2020, Mexico enacted U.S.-Mexico-Canada Agreement (USMCA) legal reforms that included changes to the criminal code that provide new tools for the prosecution of camcording pirates, including the removal of the "proof of profit" requirement, which was an important legislative improvement. However, Mexican authorities have not enforced these provisions, nor initiated any criminal investigations to prosecute camcording pirates. As a result, Mexico remains a top location for illegal camcording activity.

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. Mexico continues to suffer from very high rates of copyright piracy, including through online streaming, peer-to-peer file sharing, direct downloads, stream ripping, ISDs and apps, and circumvention devices for audiovisual content. In addition, enforcement authorities, regulators, and private stakeholders should work together to protect IP rights and prevent unlicensed distribution of audiovisual content in other parts of the region, especially in the Caribbean, El Salvador, Guatemala, and Honduras, 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.

MPA continues to monitor legislative proposals in Latin America that would introduce unwaivable statutory remuneration rights for authors and performers in the audiovisual and music sectors, with particular attention to any proposals that would subject such rights to mandatory collective rights management (MCRM) by collective management organizations (CMOs). Of greatest concern are MCRM initiatives aimed at making available and/or communication to the public (CTTP) exploitations. This includes interactive on-demand services targeting third party distributors of copyright works such as streaming services, as well as linear services and exploitations. Such a system is already in place in Argentina. These rights can be asserted by CMOs against other licensees who have no contractual relationship with authors or performers, including streaming services,



cinemas and television broadcasters that have acquired exploitation rights by license from producers, but who face subsequent claims for remuneration from a panoply of CMOs representing authors and performers. These unquantifiable back-end claims asserted against licensees significantly erode the value of the exclusive rights in copyright work.

The Argentine regime imposing MCRM on CTTP remuneration rights has been in place for many years; the law in that country says nothing about such rights for making available exploitations. Nevertheless, there is at least one CMO in Argentina that has asserted claims against streaming services in respect of making available exploitations, potentially undermining this new sector of the audiovisual business. Other countries in the region have introduced unwaivable author and performer remuneration rights, including Chile, Colombia, Peru, and Uruguay. A proposal for such rights is pending in Costa Rica and has been long discussed in Brazil. Some systems, such as Colombia and Peru for performer remuneration rights, impose MCRM. The only functioning CMO in Uruguay, representing author remuneration rights, has asserted that remuneration rights are subject to MCRM, however, the legal situation remains unclear due to patchwork and inconsistent legislative efforts. In Chile, these rights are subject to voluntary CRM. In Brazil and Costa Rica, the proposals for unwaivable remuneration rights would impose MCRM for performers. A similar legislative proposal was adopted in Uruguay. It is not clear whether these remuneration rights are going to be subject to MCRM.

None of the discussed countries currently have a supervisory or robust regulatory framework for oversight of CMO claims and collections. Without strict oversight, claims from CMOs can be excessive. Disruption and confusion in local markets can be caused by including untransparent mechanisms for tariff setting and distribution practices, cumulating tariffs from multiple CMOs, and potentially discriminatory distribution practices that chill local production. CRM and MCRM have profoundly negative impacts on U.S. exports in the audiovisual sector through secondary effects that undermine the compensation structures established in collectively bargained agreements with the creative talent in U.S. audiovisual works by imposing additional, unjustified increases in distribution and licensing costs. These initiatives also undermine the free exercise of exclusive rights and contractual freedom while imposing yet unknown back-end costs on distributors of audiovisual works, including streaming platforms, even as producers of works that are distributed and made available have already negotiated fair, ongoing compensation for authors and performers with their representative unions. These kinds of initiatives, particularly when MCRM is imposed, cause confusion in the marketplace for rights clearance as well as erosion of market value for all stakeholders.

Over the past few years, several governments in the region have amended their copyright frameworks or are actively considering amendments. The Canadian government passed long-awaited reforms to implement the WIPO Digital Treaties, but further amendments to the *Copyright Act* are needed to appropriately deal with the new forms of online copyright infringement that were not present, dominant, or contemplated when the *Copyright Act* was last amended in 2012, including streaming sites, IPTV subscription services, and ISDs. In addition, there are aspects of the legal framework in Canada that do not provide appropriate legal incentives for intermediaries (e.g., ISPs, payment processors, online advertising networks, hosting providers, etc.) to cooperate with rights holders in deterring online copyright infringement. The framework also provides broad exceptions to copyright that remain untested. In Brazil, reform is under discussion, including the potential creation of an additional layer of remuneration rights. As governments in the region consider reforms to address copyright in the digital age, it is critical for the U.S. government to



continue to engage them on the need for these reforms to be consistent with both the international copyright framework – especially regarding exceptions and limitations to copyright – and, in the case of FTA partners, consistent with their bilateral obligations.

In 2020, Mexico enacted reforms to its Copyright Law, Criminal Code, and Industrial Property Law to comply with its USMCA commitments. Despite the strides Mexico has made in its efforts to implement USMCA, additional work is needed to properly implement these provisions, particularly the issuance of the secondary regulations from the Copyright Law and the Industrial Property Law, and to maintain sufficient resources for prosecutors to enforce Criminal Code provisions. Further amendments are also needed to the Copyright Law or Civil Code to cover cable systems, as well as to provide civil remedies for satellite and signal piracy.



BRAZIL

MARKET ACCESS ISSUES

Pay-TV Content Quotas – Law #12.485/2011 imposed local content quotas for pay-TV, requiring every qualified channel (those airing films, series, and documentaries) to air at least 3.5 hours per week of Brazilian programming during primetime. It is also required that half of the content originate from independent local producers and that one-third of all qualified channels included in any pay-TV package must be Brazilian. Implementing regulations limit eligibility for these quotas to works in which local producers are the majority IP rights owners, even where such works are co-productions, and regardless of the amount invested by non-Brazilian parties. These quotas were recently renewed until 2043.

Screen Quotas – Theatrical quotas were recently renewed until 2033. The obligations include exhibiting a minimum percentage of Brazilian works, proportional to the number of screens of the complex, and a minimum amount of different works simultaneously, also proportional to the number of screens. Moreover, theater complexes with 3 or more screens cannot exhibit the same work in over 50% of the screenings of a day to prevent large theatrical releases from playing continually. The MPA opposes local content quotas, which limit consumer choice and can push consumers toward illegitimate content sources.

VOD Tax and Regulatory Framework – Brazil currently applies a Condecine tax on a per-title basis to films, pay-TV, and “other segments.” This tax does not apply to video on demand (VOD) services. However, there are several bills pending in the Brazilian Congress that would extend the Condecine tax to VOD services and impose other obligations on VOD providers, such as catalogue quotas, prominence for local works, and transparency obligations. These bills – most notably #8889/2017 and #2331/2022 – could undermine the viability of providers, chill investment, and reduce consumer choice.

Tax Issues – Brazil is currently undergoing a broad tax reform that will consolidate several consumption taxes into two new taxes (IBS and CBS). The main wording for the Tax Reform was approved in 2023, but several aspects of its implementation are still being discussed at the National Congress, including tax rates, exemptions and discounts, and tax restitutions. Complementary legislation must still be approved by Congress. The tax rates are not yet defined, but there are estimates that IBS and CBS will collectively be around 25%. Moreover, the Brazilian Congress is currently discussing several bills that aim to establish specific taxes for digital services, such as Bills #2358/2020, #131/2020, and #218/2020. Such tax increases would represent a burden to current taxpayers and a barrier to the entry of new competitors into the Brazilian market.

Accessibility Regulation – Obligations to offer audio description, closed-captioning, and sign language in Brazilian cinemas came into force in 2023. Brazil is currently considering various legislative proposals that aim to compel programmers, broadcasters and online service providers (OSPs) to provide additional accessibility tools within their services. The U.S. film industry supports measures to broaden access to its productions and to better serve patrons with disabilities. The industry is working closely with regulatory bodies and other stakeholders to ensure that the accessibility features are implemented with a technological solution that is secure, efficient, aligned with global best practices, and with reasonable timelines for implementation.



Network Usage Fees – There is an active debate in Brazil over network usage fees with the Brazilian Telecom Agency (ANATEL), telecom companies, and the Ministry of Communications pushing for their implementation. In 2023, ANATEL launched a public consultation that included a discussion on network usage fees to fund telecom infrastructure, with a follow-up consultation in June 2024. More recently, Bill #2804/2024 aims to oblige OSPs to pay ISPs when they are responsible for over 3% of a network’s bandwidth and force OSPs with yearly gross revenues over US\$10 million to contribute to FUST (a telco fund). A different bill in the Lower House (#469/2024) would prohibit network usage fees. MPA opposes the adoption of such fees, which would severely impair competition in the Brazilian market (especially considering that ISPs frequently also offer audiovisual content), harm consumers, and negatively impact net neutrality.

Account Sharing – Brazil’s legislature is currently discussing bills (#2497/2023, #3299/2023 and #1153/2024) that intend to limit or prohibit measures taken by online subscription service providers to prevent account sharing among their users. MPA opposes these restrictions because they would not only impact providers’ revenues and general freedom of contract but would also weaken copyright enforcement.

Foreign Ownership Limitations – Brazil currently maintains a 30% foreign equity cap for broadcast networks.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Brazil’s legitimate online audiovisual services continue to suffer from the pervasive availability of illicit, advertising-supported services, despite the increasing availability of legitimate options. Studies carried out in 2022 indicate that content piracy costs the motion picture and television industry US\$2.6 billion every year. Despite commendable actions by local enforcement authorities such as the Ministry of Justice CyberLab Task Force, ANATEL, Customs, and Operation 404, the market penetration of online piracy and use of illegal streaming devices (ISDs) continues to rise.

Enforcement

The Ministry of Justice’s National Council to Combat Piracy and Intellectual Property Crimes has pursued several helpful voluntary initiatives to fight illegal activity. Additionally, the Ministry of Justice has consistently deployed enforcement actions against online content piracy, such as Operation 404, in recurrent waves, and ANATEL recently improved its focus on the contraband of ISDs and blocking of non-authorized pay-TV channels. Operation 404 is a model for effective and efficient criminal enforcement measures against piracy sites and services and should be replicated by other markets within the Western Hemisphere.

Brazil however has yet to implement an efficient administrative site-blocking system to curb the availability of piracy sites and services. Moreover, Brazil would benefit from a dedicated IP police department or an IP court, along with rules to reduce the timing and costs of inquiries and lawsuits, and deterrent sentences for copyright theft. The Brazilian Film Agency’s (ANCINE) delay in its implementation of the site-blocking provision created by Federal Law #14.815/2024 is a concern for rights holders.



Legislation

Copyright Reform – Rights holders are troubled by several legislative proposals (e.g., Bills #21/2020, #3133/2012, and #6117/2009) that create broad exceptions and limitations to copyright. These bills are inconsistent with Brazil’s international obligations and, if enacted, would deter investment in Brazil’s creative industries. Moreover, the latest wording of Bill #2.370/2019 aims to reform the Copyright Act to create an additional remuneration layer affecting rights holders of copyrighted works used online.

Camcord Legislation – A 2019 anti-camcording bill (#2714/2019) that helpfully removes the requirement to prove a profit motive was approved by the House Committee on Culture and now awaits a vote at the House Committee on Constitutional Affairs. If approved, the bill will move to the Senate.

Site Blocking Legislation and Initiatives – Law #14.815/2024, enacted in January 2024, grants ANCINE the authority to suspend and prevent the future showing of any unauthorized use of protected audiovisual works. However, despite this regulatory tool being available, ANCINE has delayed implementing this prevention mechanism. By contrast, ANATEL, helpfully for rights holders, has been enforcing against illegal pay-TV signals through site blocking mechanisms.

Subtitling and Dubbing of Audiovisual Works – The Lower House has started to debate on the nationality/location of professionals and companies that dub and subtitle audiovisual works (Bill #1.376/2022). This could result in a protectionist policy that excludes work by foreign dubbing artists/companies or Brazilian professionals residing abroad. In the latest version of the bill, a new provision would forbid the assignment of images, voices, or other personal data of actors and voice dubbers.

Artificial Intelligence Regulation – Senate Bill #2338/2023 aims to create a General Artificial Intelligence Framework that includes the use of copyrighted material for AI training, including text and data mining, as well as output labelling obligations. Policymakers should proceed with care as discussions evolve. The treatment of copyright in this regulation will impact the audiovisual industry, which depends upon strong copyright protection in the digital environment to generate revenue.



CANADA

MARKET ACCESS ISSUES

Television Content Quotas – The Canadian Radio-television and Telecommunications Commission (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) 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 pm 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, Internet Protocol Television (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 only offer a second set of U.S. 4+1 signals to its subscribers 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 only be carried 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.



Obligations on Non-Canadian Digital Media Services – With Bill C-11 (Online Streaming Act) passing into law in 2023, the CRTC has the explicit power to regulate non-Canadian digital media services, including the power to make regulations that would impose financial, discoverability, and reporting obligations to support the Canadian broadcasting system. Further into 2023, the CRTC commenced a multi-phase approach to implement the Online Streaming Act with the mandate to modernize Canada’s broadcasting framework. As part of its regulatory plan, 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 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 other aspects of its new regulatory framework, which is set to take effect in 2025.

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, some 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.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Canada’s digital marketplace remains hampered by widespread copyright infringement. Canada has seen an influx of operators, sellers, and resellers of infringing paid subscription piracy services (including IPTV and video on demand [VOD] services). Canadian operators are also actively engaged in the theft of telecommunication signals, thereby acting as the sources of content for these illegal services. Streaming sites and other online sources for



unauthorized movies and TV shows, illegal streaming devices (ISDs), and apps, remain readily available both online and in the retail market, suppressing the demand for legitimate digital streaming and VOD services. Amendments to the Copyright Act, which came into force in November 2012, created an “enablement” clause whereby providing “a service primarily for the purpose of enabling acts of copyright infringement” constitutes infringement. While online services that enable others to make illegal copies (such as torrent or peer-to-peer sites) are now subject to civil liability, the current tools in the Copyright Act are insufficient to deal appropriately with the new forms of online piracy that were not present, dominant, or contemplated in 2012, such as streaming sites, cyberlocker (host) sites, ISDs configured to allow users to access unlicensed content, and illegal IPTV subscription services. In addition, there are aspects of the legal framework that do not provide appropriate legal incentives for intermediaries to cooperate with rights holders in deterring piracy. The framework also provides broad exceptions to copyright that remain untested.

Enforcement

Historically, crown prosecutors have been reluctant to seek the breadth of remedies for intellectual property crimes. This issue often arose due to a knowledge gap concerning the prosecution of intellectual property crimes, a problem that is amplified when dealing with emerging piracy models. While there have been recent prosecutions, ongoing education of crown prosecutors is key to ensuring Canada stays ahead of criminals engaged in online piracy.



MEXICO

MARKET ACCESS BARRIERS

Advertising on Broadcast and Pay-TV Services – Mexico imposes advertising limitations and incentives that aim to promote domestically-made programming. Pay-TV channels, which are primarily operated by foreigners, are forced to abide by both daily and hourly advertising limits while their domestic and free-to-air counterparts are allowed almost twice the daily advertising limit and are not subject to hourly caps. For the past 20 years, channels have been allowed up to 12 minutes of advertising per hour under a practice known as “averaging,” so long as they did not exceed the 144-minute daily limit. This practice was adopted in 2000, approved by the regulator in 2011, and affirmed by Mexico’s Superior Court of Tax and Administrative Justice in 2014. This move imposes unfavorable advertising limitations on U.S. pay-TV providers, in sharp contrast to the rules for Mexican free-to-air TV broadcasters, breaking with Mexican courts’ prior rulings and raising questions about U.S.-Mexico-Canada Agreement (USMCA) compatibility.

Foreign Ownership Limitations – Mexico currently maintains a 49% foreign equity cap for broadcast networks. By comparison, the U.S. FCC has permitted foreign entities to hold up to 100% of a broadcaster, subject to a case-by-case review.

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, as well as limits to the number of screens in which a given movie can be exhibited. If adopted, such measures would severely limit the exhibition of U.S. films in Mexico and would potentially contravene Mexico’s USMCA commitments.

Fate of Independent Regulators – The motion picture industry remains concerned about Executive Branch attempts to hinder or silence the work of certain independent and autonomous regulators, including the Federal Telecommunications Institute (IFT), which has authority over OTT regulation. The President has vetoed any new IFT member appointments, and the regulator lacks the quorum necessary to hold sessions. The Supreme Court is pending the review of a case brought by the current commissioners to obligate the President to make the appointments.

Judicial Reform – In September 2024, the Mexican Congress enacted a structural reform to the judiciary branch promoted by President Obrador. The key element of this reform is the election by popular vote of Justices, Magistrates and Judges. The reform has generated significant debate in Mexico, especially since it is not clear that the new model will guarantee the independence and impartiality of the judicial branch. MPA 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.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Online piracy is a serious, widespread problem in Mexico. Illegal streaming devices (ISDs) and apps are increasingly present in Mexico’s electronic-hardware gray markets, denoting increased preference for this type of illegal consumption. While there are some local infringing websites, many of the infringing sites and services routinely accessed by Mexican users are hosted outside of Mexico. Overall, the use of increasingly sophisticated streaming piracy sites, ISDs, and



Internet Protocol Television subscription streaming services is ubiquitous. According to MPA data from 2023, the second most visited video on demand website for Mexican consumers was an illegal content site. Mexican authorities lack a comprehensive strategy for preventing digital piracy.

Enforcement

The enforcement problems in Mexico are procedural and structural, exacerbated by a lack of resources and focus from authorities, as well as gaps in expertise. The development and adoption of a high-level national anti-piracy plan to target major piracy and counterfeiting operations, coupled with coordination of federal, state, and municipal activities, would improve Mexico's enforcement landscape.

Legislation

TCE Initiative – Mexico's Federal Law for the Protection of the Cultural Heritage of Indigenous and Afro-Mexican Peoples and Communities entered into force in 2022. The law aims to protect traditional cultural expressions (TCE) in a manner like copyrighted works, with the goal of combatting cultural appropriation and plagiarism of indigenous designs and expressions. The measure aims to register, classify, and document the TCEs of indigenous communities while also broadening the scope of protection and economic rights for these expressions. The measures also introduced a strict enforcement scheme with criminal penalties. This initiative poses 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.

Mexico's Human Rights Commission, an autonomous government agency, filed a claim of unconstitutionality against the 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.

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 Law, increases legal uncertainty in Mexico regarding audiovisual investments. The U.S. Government should encourage Mexican authorities to implement these reforms with transparency and legal clarity and in alignment with Mexico's USMCA commitments.

Legislation to Implement USMCA Reforms – Mexico has passed legislation to implement many of its USMCA obligations. Helpfully, among a myriad of benefits, these reforms are poised to improve the defense of technological protection measures (TPMs), enable a notice-and-takedown system for the removal of infringing works online, provide higher administrative sanctions for copyright infringement, enable prosecution of camcording without proof of profit motive, and enhance the Mexican Institute of Industrial Property's online enforcement capabilities. Although these developments are positive, the growth of the legal digital marketplace in Mexico has been hampered by the absence of secondary regulation to implement USMCA reforms adhering to the Mexican



Copyright Act. Further amendments are also needed to the Copyright Law or Civil Code to cover cable systems, as well as to provide civil remedies for satellite and signal piracy. MPA looks forward to working with the U.S. government to ensure that the agreement is fully and effectively implemented.

In response to the reforms of 2020, Mexico's National Human Rights Commission filed a case in the Mexican Supreme Court seeking to void the copyright gains as unconstitutional, particularly the provisions regarding criminal sanctions for circumvention of TPMs and the provisions on notice and takedown. The Supreme Court ruled in June 2024 to uphold the reforms as constitutional.