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October 30, 2018

**Filed via [www.regulations.gov](http://www.regulations.gov)**

Edward Gresser  
Chair, Trade Policy Staff Committee United States Trade Representative  
600 17th Street, NW Washington, D.C. 20508

Re: MPAA Comments Regarding the 2019 National Trade Estimate Report on  
Foreign Trade Barriers (Docket: USTR-2018-0029)

Dear Mr. Gresser:

MPAA proudly represents one of the country's most vibrant industries – the American motion picture and television 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 our nation's creativity and dynamism. To that end, please find in the enclosed submission our industry's observations on priority foreign trade barriers.

In the United States, the motion picture and television industry supports over two million high-paying jobs across all 50 states and paid \$139 billion in total wages in 2016. The industry employs nearly 342,000 workers in the core business of producing, marketing, manufacturing and distributing motion pictures and television shows. These workers earn an average annual salary of \$90,000, 68 percent higher than the average salary nationwide. The industry generates another 354,000 jobs in related businesses that distribute motion pictures and television shows to consumers, including people employed at movie theaters, video retail and rental operations, television broadcasters, cable companies, and dedicated online ventures. The motion picture industry also indirectly supports thousands of other jobs, such as caterers, dry cleaners, florists, hardware and lumber suppliers, and software and digital equipment suppliers. Ultimately, more than 93,000 businesses from across the U.S. make up the industry, 87 percent of which employ fewer than 10 people.

Creative film and television programming represents one of our country's greatest exports, accounting for \$16.5 billion in U.S. exports and registering a positive trade balance with nearly every country. Indeed, the American motion picture industry is one of the most competitive in the world. In 2016, U.S. audiovisual services exports enjoyed a trade surplus valued at \$12.2 billion, or five percent of the total U.S. private-sector trade surplus in services. This trade surplus is larger than those in the advertising, mining, telecommunications, legal, or health related services sectors. In 2016, our industry exported four times what it imported.

The U.S. motion picture industry distributes its films and television shows to over 130 countries. With well over half of MPAA member companies' revenue earned outside the U.S. each year, MPAA has a strong interest in the health and sustainability of these international markets. Accordingly, MPAA greatly appreciates USTR's interest in identifying trade barriers that jeopardize the growth of legitimate commerce and impair U.S. global competitiveness.

The economic and cultural vitality of the creative industries is one of our nation's most valuable assets. Thus, it is critical that our trading partners protect and enforce intellectual property rights and offer a level playing field for U.S. audiovisual exports. Indeed, the work we do together to expand the global market for U.S. films and television programming directly enhances efforts to create and sustain high-quality American jobs. MPAA continues to believe that the inclusion of "cultural carveouts" in trade agreements wrongly suggests that cultural promotion and open markets are incompatible. Rather, such carveouts curb consumers' access to a diversity of content and prejudice the interests of creators by excluding them from the benefits of trade disciplines.

The full potential of U.S. audiovisual exports is inhibited by traditional market access barriers. Countries around the world, developed and developing, continue to maintain restrictive content quotas, advertising restrictions, and foreign investment limitations across both business-to-business and business-to-consumer markets. Although MPAA members have adapted to these interventions over time, such policies curb the ability of our industry to compete fairly and limit consumers' choice of, and access to, legitimate content. Further, MPAA has seen an increase in traditional market barriers – such as quotas – migrating into the online marketplace.


MPAA 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. MPAA's member companies have made robust investments to expand access points for consumers to digital content. There are now approximately 460 legitimate online platforms around the world, allowing global audiences to enjoy creative entertainment wherever, whenever, and on whatever device. Despite these efforts, in many important overseas markets, content thieves have a significant competitive advantage over MPAA member companies and other legitimate businesses. By stealing and illegally disseminating the works of others, thieves deprive our content creators of the millions of dollars in remuneration that they would otherwise use to produce content and pay wages or marketing costs.

In tackling the scourge of content theft, a constantly evolving threat, MPAA continues to forge partnerships with key stakeholders in the online ecosystem, pursuing voluntary agreements and public policies that make it easier for legitimate content to thrive on the internet. Moreover, MPAA joins the chorus of America's leading creators and innovators in calling for a U.S. trade policy that protects intellectual property and prevents foreign countries from stealing the myriad of intangible assets developed by American workers.

On behalf of MPAA and its members, I want to express our appreciation for the critical assistance the U.S. government provides to our industry's efforts to grow international sales. While USTR spearheads many of these efforts, I also appreciate the valuable contributions of so many others in the Executive Branch: the Departments of Commerce and State, which are the industry's frontline advocates; the copyright experts in the Patent and Trademark and Copyright Offices; and, the enforcement agencies that protect our companies' content from theft.

I hope you find the enclosed information helpful, and please let me or my staff know how we can assist you in this critical work. The MPAA offers its full assistance and cooperation toward combating the theft of intellectual property, securing effective copyright protection, and ensuring a competitive global marketplace.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. H. Rivkin', with a stylized, flowing script.

Charles H. Rivkin  
CEO, Motion Picture Association of America

# Reporting Format

As with the last few years, the MPAA has focused its trade barrier submission on those countries and issues where it 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, MPAA 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, MPAA'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.

# About The MPAA

The Motion Picture Association of America, Inc. (MPAA) 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. Its members are: Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

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MOTION PICTURE ASSOCIATION OF AMERICA

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MPAA COMMENTS REGARDING THE

# 2019 National Trade Estimate Report on Foreign Trade Barriers

(Docket: USTR-2018-0029)

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MOTION PICTURE ASSOCIATION OF AMERICA

Africa



# South Africa

## MARKET ACCESS ISSUES

**Broadcast Quota** – In 2014, the Independent Communications Authority of South Africa (ICASA) began the Review of Regulation on South African Local Content: Television and Radio. While the regulations have yet to be finalized, MPAA maintains that market forces, rather than discriminatory quota regimes, should determine programming allocation.

**Online Value Added Tax** – In May 2014, South Africa published regulations relating to registration and payment of VAT on all online transactions conducted in, from, or through South Africa. Currently levied at 15 percent, the tax includes online selling of content such as films, series, games, and e-books.

## Legislation

**Copyright Amendment Act** – Following the publication of a copyright amendment bill in July 2015, the Department of Trade and Industry (DTI) invited stakeholders to submit comments with a very short deadline over the summer of 2017. While the draft bill contains some marginally good provisions including introduction of the right of communication to the public, it also includes a number of proposals that are likely to curb incentives for movie production in South Africa. First, the bill includes new exceptions to copyright. Second, the bill contains a range of limitations on contractual freedom, including a limitation to assignments and a provision concerning ownership of works by the state. The Portfolio Committee of the DTI recently held public hearings and appointed an advisory group to assist in redrafting the bill. MPAA submitted comments and testified at the hearings, emphasizing the troubling issues in this bill and the potential effect on rights holders, as well as the legal questions on the constitutionality of the bill's various provisions. The legislative process is ongoing.

**The Cybercrimes and Cybersecurity Bill** – The draft bill aims to put in place a coherent and integrated cybersecurity legislative framework. However, the bill overreaches and grants a concerning level of discretion to the government's security

cluster. For instance, the bill grants the South African Police Service and the State Security Agency far-reaching powers to investigate, search, and seize any electronic device, with verbally granted search warrants deemed sufficient to take action. Such a provision could invite abuse. The motion picture industry filed comments on this bill, recommending that South Africa introduce a site-blocking provision similar to successful provisions across the European Union.

The bill also defines an Electronic Communication and Service Provider (ESCP) very broadly. An ESCP includes a person who provides an electronic communications service with an electronic communications service license; a financial institution; or anyone (including an entity) who processes or stores data for someone else – an ESCP is, thus, essentially “everyone.” The bill mandates that ESCPs keep their customers updated about cybercrime trends, but does not specify the frequency of these updates nor the mode of communication that should be employed. This section also requires that companies preserve any information that may be of assistance to law enforcement agencies, including origin, destination, route, time, date, size, duration and type of service. MPAA is urging policymakers to revise the bill to offer more clarity, more specificity, and less onerous requirements for online stakeholders.

**The draft Performers Protection Bill (PPAB)** – The draft bill was first issued by South Africa's Ministry of Trade & Industry in July 2016. The perceived need was framed as legal redress of the abuse of individual author and performers' rights and the suppression of their income. PPAB supports a comprehensive review, implementing both the WPPT and Beijing Treaty provisions granting exclusive economic rights as well as moral rights to South Africa performers, in addition to compensation and royalties subject to collective rights management. Parliamentary hearings have commenced and the MPAA has testified. While MPAA is committed to the principle that performers be fairly remunerated, we are concerned that the bill's proposal to make the compensation subject to collective management would add an additional layer of transaction costs that would affect both producer and performer.





MOTION PICTURE ASSOCIATION OF AMERICA

A faint, dark teal map of the Asia-Pacific region serves as the background for the lower two-thirds of the page. The map shows the outlines of continents and major islands, including North America, South America, Africa, Europe, Asia, Australia, and New Zealand.

# Asia - Pacific

# Asia - Pacific Overview

The diverse Asia-Pacific region offers perhaps the most significant global growth opportunity for MPAA members. Yet, too often, the full potential of these markets is inhibited by market access restrictions and/or inadequate protection of intellectual property.

Market access barriers take several forms in the region. Local content quotas for both the theatrical business and the pay-TV business in China, Malaysia, Philippines, South Korea, Taiwan and Vietnam, limit consumer choice and often contribute to piracy. Indeed, we have even seen content quotas imposed on the online marketplace. Foreign ownership and investment restrictions, including those in effect in India, Indonesia, Malaysia, China, New Zealand, Thailand and Taiwan, limit U.S. industry's contribution to the growth of local creative economies. Further, advertising restrictions throughout the region make it more difficult for U.S. companies to monetize and distribute content.

In 2016, Indonesia created an enormous opportunity to attract foreign investment by relaxing its Negative Investment List (NIL) for the film sector. MPAA hopes that Indonesia will not undercut this important breakthrough by implementing an inconsistent and stifling film quota.

Tax issues also pose challenges in the region. Notably, in July 2017, India rolled out a nationwide Goods and Service Tax (GST) that subsumed other indirect taxes such as entertainment tax, service tax and VAT, with the exception of state taxes. This is a positive development; however, some state governments are introducing local body entertainment taxes which are inconsistent with the principle of the "One Nation, One Tax" intent of the GST regime.

Censorship regimes of some Asia-Pacific economies, such as China, remain opaque, unpredictable and slow, often resulting in de facto discrimination against foreign content. MPAA encourages countries utilizing censorship regimes to shift to industry self-regulation and classification in line with international best practices. Barring that, countries should ensure that their content regulation regimes are transparent, consistent, and expeditious and ensure equal treatment of all content regardless of origin.

The 2009 WTO case on China market access provided a critical opportunity, leading to the 2012 U.S.-China Film Agreement and other positive developments in the commercial relationships between U.S. motion picture companies and Chinese theatrical

and home entertainment licensees. The American film industry would benefit from USTR's continued dialogue with Chinese counterparts, aimed at removing various barriers and allowing greater development and realization of the Chinese market's true potential. The United States should encourage policies that expand the availability of legitimate product in China.

In addition to market access issues, intellectual property theft is a constantly evolving threat to MPAA's member companies in the Asia-Pacific region. MPAA members' international sales, led by box office, TV services, and video-on-demand (VOD) services, now depend increasingly on member companies' ability to capitalize on major distribution windows in the digital market. Infringing services such as linking and streaming websites, direct download cyberlockers and streaming video hosting services, as well as peer-to-peer networks and BitTorrent portals, dominate the piracy landscape, making it difficult for legitimate services to compete. More than ever, consumers are using more devices – including mobile devices – to enjoy content, but legitimate platforms find it extremely difficult to penetrate markets and compete with pirate platforms. As a result, internet piracy stands as the greatest threat to the film and television industry throughout the Asia-Pacific region.

Piracy devices and apps, sold by resellers in physical marketplaces and online through e-commerce platforms, fool consumers into thinking they can have dozens of pay TV channels and/or watch live streaming events for free. These devices, when loaded with apps and software intended to provide unauthorized access to channels and live streams, have become the latest threat to legitimate platforms. Because the media boxes themselves are not illegal, rights holders and governments must look to other criteria to determine the illegality of these platforms, such as how the boxes are marketed, whether they come preloaded, and whether the resellers and consumers readily use means to infringe. China is a significant exporter of these blank media boxes to Asia-Pacific markets and around the world. Collaboration among rights holders, governments, and other stakeholders in the online ecosystem will be necessary to address this growing problem.

MPAA urges governments in the region to enact effective laws and regulations to protect copyrighted content on the internet, including provisions designed to encourage meaningful removal of piracy listings and content by internet service providers (ISPs) and other intermediaries, and others participating in, and profiting from, the use of their online

# Asia - Pacific Overview

services to locate such pirate materials. Other participants in the internet ecosystem, such as payment processors and advertising networks, should do their part by restricting money flows and advertising revenues to piracy services, essentially choking off and eliminating their sources of income. Piracy services are almost always in business for one reason: to make a profit. Thus, laws, regulations and enforcement tools must be tailored to, and directed at, eliminating such opportunities.

Injunctive relief, an emerging best practice in Europe and the Asia-Pacific region, allows countries to disable access to primarily infringing websites. Such laws, regulations, and enforcement tools are critical to fostering a healthy and sustainable online marketplace.

The 1996 World Intellectual Property Organization (WIPO) Internet Treaties contain the building blocks for protection of copyright in the digital age, including a robust “communication to the public” and “making available” right for online transmissions, as well as prohibitions against circumvention of tools used to protect works in the online market. Countries such as Vietnam, Brunei, Thailand, and India should join the WIPO Internet Treaties and implement these important protections for copyrighted works. We are encouraged that India is preparing to join the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) in late 2018 while Thailand may join the WCT in early 2019.

The global norm for the term of copyright is now at least 70 years after the death of the last surviving author, and a similar term for works for 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 Asia-Pacific 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.

Recognizing the strong linkages between organized crime and copyright infringement throughout the Asia-Pacific region, MPAA would appreciate U.S. Government assistance in securing copyright infringement as a predicate offense under organized crime laws or money laundering laws. The now well-worn Cybercrime Convention should be ratified throughout the Asia-Pacific region, offering tools such as asset forfeiture as well as information sharing to assist civil case preparation.

Illicit camcording remains a serious problem in the Asia-Pacific region, accounting for a majority of early piracy releases on the internet. From January 2018 through September 2018, 42 illicit audio and video recordings of MPAA member films were forensically sourced to Asia-Pacific movie theaters. In 2011, Asia-Pacific Economic Cooperation (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 cooperation among cinema owners to detect and interdict those engaged in this highly damaging activity. Implementation of these APEC recommendations would help many of these markets curb illicit camcording.

Pay-TV piracy is a significant problem throughout Asia. In many markets, pay-TV channels are wholly or partially based on the unlicensed transmittal of copyrighted works, operating openly and notoriously. Regulators and enforcement officials regularly ignore, or in some cases implicitly condone, these practices. Enforcement authorities should take action against pay-TV operators engaged in piracy and regulators should revoke licenses from illegitimate services.

U.S. free trade agreements with Singapore, Australia, and South Korea have provided an important means to enhance intellectual property rights protection with key Asia-Pacific trading partners. These agreements have also eliminated burdensome market access barriers, which has benefitted both U.S. industry and the local economy. MPAA supports the negotiation of trade agreements that improve the protection and enforcement of copyright, augment market access, and foster a healthy online marketplace.



# Australia

## MARKET ACCESS ISSUES

**Broadcast Quota** – Under Section 9 of the Australian Broadcasting Authority's Content Standards, and as reaffirmed in the March 2016 Broadcasting Services Standard, 55 percent 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 which include more than 50 percent drama programs in their schedules are required to spend 10 percent of their total drama programming expenditures on new Australian/New Zealand programs. Although the U.S.-Australia Free Trade Agreement (FTA) capped broadcast quotas for analog TV at the existing 55 percent 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.

**Potential Investment Restrictions** – Under the FTA, Australia reserved the right to increase existing investment restrictions, or impose new restrictions, in the audiovisual sector. If Australia were to pursue this right, doing so would further impede the ability of U.S. content producers and distributors to harness the full potential of the market. Those potential restrictions would include a foreign investment limitation applicable to pay TV services up to 20 percent, and a reservation to expand the genre types subject to the investment obligations to include arts programming, educational programming, children's programming, and documentaries, in addition to the existing requirement for dramatic programming.

**Potential Internet Quota** – With respect to internet-based services, Australia also reserved the right under the FTA to impose new measures, if preceded by a finding that Australian content is not readily available to subscribers. Three separate reviews were initiated in 2017 and 2018. The first review, conducted by the House of Representatives Standing

Committee on Communications and the Arts, recommended a mandatory minimum investment requirement in Australian content. The second, initiated by the Australian Government under the Australian and Children's Screen Content Review, has reported back to the Minister but that report is not publicly released. The final and third review, by the Senate Standing Committee on Environment and Communications, is due to report in the fourth quarter of 2018. To ensure continued production of Australian content, Australia should maintain competitive schemes for attracting international film and TV productions. Doing so would boost the quantity and quality of local Australian content, rendering unnecessary any consideration of quotas for digital delivery.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – The key piracy problem of note in Australia is online infringement. Australia maintains one of the region's highest rates of per capita online infringement of MPAA member company films.

**New Copyright Recommendations** – Following the December 2016 Australian Productivity Commission's Final Report on Australia's Intellectual Property Arrangements, which exhibited a lack of understanding of longstanding international norms and the importance of copyright to Australia's creative industries, the Australian Government's response through a number of reviews and consultations was notably more balanced. However, in March 2018, Australia commenced the Copyright Modernization consultation which considers further exceptions to copyright, either in the form of newly defined fair dealings or fair use, as well as restrictions on contracting out of exceptions, and orphan works. This poses a risk that could undermine the current balance of IP protection in Australia and could create significant market uncertainty and effectively weaken Australia's infrastructure for intellectual property protection.

Australia has one of the most vibrant creative economies in the world and its current legal regime has helped the country become the site of major production investments. Local policymakers should take care to ensure that Australia's vibrant market is not inadvertently impaired and that any proposed relaxation of copyright and related rights protection does not violate Australia's international obligations.

**Enforcement** – Difficulties remain in obtaining police assistance for intellectual property enforcement. These challenges are magnified by undue delays by some State Police when referring matters to the Australian Federal Police and Commonwealth Director of Public Prosecutions.

## Legislation

**Anti-Camcording Legislation** – Australia should adopt anti-camcording legislation. While illegal copying is a violation of the Copyright Act, more meaningful deterrent penalties are required. For instance, in August 2012, a camcording perpetrator was convicted for illicitly recording 14 audio captures, many of which were internationally distributed through his affiliation with a notorious release group. His fine was a non-deterrent AUD 2,000 (USD 1,600). Such low penalties fail to reflect the devastating impact that this crime has on the film industry.



# China

## MARKET ACCESS ISSUES

**Import Quotas/Revenue Share** – While China has consistently allowed in a total of 34 foreign revenue-sharing films per year (some must be “enhanced format”) since the U.S.-China Film MOU, China still maintains an official quota of 20 foreign revenue sharing films per year. China restricts U.S. share of revenue to 25 percent, which is far below comparable markets.

**Government Film Importation and Distribution Monopoly**

– The newly-formed China Film Administration (CFA), which replaced the State Administration of Press, Publication, Radio, Film and TV (SAPPRFT), permits only one film importer and two distributors of foreign films, which are both state owned companies, China Film Group and Hua Xia 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 distributors. China Film Group also dictates the release dates and length of theatrical runs of foreign films, often restricting the ability of the U.S. producer to obtain the full value of the film.

**Blackout Periods During Peak Seasons** – Historically, the Chinese Government has implemented blackout periods, during which no new foreign imported films may be released, to prevent competition against Chinese films released during the same period. Such blackouts typically occur during summer and Lunar New Year holidays or coincide with political events. Restricting the release of new foreign imported titles during peak season and day-and-date releases not only drives down theatrical revenues, but also contributes to increased unauthorized consumption, as piracy websites and services meet consumer demand for foreign blockbuster titles.

**Screen Quota** – Under State Council regulations, public screening of foreign films must not exceed one-third of the total annual screen time. The same screen quota, unfortunately, is maintained in the final Film Promotion Law which took effect on March 1, 2017.

**Online Video Restrictions** – China prohibits foreign investment in online video platforms. In recent years, the Chinese Government has issued a number of regulations that further restrict the online media space. In September 2014, the former SAPPRFT issued regulations requiring that websites obtain permits, limit online distribution of foreign content to 30 percent, and modified the content review process. The content review process allows only two windows for approval of content and prohibits provincial authorities from being used for content review. Further, it requires the submission of full seasons of foreign TV series, compared to the previous practice of submitting TV shows on a per-episode basis, which was consistent with international market practice. These rules have substantially cut down on the number of U.S. TV programs licensed in China and resulted in delays in the availability of TV series, effectively curtailing day-and-date releases. The range of policies has undoubtedly led to increased online piracy. Furthermore, in 2016, the government instructed video websites to allow state-owned media enterprises to own “Special Management Stakes,” including voting powers in decision making; thus far, platforms have not complied.

On top of the 2014 regulations issued by the former SAPPRFT, the new National Administration of Radio and TV is soliciting public opinion on Administrative Rules on the Introduction and Dissemination of Foreign Audio-Visual Programs. These rules propose not only a generic 30 percent cap on foreign content, but also stipulate that the quota be further applied to on a category-by-category basis to genres of film, TV, animation and documentaries and “other” programs, such as education, science and technology, culture, variety and sports. China’s online video policies create uncertainties and have disrupted the growth of China’s online video market.

**Restriction on Foreign Participation in Domestic Content Production** – Another draft regulation, Administrative Rules of Foreigners’ Participation in the Production of Domestic Radio and TV Programs, which is currently soliciting public opinion, stipulates that foreigners are not allowed to be hired as radio



and television hosts except for gala performances co-produced with foreign broadcasters as well as for international channels. Foreigners employed in the production team in a domestic TV drama, variety show or talk show are not allowed to exceed one-fifth of the total personnel in the same category. Both the screenwriter and the director of a TV drama may not be held by foreigners at the same time, and both the male and female leading roles in a domestic play may not be held by foreigners at the same time. Such rules would limit producers' rights to employ foreign talent.

**Film Development Fund** – In March 2016, the former SAPPRFT issued a notice allowing the refund of a certain percentage from the Film Development Fund collection to cinemas that report favorable annual box office receipts from the screening of Chinese films. Under the notice, if 66 percent of a cinema's total annual gross box office comes from Chinese films, that cinema will receive a 50 percent refund of the money generated from Chinese films within the five percent of box office that the cinema contributed to the Film Fund. This incentivizes cinemas to screen more Chinese domestic films, further disadvantaging foreign films' ability to compete in the Chinese market.

**Censorship** – The China Film Administration (CFA) and the State Administration of Radio and Television (SART), 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 adopt a voluntary, age-based classification system that would help eliminate this disparity, or ensure that its content review process is transparent, predictable, and expeditious.

**Foreign Investment Restrictions** – China limits foreign investment in cinemas, film production companies and in-home video distribution companies. China prohibits foreign investment in television, including in television production companies. Foreign investments are also prohibited in pay-TV and online video platforms. Such discriminatory foreign investment restrictions limit the ability of U.S. content creators and distributors to compete in large swaths of China's audiovisual market and inhibit growth in these sectors.

**Television Quotas** – If the proposed September 2018 administrative provision on the importation and dissemination of foreign audiovisual programs is passed, it will replace the

2004 regulations and raise the limits on foreign TV and film programming from 25 percent to 30 percent of total airtime, and maintain the ban on foreign programming during prime time between 7:00 and 10:00 pm. Currently, foreign TV series and movies are limited to 50 episodes. China restricts foreign animation to no more than 40 percent 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 percent 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 3-star or higher rating.

**Retransmission of Foreign Satellite Signals** – The U.S. motion picture industry is almost totally excluded from China's pay-TV market. Local cable networks are prohibited from carrying foreign satellite channels without government approval or landing permits, which are limited to Guangdong province and a handful of foreign channels. Furthermore, foreign satellite channels beaming into China are required to downlink from a government-owned encrypted satellite platform, and these channels may only be shown in three-star hotels and above, and in foreign expatriate compounds. The annual fee for each channel remains excessively high at \$100,000.

**Regulations on Home Video Licensing Agreements** – The government requires that copyright owners enter into home-video license agreements of not less than three years' duration with their licensees in China – an unnecessary intrusion into copyright owners' contractual rights.

**Video Rights** – 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 are often ignored. As a result, U.S. content is frequently used for unauthorized public performance. For example, some Chinese pay-TV operators or digital licensees distribute U.S. content to hotels or to increasingly popular VOD mini-cinemas and chains for public viewing, without permission. In March 2018, China's regulations on VOD mini cinemas and chains came into effect. Rather than trying to legitimize the operations of these VOD mini cinemas and chains which regularly screen U.S. content without authorization, China should severely penalize or shut down these businesses if they are found to have violated the copyright law.

**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 or to trace the source of camcording piracy.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Illegal downloading and streaming of MPAA 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. These campaigns have resulted in positive and lasting results in the video-hosting landscape and helped pave the way for a growing legitimate digital economy in China. However, as legitimate video websites have become mainstream in the Chinese market, smaller linking sites have sprung up. Many of these sites utilize P2P (peer-to-peer) networks and applications to provide instant streaming of infringing copies of movies and TV shows, and spread the links of infringing content through social media platforms. Meanwhile, infringing apps that aggregate pirated content, along with piracy devices, are major concerns for the U.S. and Chinese motion picture industries. Given this reality, China must continue shifting its focus toward infringing websites, P2P networks, and piracy devices and apps, which combine to pose the greatest threat to the continued growth of legitimate business.

On July 16, the National Copyright Administration of China (NCAC), the Cyberspace Administration of China (CAC), the Ministry of Public Security (MPS) and the Ministry of Industry and Information Technology (MIIT) jointly launched the 2018 Annual Campaign against Internet Piracy. The four-month campaign will focus on unauthorized online republication of news and articles and pirated short videos and animations. The campaign will also regulate copyright compliance of live streaming platforms, knowledge sharing platforms and audiobook platforms, and will further consolidate efforts aimed to protect online video, online music, e-commerce platforms, app stores and cloud storage services.

In March 2018, China announced a major government restructuring which placed the NCAC under the Publicity Department of CPC Central Committee. It is unclear the extent to which this restructuring may impact the copyright law enforcement process in China.

To address its internet piracy problem, China must provide adequate protection in the digital environment by 1)

not insisting on the “Server Principle” interpretation, but instead setting up new rules that can address the massive piracy caused by video aggregation websites and apps, 2) enumerating the exclusive rights under copyright, 3) criminalizing violations of the anti-circumvention provisions for technological protection measures (TPMs) and rights-management information, 4) criminalizing internet offenses that may lack a demonstrable profit motive but that impact rights holders on a commercial scale and revising the 500 copies criminal threshold, 5) eliminating distinctions between crimes of entities and individuals, 6) providing deterrent-level civil and criminal penalties for infringement, and 7) establishing an adequate liability regime for e-commerce platform operators, and satisfactory measures for notice and takedown of websites central to the piracy ecosystem.

**Camcord Piracy** – China remains a significant source of illicit camcording in the region. Between January 2014 and September 2018, a total of 72 illicit audio and video camcorders were forensically matched to cinemas in China. The quality of camcorded films from China is increasing and is threatening the legitimate theatrical and home entertainment markets. China must impose sufficient criminal penalties for camcording in order to deter this crime.

**Piracy Devices and Apps** – China is a leading manufacturer of blank media boxes which permit the installation of third-party, pre-loaded or post-purchase infringing applications, allowing consumers access to pirated content.

## Legislation

**Copyright Amendment** – China’s Copyright Amendment Bill remains pending since the State Council’s Legislative Affairs Office (SCLAO) solicited public comments in June 2014. China should prioritize the legislative process to amend its Copyright Law. For example, China should raise infringers’ compensation to copyright owners, ease copyright owners’ burden of proof, lower the high threshold of commercial piracy necessary to trigger a criminal prosecution, and establish stronger, more deterrent penalties. The government should also make the act of illegal camcording in cinemas subject to civil, administrative, and criminal remedies.

**E-Commerce Law** – On August 31, 2018, the Standing Committee of the National People’s Congress passed the final version of the China E-Commerce Law that will go into effect on January 1, 2019, providing a broad legal framework



to regulate China's fast growing e-commerce sector. The new Law appears to apply to online transactions of physical infringing goods. The required standard of knowledge for a platform operator to take action is that the platform "knows or should know" that the good is infringing. High-quality Chinese counterfeit goods remain a problem for U.S. creative industries internationally, and effective enforcement action is required to prevent the supply of such goods to online marketplaces. Likewise, piracy devices and circumvention devices, both used primarily to access pirated content, remain a significant problem in China which is a hub for the manufacture of these devices. The devices may be promoted and/or advertised to enable infringement of copyright or other illegal activities. The devices are loaded with apps that facilitate infringement, and these apps may be pre-installed, either prior to shipment, prior to sale by the vendor, or as an after sale service. It is critical that the new E-Commerce Law support rights holder action to prevent the illegal trafficking of these devices on e-commerce platforms.



# 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 regulations on the broadcast sector, stifling innovation and hindering competition. For example, TRAI proposes to issue tariff orders that establish the amounts, by genre, that broadcasters can charge satellite and cable platforms for content. Local stakeholders are challenging the order before the Madras High Court, which upheld the impugned regulations of TRAI's authority to regulate content tariffs for TV services. The Madras High Court order has now been challenged in the Supreme Court and a hearing on the matter has been deferred to Q4 of 2018.

**"Must Provide" Requirements** – The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation prohibits broadcasters from granting exclusive contracts with any distributors. The regulation also imposes "must provide" channel programming requirements to all requesting distributors on a non-discriminatory basis. Combined, the exclusive contract prohibition and the "must provide" requirements eliminate all potential for competition among distributors and chill any incentive to develop exclusive programming.

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

**Foreign Ownership Restrictions** – Foreign Ownership Restrictions – In November 2015, the government announced an easing of foreign investment restrictions, allowing 100 percent foreign ownership for most pay-TV network operators. In addition, India also raised the foreign direct investment cap for Indian news channels from 26 percent to 49 percent. However, foreign investments above 49 percent for news channels will continue to require government approval.

**Taxes** – India rolled out its new Goods and Services Tax (GST) on July 1, 2017. Goods and services that are subject to GST will be assessed on a four-tier structure: 5 percent, 12 percent, 18 percent and 28 percent, with different rates of GST applying to different parts of the film value chain. Cinema tickets priced at and below Rs.100 (\$1.55) will be subject to an 18 percent GST, while tickets priced above Rs.100 will be taxed at 28 percent. However, Local Body Taxes (LBT) collected by state governments have been left out of the GST, prompting state governments to tax entertainment over and above GST. In 2018, the states of Madhya Pradesh and Tamil Nadu introduced Local Body Entertainment Tax (LBET). LBET significantly increases the tax cost for exhibitors and also goes against the principle of "One Nation, One Tax" and the intent of the GST model, i.e. to remove a multiplicity of high taxes. India should subsume all taxes including LBET into the GST system.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Internet piracy is the greatest threat to the film and television industry in India. Stakeholders attempting to address this threat continue to apply for judicial relief through John Doe orders for site blocking. Since 2016, the National IPR Policy has placed copyright jurisdiction in the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry. If properly implemented and with adequate resources, this effort should help spur greater copyright protection and enforcement at a federal level. At the state level,

the establishment of a Telangana Intellectual Property Crime Unit (TIPCU) in 2016 and a similar IP Crime Unit in Maharashtra in 2017 should continue to address internet piracy and facilitate the possible establishment of an infringing website list (IWL) in India. The voluntary arrangement begun in 2017 with the National Internet Exchange of India (NIXI), the agency in charge of “.in” domain registrations, to suspend the use of domains if based on false or fraudulent Whois information, has proven helpful and should continue. Further, officials should ensure that India’s pending personal data protection bill does not restrict the availability of the Whois information.

**Camcording Piracy** – Video camcording incidents in India have been on a decline since 2015, with 35 video camcording incidents reported between 2015-2018, compared to 113 video camcording incidents between 2011-2014. However, there has been a major shift to audio cams in the last three years. Arrests resulting from enforcement operations in 2013, 2015, 2016 and 2017, show some willingness on the part of state authorities to tackle this pervasive problem. However, camcorded copies of new releases sourced from Indian theaters continue to leak online during the films’ opening weekend, resulting in losses for content owners.

**Enforcement** – The establishment of the IPR Crime Units in Maharashtra (MCDU) and Telangana (TIPCU), in addition to the copyright issues move under the purview of the DIPP, represent two positive changes, which may signal a shift in India towards more effective IP protection and enforcement. India should continue to implement changes in support of effective IP enforcement.

## Legislation

**Anti-Camcording Legislation** – Approximately 90 percent of newly released films in India appear illegally online, due to camcording in cinemas. Amendments to the Copyright Act, 1957 in 2012 fell short on anti-camcording provisions. Industry stakeholders have advocated for anti-camcording provisions in the Draft Cinematograph Bill, 2013 which remains stalled. The Indian Government should swiftly enact legislative amendments to outlaw unauthorized recording of all or part of an audiovisual work in a cinema.

**Copyright Legislation** – On July 4, 2018, the Union Cabinet chaired by Prime Minister Modi approved the proposal submitted by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry regarding

accession to the WCT and WPPT. We understand that India expects to become the 97th member adopting the treaties during WIPO’s upcoming General Assembly which commenced in September 2018. However, this legislation also extends new compulsory licenses to foreign works, in favor of local broadcasters and the extension of such works to the Internet. These compulsory licenses appear inconsistent with India’s commitments in the Berne and TRIPs agreements.

**Structurally Infringing Websites** – India is considering further amendments to the Copyright Act, 1957 in order to obtain administrative *suo moto* action by the Ministry of Communication and Information Technology’s Computer Emergency Response Team (CERT). Such provision would allow CERT to act without prompting by judicial orders to disable access to structurally infringing websites. MPAA supports this proposal.



# Indonesia

## MARKET ACCESS ISSUES

**Foreign Ownership Restrictions** – The Indonesian Government issued Decree 44 in May 2016, enabling 100 percent foreign direct investment in the film production, distribution and exhibition sector. This positive move should be aligned with other legislative reforms Indonesia is undertaking to attract foreign investments.

**Advertising Restrictions** – Indonesia's Broadcasting Law (No. 32 Year 2002) includes a requirement that any free-to-air TV and pay-TV advertising aimed at the local market must be locally produced. Although regulations issued in 2007 provided a series of exemptions, the Indonesian Broadcasting Commission's 2015 statements regarding implementation raised concerns about the possible negative effects of such a requirement. Such a rule, if implemented, would be burdensome and the additional associated costs could be passed on to consumers. The timeline for revising the Broadcasting Law remains unclear.

**Film Law** – The Ministry of Culture and Education has been drafting implementing regulation to enforce the 2009 Film Law. MPAA notes that while the latest 2018 draft regulations do not include the provision on the 60 percent screen quota for Indonesian films, the prohibition on dubbing of imported films remains. Content owners should be given the flexibility to dub films into a local language based on market demand. Furthermore, the Film Law contains ambiguous provisions that purportedly aim to limit unfair trade practices or monopolistic conduct, such as restrictions on vertical integration. Indonesian authorities should remove these provisions, as they could have unintended consequences such as restricting foreign participation in the market and curbing business efficiency. Indonesia should amend the Film Law and incorporate international best practices, notably recognizing the exclusive right of rights owners to determine whether, how and where their works are made available. Doing so will avoid creating

new barriers that could undermine Indonesia's plan to attract foreign direct investment in the film sector.

**Local Replication Requirement** – In 2008, the Ministry for Culture and Tourism (MOCT) issued regulation PM 55, requiring that all theatrical prints and home video titles released in Indonesia be replicated locally, effective January 1, 2009. Each year since, the Ministry has postponed the effective date. In December 2015, the government transferred MOCT's responsibility for the film sector to a newly formed Ministry of Culture and Education. The shift in bureaucratic responsibility appears to render PM 55 unenforceable; thus, authorities should abolish the regulation.

**Customs Valuation** – Indonesia imposes a tariff on imported films that is based on the running time of the film, resulting in high duties for many U.S. feature films. Indonesia should join the expanded WTO Information Technology Agreement (ITA) to help address this issue and to stay consistent with international best practices.

**Censorship Restrictions** – In October 2015, the Indonesian Broadcasting Commission (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.

**OTT Regulations** – The Ministry of Communication and Informatics is drafting OTT regulations that could require foreign OTT service providers to set up local permanent establishments and use local national payment gateways. Such requirements, if implemented, would stifle business development and add a burdensome barrier to market entry.



# Japan

## MARKET ACCESS ISSUES

**Competition Policy** – The dominant ratings service company in Japan has driven competitors out of the market and distorts the broadcast television market in favor of the largest market players. The dominant service refuses to allow all channels within a given industry subsector to use comparable ratings, and fails to provide ratings data that is comparable across industry subsectors. In response to a 2013 ratings manipulation scandal, Japan's Broadcasting Ethics and Program Improvement Organization expressed the need to establish a neutral ratings agency and introduce competition into the market. Unfortunately, the market remains unchanged.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – The rampant spread of internet-based film and television piracy continues to impede the film and television industry's competitiveness in Japan. Primarily infringing websites have proliferated over the years, with no effective remedy, and with very little cooperation from Japan's ISPs or other intermediaries. In April, the Cabinet Secretariat made a public statement that piracy is decimating the Japanese anime and manga industries, and called for ISPs to block notoriously infringing websites, a call supported by the Prime Minister. This call resulted in the Intellectual Property Strategy Headquarters (IPSH), under the Cabinet Secretariat, assuming an active role to find a legislative fix to the problem. MPAA is encouraged by IPSH's commitment to work closely with industry to draft legislation which will include so-called "leech" or linking sites. We expect to see the law drafted in 2018 and passed during the ordinary Diet session which runs from January to June, 2019.

## Legislation

**Copyright Legislation** – Although the 2011 amendments to the Unfair Competition Prevention Act did address trafficking in circumvention devices, these amendments do not address the act of circumvention itself. Japan's Copyright Law should be amended to provide criminal penalties against the unauthorized circumvention of TPMs. Meanwhile, in February 2018, the Agency for Cultural Affairs (ACA) helpfully issued amendments to the Copyright Law which include the extension of copyright term to all authors to life plus 70 years (cinematographic works already enjoyed 70 years prior to this amendment). The Cabinet recently approved the amendments and the Diet is expected to pass them soon.

**ISP Liability** – Japan should amend its laws to require ISPs to act more expeditiously in response to rights holders' requests to remove infringing content. Such amendments would be an effective response to the unfair advantage sellers of illegal content have over legitimate enterprises in the Japanese marketplace. The Prime Minister has called for a stronger enforcement response to protect Japan's cultural industries and has requested a special council to explore possible measures.



# Malaysia

## MARKET ACCESS ISSUES

**Broadcast Quota** – Malaysia requires that broadcast stations, through broadcast licensing agreements, devote 80 percent 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, at 25 percent 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.

**Foreign Ownership Restrictions** – The entertainment tax for theater admissions imposed at the state government level, at 25 percent 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.

**FINAS Fees** – The entertainment tax for theater admissions imposed at the state government level, at 25 percent 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.

**Screen Quota** – In 2013, FINAS increased Malaysia's screen quota, doubling the original quota issued by the 2005 Compulsory Screening Scheme. The current quota 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** – With the continued penetration of broadband throughout the country, internet piracy has emerged as the greatest threat to the film and television industry in Malaysia. Dozens of global infringing websites and many that specifically target the Malaysian market (i.e., localized language, local titles) populate the top 1,000 sites in Malaysia, causing significant harm to both U.S. and local rights holders.

The Malaysian government recently introduced regulations allowing for administrative orders to ISPs to disable users' access to infringing websites in Malaysia. To date, administrative orders have successfully blocked access to several dozen pirate websites. Monitoring and enforcement must continue to ensure the efficacy of this program.

**Camcording** – Three audio and video recordings of MPAA member films were forensically sourced to Malaysian theaters in the 2015-2018 timeframe. Although Malaysia passed anti-camcording legislation in 2011, the government has yet to take legal action against known infringers.





# New Zealand

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Online piracy in New Zealand remains rampant. The government should take steps to strengthen copyright protection in the digital environment, including TPMs, which are vital to the creation and sustainability of legitimate online distribution models.

**Piracy Devices and Apps** – Piracy Devices such as media boxes and set-top boxes with pre-installed applications allowing consumers to stream unauthorized live TV channels or VOD content into homes via an internet connection, have boomed in popularity in recent years. Approximately five to ten well-established distributors of these products cater to the New Zealand market. MPAA urges the Government to enact legislation to deal with this increasingly threatening form of piracy.

**Digital Convergence Review** – In 2015, New Zealand initiated a broad-sweeping Digital Convergence Review, examining various components of the country's regulatory regime, including content classification. While the review has yet to be finalized, in 2016 the government clarified that the classification of VOD content would be self-regulated under the Broadcasting Act. The current regime for DVD classification, however, is outdated, inefficient and costly for rights holders. MPAA encourages New Zealand to conclude the Convergence Review as quickly as possible, or at least, as an interim measure, to adopt a more efficient classification policy that allows the DVD industry to continue, while also supporting the development of legitimate businesses in the digital environment.

## Legislation

**Copyright Act Amendments** – New Zealand's TPPA Implementation Act on copyright amendments, part of a broader effort to implement the Trans Pacific Partnership Agreement (TPP), contained less than the expected TPP standard in critical areas. Although provisions on TPMs and copyright term were suspended under the now rebranded Comprehensive and Progressive Agreement for Trans Pacific Partnership Agreement (CPTPP), New Zealand should nonetheless consider implementing these provisions under its copyright reform, in step with the global direction on copyright modernization. The government is expected to launch an issue paper on copyright in late 2018 or early 2019. MPAA's member companies and other rights holders remain concerned that New Zealand may continue this trend toward the weakening of IP by introducing unnecessary exceptions and limitations to copyright.



# Philippines

## MARKET ACCESS ISSUES

**Foreign Ownership Restrictions** – Foreign investment in mass media, including the pay-TV or terrestrial broadcast sector, is prohibited under the Philippines Constitution. However, 40 percent foreign direct investment is allowed in the telecom sector. Disparate treatment of these related network-based sectors discourages business development in a capital-intensive sector. These restrictions impede investment, limit consumer choice, and favor domestic investors, stifling development of the cable television market.

**Taxation** – Film companies doing business in the Philippines are subject to inordinately high taxes – among the highest in the Asia-Pacific region. U.S. companies are burdened with a 30 percent income tax on net profits, a 5 percent withholding tax on gross receipts chargeable to income tax liability, and a 10 percent tax on the distributor's share of the box office. A municipal license tax of 0.75 percent of a company's prior year gross receipts is also imposed on motion picture companies. Moreover, the Philippines imposes import duties on all prints and trailers, and 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 marketplace in the Philippines.

**Screen Restrictions** – In August 2018, the Film Development Council of the Philippines (FDCP) hosted the second year of the Independent Film Festival, Pista ng Pelikulang Pilipino (PPP). The PPP is a seven-day, exclusive screening of local independent films in all cinemas nationwide. During the festival, FDCP allows only local independent films to be screened. Similarly, during the annual 10-day Metro Manila Film Festival held every December, authorities limit all screen time exclusively to locally-produced films. Such periodic restrictions clearly limit screen time for U.S. films during peak movie-going times of the year.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – With the continued penetration of broadband both in homes and internet cafes throughout the Philippines, online piracy is a growing threat to the legitimate sale and distribution of audiovisual works. Moreover, the Philippines is home to the region's top piracy websites. The U.S. Government should continue to engage the Philippines on the need for a more robust intellectual property enforcement regime, including more timely investigations and prosecutions of online copyright theft.

**Camcord Piracy** – The Philippines remains a significant source of pirate camcords in the region. From January 2014 through 2018 to date, a total of 33 illicit audio and video recordings of MPAA member company films were forensically matched to cinemas in the Philippines. The increasing threat of camcord piracy in the Philippines is negatively affecting the legitimate theatrical and home video markets. We urge the U.S. Government to press its counterparts in the Philippines to bring swift and effective action against this damaging form of source piracy, which harms the lifecycle of filmed entertainment in the Philippines and beyond.





# South Korea

## MARKET ACCESS ISSUES

Now fully implemented, the KORUS FTA has produced notable liberalization in certain areas, allowing the U.S. motion picture industry to compete better in the Korean entertainment market.

**Screen Quota** – In 2006, prior to the KORUS negotiations, the Korean government agreed to reduce by half its screen quota requiring exhibition of Korean films, to 73 days per year. Over a decade later, amidst rapid development of its cultural industries and the success of many Korean films 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.

In 2016, lawmakers proposed amendments to the Motion Pictures and Video Products Act that would restrict vertical integration of film distribution and exhibition, and would “fairly” allocate screens to all movies. The focus of the amendments appears to have shifted to market dominance by conglomerates, with proposals to restrict conglomerate-owned or -operated multiplexes from allocating more than 40 percent of screens to the same film at any given time. The amendments fail to clarify how the proposal would promote the diversification of the Korean film industry. Lawmakers should avoid any unintended consequences from such proposals that could be inconsistent with South Korea’s international obligations.

**Advertising Restrictions** – In July 2015, Korea introduced an advertising cap that limits the maximum total duration of advertisements aired, regardless of the type of advertisement, to an average 17 percent of program duration and no more than 20 percent of any specific program’s duration. In-program advertising, in particular, 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 the Korean market.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Korea has developed as a major marketplace for locally-produced drama programming and thus has a great stake in ensuring adequate and effective protection against internet piracy. The Korean government has put into place administrative mechanisms to disable access to infringing websites, and so far has successfully disabled access to more than 520 primarily infringing sites. Unfortunately, problems remain, such as with sites that “migrate” (i.e., change domains or server locations), and a number of websites are now using ‘HTTP Secure (HTTPS)’ to avoid the current URL blocking measures. We urge the Korea Copyright Protection Agency (KCOPA) and other relevant government agencies to continue to take steps to disable access to the infamous sites using HTTPS. The government’s May 2018 decision to apply DNS blocking for the top 10 most infamous sites is encouraging.

Since the late 2017 launch of KCOPA’s copyright protection initiative to take down unauthorized content on local cyber lockers known as “webhards” (or web hard drives), more than 30,000 postings on webhards have been successfully blocked/taken down.

**VOD Piracy** – With the emergence of an early digital window for movies in Korea, viewers can now enjoy the latest movies on VOD approximately one month after a film’s theatrical release. While an innovative business model, this has unfortunately led to serious digital leakage. Moreover, because digital film content in Korea is released earlier than in most other countries, leaked content from Korea is spreading to torrents and cyber lockers, implicating the global market. This piracy takes a significant toll on both content creators and legitimate content platforms.



# 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 percent of the operator's total issued shares. Foreign investment in satellite television broadcasting services is also restricted to no more than 50 percent. 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 cable TV service of NT \$600 (US\$20) per month per household. Although the consumer price index has risen substantially since 1990, the price cap has never been adjusted. This cap has hindered the development of the cable TV industry, satellite operators, and content providers.

**Local Content Quotas** – In January 2017, Taiwan implemented new quotas for broadcast and satellite TV. These rules require that, 1) terrestrial TV stations broadcast at least 50 percent locally-produced drama programs between 8:00 pm and 10:00 pm, and 2) local satellite TV channels broadcast at least 25 percent locally-produced children's programs between 5:00 pm to 7:00 pm and at least 25 percent locally-produced drama, documentary and variety programs between 8:00 pm and 10:00 pm. Locally produced programs broadcasting during these periods are required to have no less than 40 percent newly produced programs. Furthermore, a cable TV service must provide at least 20 percent local programming in its channel lineup. These discriminatory conditions limit consumer choice, undermine the growth of the pay-TV sector in Taiwan, and restrict U.S. exports.

**Content Ratings** – In December 2016, the NCC issued the Television Program Classification Regulations requiring all terrestrial, cable, and satellite channels to display Taiwanese ratings and warning messages regardless of the content being

broadcast. Although implementation was delayed until 2019, Taiwan has indicated it will consider requests for waivers, but such requests will be discretionary and not always granted. This onerous requirement is likely to pose a significant market barrier for non-Taiwanese content.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Online piracy is a serious problem in Taiwan. A 2014 Sycamore Research study found that 73 percent of Taiwanese admitted to participating in piracy. That same study found that a majority of Taiwanese consumers surveyed know that downloading or streaming a movie for free and without permission is illegal, and believe the government should do more to halt the activity. Clearly, the law is inadequate to address a growing problem and the Taiwanese government should take effective steps to combat this rampant online infringement.

## Legislation

**Copyright Amendments** – Longstanding draft copyright amendments languish before the Legislative Yuan. Taiwan should prioritize copyright reform and move the legislation forward. Proposed copyright amendments would make certain positive changes to Taiwan's law, including expressly protecting temporary reproductions. Taiwan needs to address online piracy and provide a remedy that permits no-fault actions against pirate sites. Taiwan also needs to address the proliferation of ISD piracy. Taiwan should also extend term of protection to the international standard of life of the author plus 70 years (or 70 years from publication).



# Thailand

## MARKET ACCESS ISSUES

**Foreign Ownership Restrictions** – Foreign ownership of terrestrial broadcast networks is prohibited in Thailand. In January 2015, the National Broadcasting and Telecommunications Commission (NBTC) issued new rules governing media mergers, acquisitions and cross-media ownership. The new rules require prior NBTC approval when a television license holder seeks to invest more than 25 percent directly or more than 50 percent indirectly in another licensed company. This rule severely limits investment and creates new 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 against foreign films. If implemented, such restrictions would create new barriers and reduce consumer choice. Since 2017, the Ministry of Culture has been in the process of amending the MPVA. MPAA has urged the Ministry to delete Section 9(5) and the related Section 68, as such limitations, if implemented, could adversely affect Thai distributors and exhibitors, impede the development of the local film industry, limit the variety of entertainment available to Thai consumers, and exacerbate piracy.

**Must Carry Requirements** – In 2012, the NBTC hastily approved “must carry” provisions requiring all platforms to carry public and commercial free-to-air television channels nationally on an equal basis by all platforms. The regulations have not been clearly drafted and have raised important intellectual property rights issues.

**OTT Regulations** – NBTC is in the process of considering policies on OTT services. Thailand is also proposing amendments to its Revenue Code that will require overseas e-commerce services to register for VAT payment. A tax rate of 10 percent is being proposed on non-resident business operators who employ electronic payment for e-commerce

services including digital online services. Under the existing VAT guidelines implemented since 1992, any person or entity supplying goods or providing services in Thailand and that has an annual turnover exceeding 1.8 million baht (\$55,000) is subject to VAT. MPAA encourages NBTC to adopt a robust content protection regime to protect digital delivery of content, rather than compel foreign content providers to meet burdensome requirements that stifle innovation and creativity.

## INTELLECTUAL PROPERTY PROTECTION

**Online Piracy** – Online piracy is rampant in Thailand. Fledgling legitimate online services are harmed by the increasing threat from copyright infringing websites. While U.S. producers and distributors suffer from this piracy, local Thai film producers are also profoundly harmed by internet pirate platforms, who specifically target Thai users with Thai language sites..

**Camcord Piracy** – Thailand remains a significant source of illicit audio and video camcording in the region, with a total of 37 MPAA member titles forensically matched to cinemas in Thailand from January 2014 through September 2018.

**Television/Public Performance Piracy** – Cable piracy, predominantly the illegal retransmission of broadcast signals, remains a notable problem outside Thailand’s main cities. In addition, “public performance” piracy continues to be a problem. Many hotels outside Bangkok retransmit unauthorized videos over in-house movie systems, while bars in tourist areas openly exhibit films without authorization.

## Legislation

**Copyright Legislation** – MPAA urges 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.

**Safe Harbors and TPMs** – Thailand's pending copyright amendments are aimed at improving its safe harbor provisions and addressing deficiencies in its TPM provisions. While not embracing a more proactive approach to intermediary liability, the new provisions adopt a notice and takedown process in line with the U.S. DMCA. The TPM provisions have partially closed the loophole of permitting circumvention of a TPM for the purpose of benefiting from a specified copyright exception. While not granting a blanket exception to TPM protections in such cases, it will now be left to the implementing regulations to specify the particular exceptions. The amendments are now with the Cabinet for consideration. As weak copyright and TPM protections create *de facto* barriers to trade, efforts to strengthen such protections effectively reduce such barriers.

**WIPO Internet Treaty Implementation** – Thailand needs to implement the 1996 WIPO Internet Treaties to provide the global minimum standard of protection against online piracy. Amendments enacted in 2014 regarding protection for TPMs and ISP liability fell short of international expectations. However, MPAA is encouraged that Thailand plans to accede to WCT/WPPT in Q4 2018.

**Anti-Camcording Legislation** – Thailand enacted anti-camcording legislation in 2014. However, the anti-camcording provision falls short because it requires a link between the act of camcording and a copyright infringement, instead of simply criminalizing the camcording act itself. Criminalizing the act of camcording including Thai audio, without requiring a link to copyright infringement, would empower law enforcement to intercept illegal recordings before they enter the online pirate ecosystem.



# Vietnam

## MARKET ACCESS ISSUES

**Screen Quotas** – Under Cinema Law/Decree 54, Vietnam requires that at least 20 percent of total screen time be devoted to Vietnamese feature films. Vietnam is producing more local films, which now command over 20 percent market share in the country, rendering this quota irrelevant. Accordingly, Vietnam should remove this quota, which is currently not enforced.

**Broadcast Quotas** – In the television sector, foreign content is limited to 50 percent of broadcast time, and foreign programming is not allowed during prime time. Broadcast stations must also allocate 30 percent air time to Vietnamese feature films. These restrictions limit U.S. exports of filmed entertainment.

**Foreign Investment Restrictions** – Foreign investors may invest in cinema construction and operation through joint ventures with local Vietnamese partners, but these undertakings are subject to government approval and a 51 percent ownership ceiling.

**Pay-TV Regulation** – In March 2016, Vietnam enacted pay-TV regulations (Decree 06/2016/ND-CP) requiring the number of foreign channels on pay-TV services be capped at 30 percent of the total number of channels the service carries. These regulations also require 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. The regulations also provide that all commercial advertisements airing on such channels in Vietnam must be produced or otherwise “conducted” in Vietnam. Further, these regulations essentially expand censorship requirements to all channels, while such regulations had previously applied solely to “sensitive” channels. This mandate also appears to impose new “editing fees” on international channels. These measures are unduly restrictive

and severely impede the growth and development of Vietnam’s pay-TV industry. In August 2018, the Ministry of Information and Communications issued draft amendments to Decree 06 with intent to expand the scope to encompass OTT services. If implemented, these changes will place additional restrictions on OTT services.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Online piracy is rampant in Vietnam. For example, Vietnamese consumers clocked over 345 million page views of pirate websites in August 2017. In 2016 and 2017, a number of the most visited pirate sites globally have been linked to Vietnam. MPAA has asked that ISPs and hosting providers promptly respond to notice and takedown requests from rights holders, given that the majority of the top 20 most active infringing websites in Vietnam are operated from Vietnam and are hosted by local ISPs. On a positive note, in 2017, the Ministry of Information and Communication (MIC) was given clear authority to address online infringement. The MPAA encourages the MIC to follow through on this authority through meaningful and effective enforcement actions and imposition of deterrent sanctions against infringing websites.



MOTION PICTURE ASSOCIATION OF AMERICA

# European Union (EU)



# European Union Overview

In May 2015, the European Commission announced a reform of the copyright regime as part of its Digital Single Market Strategy. MPAA member companies, as firms with major European operating entities, share the concerns expressed by the European audiovisual sector on some major aspects of this strategy. Our primary concerns focus on initiatives aimed at mandating cross-border access to audio-visual content, as they would damage the principle of contractual freedom, affect the value of rights, deter future investments in the production of high value content, and act as a disincentive to making that content available through a variety of innovative business models.

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## MARKET ACCESS ISSUES

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**European Content Quotas** – The EU Directive on Broadcasting, initially adopted in October 1989, and referred to as the Television Without Frontiers (TVWF) Directive, established European content quotas for broadcast television programming. All EU countries have implemented this directive, which creates a baseline of restrictive provisions for foreign program suppliers. Some EU Member States have taken measures that go beyond the baseline provision of the TVWF Directive, including the imposition of: 1) prime time programming requirements; 2) feature film quotas; and, 3) domestic language sub-quotas. In 2007, the Audiovisual Media Services (AVMS) Directive replaced the TVWF Directive. The AVMS Directive widens the scope of the TVWF Directive (which already included traditional broadcasting, cable and satellite) to also cover audiovisual media services provided on-demand, including via the internet. Content quotas are not market friendly and impede consumer choice.

The AVMS Directive relies on a two-tiered approach to regulation with a set of basic obligations applying to all content delivery services (e.g., protection of minors and human dignity) and specific requirements that apply only to traditional broadcasting or to on-demand services. The European content quotas for broadcasting remain in place. On-demand services are subject to a somewhat less restrictive provision, which does not set any strict content quota but still requires Member States to ensure that on-demand services encourage production of, and access to, European works.

In May 2016, the European Commission released its proposal to modernize the AVMS Directive. The EU co-legislators concluded their negotiations in June 2018 and agreed on a new obligation

for all video-on-demand (VOD) service providers, falling under the jurisdiction of a European Member State, to reserve at least a 30 percent share in their catalogues for EU works, and ensure adequate prominence of such works. In addition, every Member State will have the possibility to impose financial contributions (direct investments or levies allocated to national film funds) to media service providers under their jurisdiction and, under certain conditions, to media service providers established elsewhere but targeting their national audience. Service providers with a low turnover or low audience can benefit from a mandatory exception and an optional exception where it would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services. The new directive, which is likely to be officially adopted in November 2018 and implemented by all EU member states by mid-to-late 2020, includes more flexibility vis-à-vis advertising rules and obligations for video-sharing platforms to protect minors from harmful content.

**Electronic Commerce VAT Reform** – EU Member States impose a value-added tax (VAT) on companies established in a third country that sell and deliver products within the EU over the internet, including movies, pay broadcasting, and music. The measure does not apply to business-to-business transactions (90 percent of the market). Since January 1, 2015, European companies and foreign companies established in the EU are now subject to VAT in the country of consumption.

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## INTELLECTUAL PROPERTY PROTECTION

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

**Digital Single Market (DSM)** – In May 2015, the European Commission adopted a Communication on the DSM, aiming to reduce differences among national copyright regimes and allowing for wider online access to works by users across the EU. In December 2015, the EC put forth its first legislative proposal in that regard: a “Regulation on ensuring the cross-border portability of online content services in the internal market.” This Regulation became applicable in all EU Member States on April 1, 2018. The EC issued a second wave of proposals in September 2016, which included: “(i) ensuring wider access to content, (ii) adapting exceptions to the digital

# European Union Overview

and cross-border environment, i.e. creating new and mandatory exceptions in the field of teaching, text and data mining, and preservation; (iii) rules that aim at achieving a well-functioning marketplace for copyright. The EC had announced another initiative for “later in 2016,” with the aim of (iv) modernizing enforcement of intellectual property rights, but such an initiative remains unpublished to-date and it becomes less and less likely that the EC will put forward any legislative initiatives in the field of enforcement under its current term. The EC had also aimed for a MoU on commercial-scale infringements (the “follow the money” approach), but that initiative failed at the last minute (just before the summer of 2017), and it remains unclear whether the EC will resume this initiative.

Parts of the September 2016 proposals, particularly the “Regulation laying down rules on the exercise of copyright and related rights to online transmissions of broadcasting organizations and retransmissions of television and radio programs,” might negatively impact territorial licensing. The proposed Directive on Copyright in the DSM encompasses a very broad text data mining (TDM) exception (including for commercial uses) as well as an erosion of the secure use of technical protection measures, which will harm MPAA member companies as well as international and European rights holders. Contractual freedom to license on a territorial basis and respect for international copyright norms are of critical importance to the audiovisual sector, where the exclusive rights to authorize/prohibit the distribution of creative works through licensing is the basis for recouping substantial upstream production costs, often through pre-sales of exploitation rights.

Both legislative instruments are currently in the final stage of the legislative process and the three co-legislators (Commission-Council-Parliament) aim at finding an agreement before the end of 2018. Once the two legislative instruments enter into force, all EU Member States will be obligated to implement and comply with the provisions in both legislative instruments.

**Enforcement Directive** – This law establishes a community-wide minimum standard for civil procedures. The Enforcement Directive establishes an appropriate minimum level of civil enforcement tools, including the right to ask ISPs for information and to provide injunctive relief to block infringements. These tools are invaluable to combating internet piracy. While all Member States have implemented the Directive, many Member States have not implemented correctly the “right of information” provision, which is a basic tool for

gathering information about infringers.

The Directive provides a number of other benefits, including asset-freezing injunctions, search and seizure orders, presumptions of ownership for holders of related rights, and publication of judgments. Member States are free to apply more stringent provisions in civil law, and to impose criminal or administrative sanctions.

Despite strong advice from rights holders, Member States declined to make the system identification code mandatory for optical disc manufacturers, preferring a voluntary code of practice. The Directive also fails to significantly improve the Community’s damages regime.

Several Member States – Austria, Greece, Lithuania, Poland, Romania and Slovenia – took the opportunity to grant damages exceeding just one hypothetical license fee. Other States, unfortunately, did not.

In 2017, the EC evaluated the Enforcement Directive and, in November 2017, adopted the ‘Guidance Communication’ clarifying certain provisions of the Directive relating to scope, general obligations, entitlement to apply measures, presumption of authorship, right of information injunctions, calculation of damages and legal cost.

**Electronic Commerce Directive** – The 2000 E-Commerce Directive provides a general legal framework for internet services in the Internal Market. All EU countries have implemented the Directive. 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.

With respect to ISP liability, the Directive provides conditions on the limitation of liability of service providers (i.e. safe harbor) for hosting, mere conduit, and caching. Some countries have failed to implement these conditions correctly. Spain, in particular, failed to implement the constructive knowledge standard for hosting and inappropriately limited the means of obtaining knowledge of copyright infringement from the service provider. Moreover, Finland’s Act, in contravention of the Directive, does not expressly require that the safe harbor criteria for caching and mere conduit be cumulative. It also provides a



# European Union Overview

statutory notice-and-takedown procedure that is cumbersome for copyright holders and organizations acting on behalf of copyright holders. As a result, these countries' implementations create limitations on liability for service providers that go beyond what is allowed under the Directive and make it even more difficult to combat IP theft in the EU.

Furthermore, the Directive's unclear ban on "general monitoring" (Article 15(1)) has interfered with injunction proceedings. Although the Directive allows monitoring obligations in specific cases, differentiating between general and specific monitoring has been a difficult issue.

In September 2017, the Commission published a Communication on 'tackling illegal content online.' The Commission promised to monitor progress and assess whether additional measures are needed to ensure the swift and proactive detection and removal of illegal content online, including possible legislative measures to complement the existing regulatory framework. The September Communication contained some positive (although non-binding) principles encouraging platforms to take more proactive, voluntary action to take (and keep) illegal content down.

As a follow-up, in March 2018, the European Commission adopted a Recommendation on 'measures to effectively tackle illegal content online,' partly translating the political commitment of the Communication into a (non-binding) legal form, but focusing primarily on terrorist content rather than proactive measures for other forms of illegal content.

**EU Copyright Directive/WIPO Implementation** – The principal objectives of this legislation are the harmonization and modernization of copyright law in the digital age. This includes the implementation and ratification by the European Union and its Member States of the 1996 WIPO Internet Treaties. All EU Member States have implemented Directive 2001/29/EC (the Information Society Directive or Copyright Directive) which ratifies certain aspects of the WIPO Internet Treaties. The digital age has made certain rights in the copyright bundle of rights central to rights holders and to the ability to ensure investment in digital distribution platforms. It is, therefore, vital that Member States do not weaken the exclusive rights of reproduction and communication to the public (including the making available right) when implementing any subsequent copyright and related Directive or Regulation into national laws.

Notably, the Information Society Directive contains an exception for digital private copying that, if interpreted

incorrectly (as per the so-called Darmstadt case), could violate the TRIPS/Berne 3-Step test. In some countries, the provisions regarding the private copy exception are too broad and could allow the making of copies for the benefit of third parties, thereby contributing to the illegal transmission of works on the internet. 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.

The Directive also establishes legal protection for technological protection measures (TPMs) necessary for the protection of copyrighted material in the digital environment. However, this protection is threatened by possible undefined and varied Member State intervention to regulate the relationship between technological measures and exceptions.

At the national level, some countries fail to provide appropriate measures for the legal protection of 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. Belgium, the United Kingdom, Spain, and France establish broad power for national authorities to intervene and dictate to rights holders how to make their works available. Germany also provides a right of action for individuals and associations against rights holders who fail to accommodate certain exceptions.

The Copyright Directive requires the provision of injunctions 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 E-Commerce Directive. Some laws, such as those in Finland, Germany, Poland, and Sweden, are not worded to ensure these injunctions, which are a key tool in the fight against digital piracy.

**Copyright Enforcement and Privacy Rules** – The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) was adopted on April 27, 2016, and became enforceable on May 25, 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

# European Union Overview

defined conditions. As a result, rights holders are not certain that this provision (to be interpreted very strictly) will be given any meaning in the future. In addition, the Commission's proposed E-Privacy Regulation may affect the ability of Member States to lay down, in order to ensure effective protection of copyright, an obligation to communicate personal data in the context of civil proceedings.

Historically, ICANN required that the domain name registrars with which it contracts collect personal contact information (including name, postal address, email address, and telephone number) from domain name registrants and make it publicly available through the WHOIS database. The ICANN WHOIS database was (and remains) a key source of information for rights holders in their enforcement efforts.

On May 17, 2018, the ICANN Board adopted a Temporary Specification for gTLD Registration Data, adopting a layered access approach to the WHOIS database rather than complete public access. ICANN continues to require registrars to collect personal information, but instructs them to provide an automated way to reach domain name holders, without revealing personal information like name or email address. Also, ICANN requires each registrar to determine in each individual case whether a party requesting access to personal information has a legitimate interest and whether that interest overrides the privacy interests of the registrant. Subsequently, on June 18, 2018, ICANN shared for discussion a draft Framework Elements for a Unified Access Model for Continued Access to Full WHOIS Data, which provides a process for how third parties may access non-public WHOIS data. Limitations on access to WHOIS have far-reaching ramifications for enforcement, as WHOIS data is a key element for the ability of rights holders to file criminal complaints and obtain injunctions against website operators.



# Belgium

## MARKET ACCESS ISSUES

**Video-on-Demand (VOD)** – VOD services face two barriers in Belgium. First, per the AVMS Directive, on-demand services must place particular emphasis on European works by using a prominent presentation in their catalogues. Prominence requirements constitute a trade barrier to the extent they inhibit consumer access to a wide variety of both European and international content.

Second, Belgium requires two types of financial contribution. For “publishers of television services,” up to 2.2 percent of all revenues generated by audio-visual services is required, which applies to broadcasters as well as VOD service providers. If an audiovisual service provider offers programs in French and Dutch, only the French-speaking programs will be taken into account for the revenue calculation. For “any distributor of television services,” either 2€ per user or 2.5 percent of the revenues is required. Financial contributions can be made directly to co-productions and/or acquisition of rights or in the form of a levy to the Cinema and Audiovisual Center.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – While P2P piracy is on the decline, illicit streaming and cyberlocker sites remain a significant challenge for rights holders in Belgium.

### Enforcement

Belgian police cooperation with rights holders regarding enforcement actions is generally good, although IP cases tend to rank low in priority. Brussels police and customs agencies are confronted with a severe lack of personnel and resources, which negatively impacts the number of anti-piracy actions. The action plan “Digital Belgium” for 2015-2020, conducted

by the Minister for the Digital Agenda, and the policy plan for 2015-2019 of national customs, both include tackling piracy and counterfeiting in their objectives. However, none of this has led to a significant increase of resources dedicated to content protection. While the conviction success rate is relatively high, short-term sentences are not executed, and it is difficult for rights holders to collect awarded damages. The Brussels prosecutor views the seizure of counterfeit goods and revenue to be a sufficient deterrent for infringers.

In October 2012, the Belgian Anti-Piracy Federation (now Belgian Entertainment Association or BEA) signed a collaboration protocol with the Federal Public Service (FPS) Economy (equivalent of the “economic inspection” or “fiscal police” in some countries), which aims to strengthen the fight against piracy and counterfeiting on the internet. FPS Economy is taking action against illegal online offers, ranging from individual uploaders and hard goods sellers to websites offering unauthorized copyrighted content. Although rather slow, their actions have resulted in some successes, and their skills and experience continue to grow.

BEA and the four main Internet Service Providers in Belgium (PROXIMUS, TELENET, BRUTELE & NETHYS) collaborate to a certain extent to facilitate the blocking of copyright infringing websites. In 2018, BEA obtained two streamlined court decisions ordering the ISPs to block 548 domain names referring to 50 copyright infringing websites. The ISPs did not oppose in court. BEA also took actions respectively against registry DNS.be (2013) and registrar EuroDNS (2016 and 2017) under the local implementation of Art. 8.3 of the Copyright Directive.

### Legislation

**EU Enforcement Directive** – Belgium implemented the Enforcement Directive in May 2007. The implementation

provides a number of 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, and, as a result, can cause significant delays before the judge orders provision of the information. In the context of proceedings against P2P users in particular, such losses of time and resources are a significant burden for rights holders.

**EU Copyright Directive Implementation** – Belgium has implemented the Copyright Directive. Article 8(3) on injunctive relief has been successfully applied. Although elements of the three-step test are referred to in some exceptions, the law does not include an express provision on the three-step test.

**Pending legislative initiatives** – First, MPAA is monitoring a legislative proposal on “direct injection” that would introduce a statutory unwaivable remuneration right for authors and performers, clarifying that broadcasters and distributors are jointly liable for communication to the public. Direct injection would impede U.S. producers’ ability to license works directly. The introduction of an unwaivable remuneration right for authors would also introduce an additional layer of rights clearance and payment which would reduce U.S. producers’ earnings in the Belgian market. Second, Belgian lawmakers are considering a proposal that would apply the private copying exception to cloud services. Such an exception to copyright could potentially limit U.S. producers’ ability to license works.



# France

## MARKET ACCESS ISSUES

**Broadcast Quota** – French broadcast quotas exceed the requirements established by the EU AVMS Directive. Forty percent of the total number of feature films and the total transmission time allocated to audiovisual works must be of French origin. In addition, 60 percent of feature films and audiovisual works broadcast must be of EU origin. Thus, 40 percent must be exclusively of French origin, and an additional 20 percent must be of EU origin.

France also imposes a cap of 192 movies per channel, per year, for feature films of foreign origin (and hourly sub-quota). Certain days and time slots are also closed to foreign feature films, and similar constraints apply to pay-television through the use of multiple watersheds depending on the nature of the channel. Such broadcast quotas effectively limit consumer access to U.S. audiovisual content.

**Screen Quota** – France’s general screen quota rules were recently abrogated by decree 2014-794 of July 2014 and re-addressed, along with multiplex-specific quotas, by Government-sponsored inter-industry “commitments” (sourced in the Cinema Code - L. 212-19 à L. 212-23), and more recently in a May 2016 inter-industry agreement. As an example, such rules limit the screening of a same movie on a maximum of 4 screens in the case of a 15-screen theater. These measures are of quasi-statutory nature in France.

**Video-on-Demand (VOD)** – The French government, through the National Center of Cinematography (CNC), is encouraging regulation of the supply of VOD over the internet through inter-industry agreements. These agreements impose a number of constraints, including a required release window, minimum pricing levels and artist remuneration, investment requirements, and other constraints. Release window

constraints hinder the roll-out of VOD services in France: 1) a 4-month waiting period before movies can be commercialized on VOD platforms, 2) a 36-month waiting period on subscription VOD platforms, and 3) a 48-month waiting period on free VOD platforms.

At the end of July 2017, the Culture, Education and Communication Commission of the French Senate issued a report on release windows, highlighting the need to update the regulations. As of October 2018, an updated draft agreement is still pending approval by local industry stakeholders.

**Subsidies** – The French government provides extensive aid and subsidies to assist local film producers. The film industry continues to contribute to subsidy funds through: 1) dues levied on distributors, exhibitors, exporters, newsreel producers, and dubbing studios; 2) fees for censorship, visas, permits, and registration; 3) special admission tax revenues; and, 4) repayment of prior loans or advances. Such subsidies unfairly disadvantage U.S. content creators.

**Film Rental Terms** – The law (Art. L.213-11) determines the terms under which a film may be licensed. All French cinemas have been limited to a maximum of 50 percent of gross box office revenues remitted to the film distributor. MPAA maintains that film distributors should have the freedom to negotiate film rental terms based on market conditions.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Internet piracy is a major source of concern in France, as a result of high broadband penetration and the popularity of streaming and direct download websites. Streaming is currently the most popular way for French consumers to pirate content. Meanwhile, P2P has declined as a piracy vehicle, although a few P2P sites remain highly popular.

**Enforcement** – In 2009, the Government adopted the HADOPI legislation to address online piracy through a graduated response sanctioning a suspension of subscribers' Internet access. Since then, the Government, through the high authority HADOPI, has educated Internet users through successive notifications, having sent 10 million email notifications to Internet users as of September 2017. The Government repealed Internet access suspension in June 2013. Fines remain in place, but they must be imposed by a judge. Whereas HADOPI's graduated response addresses P2P piracy, the French trade associations of the audiovisual sector have engaged in site blocking and delisting actions involving direct download and streaming websites. In 2017, the French Supreme Court confirmed that the intermediaries must bear the costs related to these measures. Court decisions have clarified that the search engines must delist, without notification, every new domain name or subdomain that would appear in relation to the websites subject to a delisting order. In July 2018, Paris District Court decided to update site blocking orders against ISPs via urgent proceedings. In 2017, statistics from Médiamétrie-Netratings showed an overall drop in piracy in France of up to a million users, going from 13 million pirate users per month in 2016 to 12 million pirate users per month in 2017. These statistics take into account live streaming, which is now measured at around 1 million users per month.

## Legislation

**EU Copyright Directive Implementation** – In a move helpful to rights holders, France implemented the EU Copyright Directive and strengthened the language of Art. 8.3 in Law No. 2009-669.

**EU Enforcement Directive Implementation** – France has implemented the Enforcement Directive.

**EU E-Commerce Directive Implementation** – France has implemented the EU E-Commerce Directive. In March 2014, the National Assembly enacted helpful reforms related to hard goods piracy. Proposals to strengthen the notice-and-takedown system remain under consideration.





# Germany

## MARKET ACCESS ISSUES

**Film Levy** – Pursuant to the Film Support Act (FFG), companies exploiting feature films must pay a legally binding proportion of their revenues to the German Federal Film Board, the FFA, to fund local film and television production. This film levy must be paid by the exhibitors, the video industry, the broadcasters as well as program providers. The film levy for video distributors, who exploit films over 58 minutes as license-holders on such image-carriers as DVD or Blu-ray Disc by sell-through or rental, is also based on the annual net turnover from these revenues, ranging from 1.8 to 2.5 percent. Video distributors, who generate net turnover of under 500,000 Euros and less than 2 percent of this turnover with feature films, are not required to pay any film levy. Video-on-Demand operators, who annually generate less than 500,000 Euros with the exploitation of feature films, are also exempt from the levy, but VOD operators must pay a levy between 1.8 and 2.5 percent in the case of annual net turnover exceeding 500,000 Euros. The VOD film levy also applies to holders of licensing rights who have no registered or branch offices in Germany. In May 2018, the Court of Justice of the European Union (CJEU) confirmed compliance of this measure, such that any VOD service transmitting its content in Germany is obligated to pay the German film levy.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Internet exchange of illegal copies, direct download, streaming and P2P are the primary online piracy concerns in Germany. Several German domain name registrars (in particular KeySystems and 1API) remain uncooperative, and as such, create a safe haven for internet access through notoriously rogue domain names, such as The Pirate Bay.

**Illegal Recording** – German-language release groups illegally record local soundtracks and encode them with video camcords often sourced from other international release groups, to create unauthorized copies of movies in theatrical

release. These groups are a primary concern because they are the original source of illegal German audio material on the internet and used in the illegal reproduction of optical discs. Mass distribution follows soon after encoding, via the internet and facilitated by portal sites. Video camcording of theatrical releases also remains a problem in Germany.

## Enforcement

German law enforcement authorities, especially the police and public prosecutors, are aware of piracy problems and, over the last few years, have committed resources to a number of successful investigations and prosecutions. The judiciary has also imposed deterrent sentences in cases such as Kino.to. These copyright infringements are on a commercial scale and German officials recognize them as organized criminal activities.

While it is possible for rights holders to obtain an injunction under civil law, injunctions are title-specific, which is inefficient against online sites that facilitate copyright infringement on a massive scale. Significant case law at the Supreme Court level is pending, with regard to liability of cyberlockers and Youtube.

## Legislation

**Copyright reform** – Germany's private copy exception is too broad. There is no exclusion of copying by third parties, and therefore, the exception may violate the TRIPS three-step test. In its decision on April 10, 2014 (C-435/12), the CJEU held that under EU law, legal copies may only be made from legal sources. Existing German law, which excludes only copies made from "obviously" illegal sources, must now be interpreted to accommodate the decision and conform to EU law.

By contrast, the CJEU issued a decision on September 11, 2014 (C-117/13, Technische Universität Darmstadt v Eugen Ulmer KG) – a case that originated from a preliminary ruling from

Germany's Bundesgerichtshof (BGH) – that indirectly upheld the all-too broad scope of the private copy exception to the detriment of rights holders. The CJEU ruled that certain acts of reproduction (such as printing works or storing them on a USB stick) carried out by users from dedicated terminals installed in publicly accessible libraries, are permissible under national law, extending the exceptions and limitations provided for in Art. 5(2) a and b.

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

**EU Enforcement Directive Implementation** – During 2012, the German Supreme Court corrected a previous failure with the implementation of the Directive's right of information, restricting it to cases of infringements committed on a commercial scale (April 19, 2012, IZB 80/11). Under the German implementation, however, rights holders contemplating legal action against internet pirates still face difficulties in identifying infringers, 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. In December 2015, the new law on data retention came into force. However, the law obligated ISPs to store data starting in July 2017, allowing time for implementation.

During 2013, the German legislature dramatically restricted remuneration by capping the attorneys' fees for legal claims against infringers, to limit the number of remand cases. Fees incentivize attorneys to take rights holders' cases. Such a severe limit on attorneys' fees creates another obstacle for rights holders when they pursue legitimate claims of infringement. However, the courts subsequently established case law minimizing harmful impact, still allowing for cease and desist letters directed at end users.

In June 2016, the Bundestag passed a reform of the country's Telemedia Act (TMG) that was aimed at ending the principle called 'Störerhaftung,' under which private and business WiFi hotspot providers could be held liable for their users' illegal online activities. Under the 2016 reform, individuals and businesses opening their internet access to users are

considered to be access providers and, as such, are subjected to limited liability. This reform, therefore, rendered virtually impossible any IP enforcement for infringements via (public) WiFi hotspots. The German Federal Court of Justice (BGH) decided that the TMG provision, which implemented Art. 8 (3) Copyright Directive into German law for WIFI-providers only, applies mutatis mutandis to all other access providers, and 'Störerhaftung' would no longer apply. As a result, website blocking in Germany must now be undertaken using § 7 (4) of the TMG. Finally Art. 8 (3) of the EU Copyright Directive has been implemented into German law, but through the back door of analogue application.



## MARKET ACCESS ISSUES

**Audiovisual quotas** – By way of Decree 204 in 2017, Italy passed significant amendments to its audiovisual services legislation, in anticipation of EU institutions’ updating of the AVMS. A number of new quotas – affecting both programming and investment, for linear and non-linear services (such as VOD) – are already in force, while others take effect in 2019. The new rules will force broadcasters and streaming platforms to increase the amount of European and domestic content they offer Italian viewers and mandate a higher level of investment into the latter. For example, broadcasters must air a minimum of 53 percent of European content during 2019, a percentage that will incrementally rise to 60 percent by 2021. The new rules also require commercial Italian TV channels to air at least one local movie or scripted TV show during prime time each week, while public broadcaster RAI must air two. Non-linear providers such as VOD platforms must devote at least 30 percent of the catalogue to EU works produced within the past five years. These quotas unduly restrict the commercial freedom of local industry players and limit consumer choice.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** –The Italian market suffers from the massive use of linking websites that share illicit content through cyberlocker services (streaming and download). Torrent sites (download) are also popular in Italy. In recent years, MPAA members have witnessed an increase of illicit content shared through UGC platforms (streaming) as well as unauthorized IPTV services.

**Illegal Recording** – Italy is the source of significant audio source-theft, in which individuals record local soundtracks and then match them with video camcords to create unauthorized copies of films in theatrical release, localizing pirate content and undermining legitimate commerce in the Italian market. In the first eight months of 2018, 3 audio-sources and 1 video track thefts of MPAA member movies originated in Italy.

## Enforcement

Italy’s overall enforcement efforts show progress consistent with recent CJEU decisions. In recent years, rights holders have worked closely with Italian judicial and law enforcement authorities to share information about the scourge of piracy. This collaboration has led to better criminal enforcement. Despite Italy’s lack of specialized personnel to investigate increasingly complex infringements committed online, some significant criminal cases have led to stiffer sentences for infringers. On the administrative side, AGCOM is a key institution for site blocking in Italy. AGCOM plans to amend its regulation to include website-specific (dynamic) blocking and precautionary blocks in case of urgency. On the civil side, in June 2018, the District Court of Milan issued a first website-specific (i.e. dynamic) civil site blocking order based on the national implementation of Article 8.3 of the Copyright Directive. However, the court imposed to the right holders the reimbursement of the implementation costs.

## Legislation

**AGCOM Framework Regulation** – The AGCOM Framework Regulation has been fully in force since March 2014. The aim is to protect copyright over electronic networks. The Regulation’s expedited site-blocking process and effective removal of infringing material represent significant progress. However, despite the positive outcome of the DNS blocking ordered by the AGCOM, the use by online infringers of several DNS “aliases” to circumvent such blocking orders is evidence of the need for stronger measures. In mid-2017, a legislative amendment was approved by the Chamber to strengthen AGCOM powers and allow an enhanced blocking process.

**Copyright Directive** – Italian courts have inconsistently applied the Copyright Directive’s standards for ISP liability, due to the incorrect implementation of the e-Commerce Directive by the Italian Parliament (detailed below) and uneven opinions from Italian magistrates related to the Copyright Directive’s

enforcement provisions. As a result, decisions often stand in conflict with one another. A number of the conflicts have stemmed from how courts have differently categorized the types of services that ISPs offer, inconsistently applying liability standards to the same types of services.

**Data Protection Law** – Italy's Data Protection law, and in particular the conservative approach of Italy's Data Protection Authority (Garante), is an obstacle to reasonable enforcement. In September 2007, January 2008, and February 2008, the Data Protection Authority issued regulations prohibiting ISPs from disclosing information about their subscribers for civil or administrative purposes.

**E-Commerce Directive Implementation** – Decree 68/2003 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 and is also prejudicial to cross-industry agreements on takedown procedures. In 2017, policymakers attempted a legislative fix to this issue, but the relevant amendment failed and was redrafted to enhance AGCOM's enforcement activities. To-date, the amendment's efficacy is unclear.



# Netherlands

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – The Netherlands houses both locally-oriented pirate internet sites and several international (English language) pirate sites. The Netherlands was for years considered a “safe haven” for internet piracy. With improved cooperation from hosting providers taking unlawful sites offline, many sites have left the Netherlands. However, many cyberlockers that foster infringement are hosted in the Netherlands, and hosting providers have been reluctant to take the cyberlockers offline if they have a notice-and-takedown policy for content linked to publicly accessible link sites. Dutch ISPs continue to resist website blocking cases (e.g. Pirate Bay), in spite of CJEU case law determining that the blocking of such sites is a proportionate remedy. The Dutch Government has recently started to play a more positive role by organizing roundtable discussions with stakeholders.

### Enforcement

Dutch police and public prosecutors are reluctant to get involved in internet piracy cases. They often do not respond when rights holders request criminal investigation of Dutch aspects of an international operation involving hosting and linking to unauthorized content, or of Dutch operations organizing and gaining major advertising income from unauthorized content. As a result, nearly all enforcement efforts are carried out by rights holders on the civil front.

ISPs vehemently oppose blocking website access for consumers. The Dutch Appeals Court rejected blocking The Pirate Bay web site in January 2014. The decision was appealed and the Supreme Court ruled in 2015 that the Appeals Court applied a much too broad effectiveness test, but then asked the CJEU to answer pre-judicial questions of whether The Pirate Bay itself is infringing copyright. The CJEU confirmed this in June 2017 and, subsequently, Dutch ISPs in preliminary injunction proceedings were asked to block The Pirate Bay while the

proceedings on the merits are pending. Blocking of other websites is not expected before 2019.

Another case regarding a media player (Filmspeler) pre-loaded with “add-ons” to illegal sources, was also referred to the CJEU asking whether such a media player infringes copyright and whether the temporary download made when streaming from an illegal source is infringing copyright. Helpfully, the CJEU affirmed these were infringements, enabling rights holders to enforce against sellers of pre-loaded boxes, as well as add-on and application developers.

### Legislation

**EU Copyright Directive** – The Dutch Government had previously treated copying or downloading copyrighted material from an illegal source as permissible for private use. In response to a pre-judicial question from the Dutch Supreme Court, the CJEU ruled in April 2014 that the private copy exception could not apply to copies obtained from illegal sources. As a result, the government has reversed its position. No amendment to Dutch law was required.



# Norway

## MARKET ACCESS ISSUES

**Video Taxes** – Three different sets of levies continue to be imposed on home video sales in Norway: 1) a 25 percent value-added tax (VAT) on both the rental and the sale of videocassettes and optical discs; 2) a fixed price levy of NOK 3.50 per videocassette or optical disc (rental and sell-through), payable by the distributor and dispersed as subsidies to the theatrical and home video market; and, 3) a registration fee of NOK 0.60 per both rental and sell-through cassettes and optical discs. U.S. copyright holders receive no benefit from the fixed levy. The high VAT and the licensing scheme for retail outlets continue to burden the video rental market and stifle the development of a healthy sell-through market in Norway. For online sales and rentals (streaming) of movies, Norway applies the VAT, while the taxes set out in 2) and 3) above are applied once for each copy on the service provider's server (i.e. not once for each download).

Norway also applies a VAT to the purchase of electronic services from abroad. There is, however, no VAT on private import where the value of the good including freight and insurance falls below NOK 350 (approximately \$43 USD).

**Fair Compensation** – In Norway, rights holders' compensation for legal reproductions made for private use is funded through yearly allocations in the government budget. The Ministry of Culture has, however, stated that only rights holders that are citizens or domiciled within the European Economic Area (EEA), or companies with a registered office within the EEA, are entitled to such compensation. This measure appears to contradict Norway's national treatment obligations under the Berne and TRIPS agreements.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Internet piracy is a significant problem in Norway, where P2P networks using BitTorrent are still popular

and streaming sites are gaining popularity rapidly. Site blocking is considered the most effective enforcement tool in Norway. In total, 26 websites have been blocked based on the specific site blocking legislation introduced in 2014. Rights holders won an important and precedent-setting site blocking case in early 2018, related to Popcorn Time, a hybrid streaming and BitTorrent app, which had overtaken The Pirate Bay as the most popular piracy platform for Norwegian internet users.

## Enforcement

In April 2017, the Norwegian Supreme Court delivered a decision concerning the procedure where Norwegian courts, at right holders' requests and subject to strict requirements, can order ISPs to surrender information about the identity of certain subscribers who can be linked to infringements. The Supreme Court rejected the right holders' request for information about subscriber identities. The judgement clarifies that it is not sufficient to prove that a subscriber has downloaded parts of one movie; rather, it must be substantiated infringement of a "certain extent." Until case law can provide further clarification, uncertainties remain as to the nature and extent of proof required from right holders in order to obtain information about the identity of subscribers.

## Legislation

**Extended Collective Licensing** – The MPAA has concerns about an amendment to the Norwegian Copyright Act including a general extended collective license which entered into force July 1, 2015. While Recital 18 of the Copyright Directive permits existing national "arrangements" such as extended collective licenses, it does not exempt them from the customary three-step test. The adopted collective license could in principle apply to over-the-top services, internet transmissions, and other audiovisual delivery platforms. The adopted collective license will not apply to rights holders that have affirmatively opted out of the system.

While the MPAA supports initiatives that enable collective management organizations to better serve their members, collective licensing should not undermine opportunities for rights holders to exercise their exclusive rights individually. Strong protection for the individual exercise of exclusive rights remains the most effective way for rights holders to derive value from their creative works, particularly in the audiovisual sector. The majority in the Standing Committee in the Parliament have clarified that the purpose of the legislation is not to limit the opportunity to enter into individual agreements directly with the rights holder, and that the existing principles governing the relationship between individual licensing and collective licensing shall remain unaltered. Further, the majority underlined that collective licensing shall not cover areas where individual licensing may take place. The majority also stated that the required approval for organizations offering collective licensing must apply to each individual area where the new provision is to be exercised. MPAA urges the Ministry of Culture to act in accordance with these principles when implementing the new provisions, to ensure proper protection of the individual exercise of exclusive rights. To date, no party has used this new extended collective licensing provision.

**Revision of the Copyright Act** – On July 1, 2018, the new Norwegian Copyright Act entered into force. The new law contains, in addition to modernization of the law's structure and language, a number of material changes compared to the previous Copyright Act. The new act contains some helpful provisions that clarify that streaming of content from illegal sources is illegal. The focus is not on end-user liability as such, but rather the need to enable action against intermediaries who are best placed to bring infringing activities to an end (ref. Article 8(3) of Directive 2001/29/EC). However, the new Act contains a clarification that the use of works in “classrooms” is private and thus does not implicate copyright. MPAA shares the concerns of local rights holders, who have urged the Ministry to reconsider this provision.



# Poland

## MARKET ACCESS ISSUES

**Broadcast Quotas** – Poland’s broadcasters must dedicate at least 33 percent of their quarterly broadcasting time to programming produced originally in Polish. This provision, which goes beyond what is prescribed in the EU’s AVMS Directive, impedes market access for U.S. industry.

**Video-on-Demand (VOD)** – On-demand services shall promote European works, including those originally produced in Polish language, in particular by: 1) giving prominence by identifying the origin of works, creating a search option for European works and providing information and materials, and 2) reserving at least 20 percent of their catalogues for European works. Prominence requirements constitute a trade barrier to the extent they inhibit consumer access to a wide variety of both European and international/U.S. content.

**Discriminatory Tax Treatment of U.S. Audiovisual Works** – The 2005 Film Law includes taxes on box office and on DVD sales to finance subsidies for Polish and European films. Further, the language of the text appears to allow a double taxation burden on distributors.

**Foreign Ownership Restrictions** – Poland limits foreign ownership in a broadcasting company to 49 percent.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Internet piracy is steadily growing in Poland. BitTorrent remains a popular vehicle for pirating movies in Poland, but linking sites (direct download), hosting sites and streaming video are on the rise. Illegal sharing of pay TV signals is also a growing trend in Poland. Sites offering illegal Polish subtitles are also a serious concern, as the uploading of pirate copies of new releases is typically followed by the posting of a Polish-language dialogue list, enabling the creation

of localized subtitled pirate copies. Polish law is not fully aligned with EU standards relating to observance of copyright laws. In particular, Art. 8.3 of the Copyright Directive was not implemented into Poland’s legal system. Also, Poland has not correctly implemented Art. 14 of the E-Commerce Directive, which has hampered enforcement activities.

## Enforcement

A 2017 Deloitte study concluded that online content piracy generated PLN 3 billion in GDP losses in Poland in 2016. The situation has not changed since then. However, legislators do not devote adequate attention to online piracy. Meanwhile, Polish courts are seriously backlogged. While the majority of piracy cases brought to court conclude with guilty verdicts, sentences are insufficient. MPAA remains concerned that Polish police may de-prioritize working with rights holders as a result of languishing court cases and disappointing sentences.





# Russia

## MARKET ACCESS ISSUES

**Customs Duties** – Russia’s customs authorities continue to assess duties on the royalty value of some imported audiovisual materials, rather than solely on the value of the physical carrier medium. This is contrary to standard international practice. Although modern-day digital transmissions mitigate the impact on film and audiovisual content, such assessments are nonetheless a form of double taxation, since royalties are also subject to withholding, income, value-added and remittance taxes.

**Foreign Ownership Restrictions** – The Mass Media Law, as amended, imposes a ban on establishing mass media activities, including broadcasting, with respect to the following categories of investors: 1) foreign States, international organizations, as well as organizations under their control; 2) Russian legal entities with a foreign participation (regardless of the participation percentage); 3) Foreign citizens, individuals without citizenship, or Russian citizens with an additional citizenship. In addition, none of the above has the right to own, directly or indirectly control (including through a third party) more than 20 percent of the capital of a person who participates (as a member or shareholder) in the founding of a mass media entity or in the organization acting as a broadcaster. Breach of the above restrictions is sanctioned by denying the violating individuals/entities the rights to own, control or participate in the business of a corporation. MPAA opposes these types of restrictions which reduce consumer choice and unreasonably favor domestic investors.

**Advertising Ban on Pay-TV** – Russia has legislation that bans advertising on pay- and scrambled-signal channels. While the law has no practical effect on state-owned television channels, it has a significant impact on cable and on-demand services, including those operated by foreign companies. MPAA opposes such laws, as they interfere with the market and hinder the growth of the pay-TV industry.

**Theatrical Exhibition Restrictions** – As of October 2018, the Ministry of Culture is reportedly considering a measure that would limit the percentage of screens that can be occupied by a single foreign film. MPAA supports maintaining the full flexibility of distributors and exhibitors to serve Russian audiences.

**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 granted to Russian-made films. The RF Tax Code (Article 149 p. 21) specifies VAT is exempt for works (services) on film production by cinematography organizations, as well as exploitation rights (including distribution and exhibition) of film products that are granted the national film certificate. Thus 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. Therefore, the Government of Russia appears to be in violation of this WTO obligation, as it is currently applying a value-added tax to non-Russian films and not to domestic films.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Russia is host to a number of illicit sites that cater to English-speaking audiences, negatively impacting markets worldwide. However, many pirate sites have moved to foreign hosting locations after the implementation of the so-called “Internet Anti-Piracy Law,” allowing rights holders to apply for injunction measures via the Moscow City Court. Mirrors of pirate websites can be addressed via an administrative process. These measures also extend for search engines active in Russia. Search engine Yandex in particular is being challenged in court for making available pirated content to Russian internet users. Infringement on Russian social media platforms such as VK, OK and Telegram remains a significant concern to rights holders.

## Enforcement

Russia needs to increase its enforcement activity well beyond current levels to provide adequate and effective enforcement against IPR violations, including the imposition of criminal deterrent penalties. A critical element of the U.S.-Russia bilateral IPR agreement is Russia's obligation to provide for effective enforcement of IPR online. Russia will need to take effective action on the basis of its amended legal framework to meet this obligation. Meanwhile, the government's special sub-unit within Department K previously dealt exclusively with IP internet cases, but they are no longer taking responsibility for these matters. Also, meeting the monetary threshold to have copyright cases accepted by law enforcement and the prosecutor's office is a serious challenge for rights holders and a de facto hurdle for proper enforcement.

Russia continues to be a leading global source for illicit camcording. Judicial action against unauthorized camcorders in theaters continues to be challenged by the private copy exception, despite amendments clarifying that the private copy exception is not applicable. MPAA continues to urge the government bodies reviewing IP legislation to revisit this issue.



# Spain

## MARKET ACCESS BARRIERS

**Video-on-Demand (VOD)** – Transactional on-demand services operating in Spain must reserve 30 percent of their catalogues for European works (half of these in a Spanish official language) and must financially contribute to the funding of audiovisual content with at least 5 percent of their turnover.

**Film Dubbing (Catalonia)** – In 2010, the Catalan regional government adopted language restrictions on films released in Catalonia, but implementing measures have not been released. In September 2011, film distributors and exhibitors and the Catalan Government entered into a cooperation agreement that established a network of movie theaters exhibiting films dubbed in Catalan, with distributors committing to provide 25 prints in Catalan for new films each year. The Catalan Administration committed to fund the dubbing and amend the law when possible. After the European Commission (EC) found Article 18 of the legislation discriminatory towards other European countries, the Catalan Government amended the law by removing European works from the scope of the obligation and therefore leaving the quotas for non-European works. Parliament did not pass the amending legislation.

The EC did not bring the case before the European Court of Justice and, in July 2017, they announced their intention to close the file unless film distributors and exhibitors had any new information that might be relevant for the reassessment of the case. FEDICINE and GREMI (the Catalan Exhibitors Association), together with European audiovisual organizations UNIC, FIAD and Europa Distribution, sent a letter calling on the EC to keep the case open. In November 2017, the EC decided to keep the case open. MPAA remains concerned about the dubbing obligation as a trade barrier, and while it is good news that the EC decided to keep the case open, a positive outcome is not guaranteed.

**Investment Obligation** – Spain maintains discriminatory

investment provisions whereby audiovisual media service providers, including broadcasters, must annually invest 5 percent of their revenues in the production of European and Spanish films and audiovisual programs. In addition, 60 percent of this allocation should be directed towards productions in any of Spain's official languages. These investment obligations also apply to digital terrestrial channels.

**Screen Quota** – For every three days that a non-EU country film is screened in its original language or dubbed into one of Spain's languages, one European Union film must be shown. This quota is reduced to 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 discriminatory measures ignore market demand for U.S. and non-EU country films and stifle development of Spain's theatrical market.

**Broadcasting Licenses** – In 2010, the Spanish government revised its audiovisual law and imposed restrictions on non-EU ownership (limited to no more than 25 percent share) and leasing of AV licenses, and U.S. investors report that they have been negatively impacted. Following the 2010 amendment, several U.S. investors signed agreements with Spanish AV license holders to provide content for free-to-air TV channels. These investments were disrupted by a November 2012 decision by the Spanish Supreme Court, which annulled nine digital terrestrial television (DTT) broadcasting licenses of these Spanish firms on the basis that the government had not followed the proper public tender process in allocating the licenses in 2010. In May 2014, all of the annulled DTT channels ceased broadcasting, and in October 2015, the Spanish government awarded six new licenses through a public tender process. U.S. investors were unable to participate in this tender process due to restrictions on foreign ownership.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Internet piracy in Spain is among Europe’s worst. At the end of 2014, the Spanish government amended the IP Law, which should have improved the poor results of the Intellectual Property Commission (IPC)’s administrative procedure. Unfortunately, the IPC results remain disappointing. Lawmakers also amended the Criminal Code, providing for higher penalties against copyright infringement and explicitly included linking sites’ activity under the scope of Article 270. Distribution and use of TPM circumvention devices are now penalized in a way that is more consistent with the European Directive.

**Camcord Piracy** – After some illegal recordings of MPAA member films during 2015 and 2016, increased attention for the issue resulted in police arresting release group members and the conviction of a cammer. Following these actions, camcording reduced significantly in Spain.

addition, Spain does not require ISPs to respond to any take-down request that is not accompanied by an order from a “competent body,” which has been interpreted to mean a court order. Recent legal amendments improve the IPC’s site-blocking powers by providing it the authority to fine non-cooperative ISP’s.

**Enforcement Directive** – Spain’s recent IP law amendments, specifically Article 256, correct Spain’s earlier improper implementation of the right to information. Judges can now grant right of information while limiting its application to cases involving an “appreciable” Spanish audience and a “relevant” number of copyrighted works.

**Spanish Data Protection Law** – This law does not allow a civil party to collect and process infringers’ IP numbers on the basis that such numbers are personal, confidential data. As a result, rights holders have no viable path to take action against Internet users who infringe copyright.

## Enforcement

In general, judicial action in Spain is slow, but this is even more the case in relation to IP-related crimes. The Ministry of Justice recently announced its goal to set up a public prosecutor’s office focusing solely on IP crimes. Currently no budget exists for this initiative. Helpfully, Spanish criminal courts have recently handed down positive decisions against administrators of pirate websites, including site blocking orders. With regard to administrative law procedures, the IPC has failed to address complaints against linking sites and cyberlockers, which are usually located outside of Spain. However, in June 2018, the first administrative decision to sanction a website (X-Caleta) was issued, leading to a high fine (€ 375,000) being imposed on the website owner. Finally, the government (represented by the Culture Ministry and the Department for Digital Agenda under the Economic Affairs Ministry) is in ongoing discussions with rights holders, ISPs and the advertisement industry to create a Code of Conduct to tackle online copyright infringement.

## Legislation

**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 on the basis of “effective knowledge.” In



# Sweden

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Sweden is a major contributor to worldwide internet piracy. Significant source piracy infrastructure and group memberships have flourished in the country due to Sweden’s reputation as a safe haven. Annual studies from Mediavision show that Sweden has more digital pirates than any other Nordic country. Out of 360 million illegally streamed and downloaded movies and episodes in the region, 170 million (47 percent) were downloaded and streamed in Sweden. This is 3.5 times more than the legal market. Several actions from rights holders through Rights Alliance, together with police and prosecutors, have led to a decline in piracy since 2017.

Illegal streaming in Sweden remains a serious threat to the motion picture industry. Police investigations show that the illegal streaming sites have made millions of Swedish Krona from advertising. While Swedish law is clear that downloading from an illegal source is illegal, the government still has not clarified that it is illegal to make temporary copies from an illegal source.

Topsites, highly specialized servers with massive storage and extremely high bandwidth, are used by release groups for the first release of pirate content on the internet. This stolen source content is then passed down using a series of couriers from Topsites to Internet Relay Chats, Newsgroups and P2P networks; this is known as the “Scene.” The Scene is very active and growing in Sweden. A significant amount of infringing content flows through Swedish release groups every year.

## Enforcement

There is a special unit for IP crimes within the Police and Prosecutor’s offices. The police unit, reorganized in January 2015, now has nationwide jurisdiction. Sweden further created special IP courts in 2016. Swedish court sentences continue to be very modest, but the damages can be very high. Suspended

jail time is the standard even for individuals deeply involved in copyright theft.

MPAA remains concerned that Swedish law enforcement are not yet authorized to confiscate a website during a criminal investigation. This means that an online service can stay online and continue its illegal activities without any disruption from law enforcement.

In February 2017, the Svea Court of Appeals ordered an access provider to block its subscribers’ access to the illegal services The Pirate Bay and Swefilmer. The case was the first one to enforce Article 8(3) of the EU Copyright Directive. Before this case, an injunction could only be ordered against an intermediary if it was aiding and abetting the infringement, for example, by hosting material on a server.

Rights holders have advocated that the penalties for copyright infringement in Sweden should be in line with similar economic crimes, such as theft and fraud. The government appointed an inquiry group, which proposed that the new “serious copyright crime” be introduced with penalties ranging from six months to six years. Helpfully, the new legislation is expected to take effect in Q3 2019.



# Switzerland

## MARKET ACCESS ISSUES

**Film Act Amendment** – Effective since 2016, a Film Act provision known as the “unique distributor clause” has been extended to all forms of exploitation, including DVD/physical home entertainment and all forms of video-on-demand/online distribution, with the exception only of linear television (broadcasters’ ancillary on-demand rights are excepted only for 7-day Catch-up). Exploitation of a film in any media in Switzerland now requires exclusive control over all language versions exploited in Switzerland (whether or not actually exploited), in the hands of a single distributor. This is accompanied by laborious registration and reporting duties, which address foreign entities owning and exploiting rights in Switzerland. The provision lacks clarity and has caused several areas of dispute and uncertainty: 1) whether or not all types of VOD (including SVOD) must be included in exclusive “package” licenses for the territory; 2) the extent of “grandfathering” protection for existing contractual fragmentation of film rights (output deals made prior to 2016 will lose “grandfathering” treatment as of 2019). In sum, this amendment’s provisions interfere with internationally established licensing practices.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Switzerland lacks meaningful remedies and effective enforcement against online copyright infringement. Switzerland’s inadequate legal framework and robust technical infrastructure make it an extremely attractive host for illegal sites.

### Legislation

**Copyright Legislation** – Switzerland’s copyright law is wholly inadequate, lacking crucial mechanisms needed for enforcement in the digital era. Swiss copyright law fails to clarify that the private copy exception does not apply to unlawful

sources. Further, the lack of any access blocking mechanism effectively provides Swiss consumers with unfettered access to piracy. Moreover, the private copy exception is very broad and permits on-demand services (in the form of 7-days “catch-up TV” recording and making available) by commercial players, with rights clearance via a collecting society. Swiss law allows acts of circumvention of technological protection measures “for the purposes of a use permitted by law” (Article 39(a)(4)), an exception that is far too broad, particularly given the inappropriately wide scope of the private copy exception. Further, overly restrictive interpretation of data protection legislation, following the Logistep decision by the Swiss Supreme Court, has brought effective criminal and civil enforcement against copyright infringement to a halt.

It is critical that the Swiss government expeditiously bring Switzerland into compliance with the Berne Convention/TRIPs, WIPO Internet Treaties, and internationally acceptable enforcement standards. Necessary minimum changes would include: 1) ensuring liability under Swiss law for parties who facilitate, encourage, and profit from widespread infringement; 2) engaging ISPs in the fight against online piracy; 3) affirming that current law does not permit copying from unauthorized sources; and 4) implementing adequate civil and criminal enforcement tools.

The Swiss government sent a draft revised Copyright Act to Parliament in November 2017, which is currently being debated by Parliament and expected to be adopted during the first half of 2019. The draft Copyright Act shows significant shortcomings and will not significantly improve copyright protection. The Swiss government has refused to introduce basic elements of internationally accepted anti-piracy legislation into Swiss law. For instance, the government dropped any access blocking mechanisms from the draft. Instead of proposing a legal source requirement for private use, the draft cements the understanding that private use of illegal sources is permitted. The road block created by data protection for civil litigation



# Switzerland

will remain, leaving only criminal prosecution open. The draft also does not abolish or limit the scope of collective licensing of “catch-up TV” recording/making available services. In addition, it proposes the introduction of a compulsory collective remuneration on video-on-demand (VOD) for a broad range of content, which would interfere with contractual licensing and remuneration practices. Any changes to the law would be unlikely to take effect before 2020.



# Ukraine

## MARKET ACCESS ISSUES

**Compulsory Manufacturing of Film Prints** – Effective in 2010 and reiterated in 2012, Ukrainian law requires the production of film prints locally as a prerequisite for the issuance of a state distribution certificate. This protectionist policy favors a handful of vendors at the expense of Ukraine's theatrical industry and consumers.

**Customs Valuation** – In May 2012, Ukraine adopted a new Customs Code which affirms that royalties on both theatrical and home entertainment imports are subject to duties in Ukraine. This methodology is out of step with global norms, burdensome in terms of assessment, and amounts to double taxation. The Ukrainian Supreme Court has rendered views in opposition to this methodology, but Customs authorities disregard the decisions.

## INTELLECTUAL PROPERTY PROTECTION

**Camcord Piracy** – Source piracy from Ukraine remains a serious concern for MPAA member companies. In the first six months of 2018, seven illicit recordings of MPAA member films were linked to Ukrainian theaters, a slight reduction from the same period in 2017.

**Internet Piracy** – Both P2P services and illegal hosting-sites targeting Western European and U.S. audiences are very serious problems in Ukraine. Ukraine also hosts some of the world's most notorious BitTorrent sites.

**Broadcast Television Piracy** – A large number of Ukrainian cable operators continue to transmit pirated product without authorization. Enforcement authorities should shut down operators that engage in infringement.

**Illegal Film Screening** – Small Ukrainian theaters often screen pirate digital copies of films without a State Certificate, which is a punishable offense. Helpfully, Ukrainian law enforcement

recently investigated these acts and shut down six theaters.

## Enforcement

The four most significant enforcement challenges in Ukraine are: 1) the absence of criminal prosecutions and deterrent sentencing; 2) ineffective border enforcement, especially against large-scale pirate operations; 3) illicit camcording in theaters, and 4) the lack of civil remedies to address online piracy. Also, law enforcement practices requiring right holders to provide damage estimates in every case filed is a serious challenge for right holders and a hurdle for proper enforcement.

## Legislation

**IP Reorganization** – The Ukrainian government recently declared a reorganization of its intellectual property control structure. All questions connected with IP are now directed to the Ministry of Economic Development and Trade. Unfortunately, reorganization of Ukraine's State Service of Intellectual Property continues at a slow pace.

**Copyright Piracy Law** – In April 2017, the President of Ukraine signed a long-awaited law "On State Support of Cinematography in Ukraine" offering inter alia new mechanisms to combat copyright infringement on the internet. The Law includes definitions of relevant terms such as hyperlink, electronic information, camcording and hosting provider. Notably, the Law also amends the Criminal Code of Ukraine, qualifying camcording and card-sharing as a crime and provides for criminal liability. The Government has indicated implementation of this Law as one of its priorities for 2018.

**Criminal Procedure Code** – Article 477 of the Criminal Procedure Code, which took effect in November 2012, precludes ex-officio actions. Enforcement authorities were deprived of the right to initiate the proceedings in a case when the case has a special public significance. The Criminal Procedure Code should be amended to provide Ukraine's enforcement authorities with this critical enforcement tool.



# United Kingdom

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Online piracy remains the prevalent form of film and TV piracy in the UK, characterized by streaming of film, TV and sports content via TV-connected boxes and other devices, as well as via digital apps and add-ons accessed via laptops, tablets and smaller devices. Organized criminal gangs, still heavily involved in optical disc piracy, are increasingly getting involved in the importation, configuration and marketing of these piracy devices and apps. MPAA appreciates the increasing interest from the Border Agency in dealing with this problem. However, given that there are some shortcomings in current UK law, it is disappointing that, after almost 2 years, the UK Government has not responded formally to the UK Intellectual Property Office's consultation on pirate streaming devices. MPAA also continues to work closely with the City of London's Police Intellectual Property Crime Unit (PIPCU), which is critical to ensuring investigative success.

the UK, but could equally result in scenarios that would limit UK flexibility to forge agreements with other markets. Open questions include the extent to which the audiovisual sector and the wider creative industry will be included in a UK/EU agreement, the outcome of EU DSM discussions on issues of concern to the UK, and the sectoral impact of a possible “no deal” scenario. The UK government should be encouraged to continue to prioritize film and television as an important sector for both exports and inward investment.

## Legislation

**Digital Economy Bill** – In the spring of 2017, via the passage of a new Digital Economy Bill, the UK government amended the sentencing for online offenses, raising the maximum prison sentence from two years to ten years, matching the penalties for offenses committed with hard goods. Rights holders had hoped to use the Digital Economy Bill to address issues related to the above-referenced piracy devices and apps. Despite widespread support for this concept, the government was not persuaded that new legislation was needed. Rights holders do not anticipate new legislation; rather, the effort will most likely initiate and/or reinforce several other practical initiatives, including additional training for Trading Standards Officers.

**Brexit** – Like other sectors, the U.S. film and television sector faces uncertainties related to Brexit. Ongoing discussions have the potential to deliver positive outcomes for trade with



MOTION PICTURE ASSOCIATION OF AMERICA

# Western Hemisphere

# Western Hemisphere Overview

Our industry's largest foreign markets in the Americas – Canada, Brazil, and Mexico – each pose a unique set of challenges for U.S. media and entertainment exports. Meanwhile, emerging markets such as Argentina are embracing open markets and seeking increased collaboration with and investment from U.S. industry. While most countries in this hemisphere are smaller markets for MPAA member companies, negative government policies in these territories often proliferate, impacting the global policy framework.

Throughout the hemisphere, MPAA members face domestic content quotas. These quotas are generally attenuated by a lack of enabling legislation in some countries and by weak enforcement in others. However, such quotas persist and may expand throughout the region. In recent years, Brazil raised its screen quota, increasing the total number of domestic films that must be exhibited per year and the number of days they must be exhibited. Brazil also requires local content quotas for the pay-TV industry. Venezuela requires at least half of the television programming to be dedicated to domestic programming. Argentina recently began enforcing local content quotas for movie theaters and free-to-air television. Canada maintains a web of discriminatory and outdated content quotas for broadcast and pay-TV which artificially inflate the total spend on Canadian programming. Further, recent bills in Chile's legislature, if implemented, would impose a new box office levy to fund local productions, along with screen quotas that appear inconsistent with Chile's FTA commitments.

The U.S. motion picture industry also faces barriers in the form of foreign ownership caps, advertising restrictions, and potential new taxes in markets throughout the region. For example, Canada and Mexico both maintain foreign investment limitations in their broadcasting or pay-TV markets. Further, Mexico and Argentina impose strict advertising limitations on pay-TV channels. Several markets, including Argentina, Brazil, Colombia and Uruguay, are implementing or exploring new taxes on over-the-top (OTT) platforms, which could inhibit the growth of this nascent sector and, in doing so, limit consumer choices.

Beyond market access barriers, our industry also faces barriers in the form of widespread content theft. While hard goods piracy persists throughout the region, online piracy is the primary barrier and priority for our industry. Of particular concern is the proliferation of piracy devices and apps – media boxes, set-top boxes and other devices – that allow users to

stream, download or otherwise view unauthorized content from the internet. These devices are gaining popularity in Mexico, Canada and Brazil, and becoming a leading vehicle for online piracy of audiovisual material. Another emerging regional threat is piracy from illegal internet protocol television (IPTV) services that provide stolen telecommunication signal/channels to a global audience via dedicated web portals, third party applications and piracy devices configured to access the service. MPAA is working closely with law enforcement and other IP stakeholders on strategies to address these challenges, in the Americas and around the world.

MPAA has seen increasingly-organized online piracy in the region and the formation of internet release groups. Internet release groups have been identified in Argentina, Brazil, Chile, Ecuador, Guatemala, Mexico and Peru. These groups are overtly profit driven and utilize different distribution channels to release content. Rather than closely-held topsites, some of these groups operate public websites and work at the P2P level. In general, they also have a close association with hard goods operators. Moreover, in the last couple of years, Latin American release groups have extended their operations outside the region, recruiting cammers in the United States and Russia. It is imperative that countries' legal and enforcement frameworks promote accountability and the rule of law and create incentives for intermediaries to cooperate with rights holders in combating this serious, ongoing problem.

Camcording as source piracy is a persistent problem in Latin America, tracking the development of camcorder technology, which makes detection difficult and copies nearly perfect. A total of 126 illicit audio and video recordings of MPAA member company films were sourced from Latin American theaters from January through September 2018, down from 165 during the same period in 2017. Additionally, authorities in Brazil, Colombia and Mexico have arrested/interdicted cammers, audio cappers, brokers, and/or online release group members in recent months. While these trends are encouraging, MPAA continues to urge regional governments to strengthen their enforcement regimes so that gains can be sustainable in the face of ever-changing criminal behaviors.

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 piracy. Other territories, notably Mexico, Chile, Peru,

# Western Hemisphere Overview

and Brazil, suffer from the absence of a legislative framework specifically criminalizing the act of illicit camcording in theaters. The lack of anti-camcording laws to criminalize unauthorized movie recording complicates rights holders' efforts to obtain cooperation from law enforcement and prosecutors.

MPAA has noted an uptick in collective rights management (CRM) by collective management organizations (CMOs) in Latin America. In CRM systems seen so far in this region, CMOs collect and distribute royalties largely on account of the communication to the public (CTTP) of audiovisual and musical works. Certain of these systems impose CRM as a matter of law, effectively creating compulsory CRM. While such systems for audiovisual works are rarer for A/V works than they are for musical works, there seems to be a growing interest in the region to use mandatory or compulsory CRM for author and performer rights of CTTP in A/V works, including U.S. A/V works - regardless of whether those stakeholders already have payment agreements with U.S. producers for the uses of their works. Evidence of such a trend is seen in legislative proposals and/or laws promulgated in each of Chile, Peru and Brazil. Such proposals would likely have a negative impact on U.S. exports in the audiovisual sector through imposition of additional, unjustified increases in distribution and licensing costs.

In Central America and the Caribbean, including Honduras, Guyana, Guatemala, and Trinidad and Tobago, rogue cable operators are unlawfully receiving and retransmitting channels and content of international programmers. While some governments in the region, including Jamaica and Dominican Republic, have recently stepped up their focus on this unauthorized use of U.S. intellectual property, more work is needed to address this challenge. These rogue operators negatively affect investment and competition in local markets, impacting international programmers, as well as local distribution platforms. Enforcement authorities should revoke the licenses of operators that are infringing copyright.

Over the past couple of years, several governments have amended their copyright frameworks or are actively considering amendments. In Canada, the Government passed long-awaited reforms to implement the WIPO Internet Treaties. In Argentina and Brazil, copyright reform efforts are stalled or underway. As Governments 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, and, in the case of FTA partners, consistent with their bilateral

obligations. For example, FTA partners Chile, Peru, Panama, and Costa Rica all have yet to implement key ISP liability provisions in their respective bilateral agreements with the United States. Such obligations, when fully implemented, would assist in the removal of infringing material online and ensure that infringing services cannot avoid liability.

MPAA members distribute film and television content throughout North America, maintaining a healthy trade surplus with both Canada and Mexico. However, there are serious disparities between the level of market access and intellectual property protections offered by the United States as compared to its closest neighbors. The recently negotiated U.S.-Mexico-Canada Agreement (USMCA) includes some important provisions that could enable our industry to compete more fairly and expand the U.S. trade surplus with Mexico. For instance, USMCA contains strong commitments with regard to unauthorized camcording, cable and satellite signal theft, and technological protection measures (TPMs). Helpfully, the agreement also compels parties to implement the WIPO internet treaties. The agreement also provides ex officio authority for police and customs officials, enforcement against commercial scale piracy, full national treatment, and extension of the term of copyright protection. Regrettably, the USMCA preserves Canada's cultural carve-out. However, MPAA appreciates the inclusion of a robust retaliation mechanism to help deter future protectionist policies. MPAA looks forward to working with the U.S. Government to ensure that the agreement is fully and effectively implemented.





# Argentina

## MARKET ACCESS ISSUES

### **Communications Convergence (“Media Law”) Legislation**

– On August 13, the Ministry of Modernization published a resolution announcing a fourth delay in presenting a Media Law proposal, the “Convergent Communications Bill,” to the Executive. Delivery of the proposal is now set for mid-November 2018, just prior to the close of the 2018 legislative session in December. This reform poses an opportunity for Argentina to eliminate/reduce local content quotas, clarify regulations for TV content, ease caps on TV advertising, and establish a ratings system consistent with U.S. standards. The government should ensure that any subsequent media law reforms respect fundamental business principles, including contractual freedom and respect for copyright, and should avoid/reduce protectionist policies such as screen/content quotas. Further, any media law reforms should respect the principles of the bilateral investment treaty between the U.S. and Argentina.

**Local Content Quotas** – In July, INCAA (the National Film and Audiovisual Arts Institute) published Resolution 1050/2018 regulating content quotas for movie theatres. Domestically produced films must represent 30 percent of the volume of content shown, for the entirety of one week per quarter where there is a dedicated screen (while that 30 percent content quota was in effect previously, under the prior regulatory regime, the screen could be shared with another film). Under the current regulation, should the exhibitor share the screen with another movie, the local production must be shown for two weeks, or until the quota is fulfilled. Resolution 1050/2018 came into force on July 10, 2018. Also in July 2018, ENACOM (National Communications Agency) announced via Resolution 4513 that a 30 percent local content quota would be enforced on free-to-air TV in urban areas (10-15 percent for lesser populated markets). The status of content quotas for pay-TV and streaming services remains unconfirmed in the vacuum left by the delayed Convergence Communications Law.

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

**Advertising Restrictions** – Argentina imposes strict limitations on advertising minutes in the pay-TV space. Caps on advertising minutes currently stand at 6 minutes per hour, allowing industry averaging up to 144 ad minutes per calendar day.

## INTELLECTUAL PROPERTY PROTECTION

**Online Piracy** – USTR named Argentina a Priority Watch List country in its 2018 Special 301 Report, largely due to online piracy. In 2017, federal and local authorities failed to promote or support any online investigations, and undertook no website removals in coordination with Internet Service Providers (ISPs). This inaction regarding online piracy, due to a failure of inter-agency cooperation to address the issue, has resulted in numerous pirate sites that are growing, adapting, and developing resiliency. Fighting piracy must be prioritized to promote a positive shift in the market and the rapidly growing creative sectors so valued by Argentina.

**Penal Code Reform** – The Macri Administration is preparing a penal code reform bill that addresses a number of copyright issues, including: 1) reproduction of copyrighted material and programs from the internet without proper authorization, 2) manufacturing, storing or selling copyrighted programs without authorization, 3) imitating a registered trademark, and 4) circumvention of technological protection measures (TPMs). The proposal would make theft of IP equivalent to theft of physical objects and would make the incorrect reporting of Pay TV subscriber numbers a penalty under the law. Moreover, the Justice Ministry has signaled a commitment to amend the penal code to outlaw sale of illicit streaming devices, which enable

# Argentina

piracy of creative works. These provisions, if implemented, would improve the enforcement landscape in Argentina.

**Copyright Enforcement** – Procedural hurdles in the criminal and civil courts complicate moving cases through the system. Argentine police do not take ex officio actions, police often fail to comply with search warrants in a timely manner, and prosecutors often fail to pursue criminal cases. Argentina also lacks adequate enforcement resources, such as special police crime units dedicated to online piracy, to enforce copyrights online. To address digital piracy, the government should encourage the development of processes that enhance cooperation between rights holders and online intermediaries. Argentina's law should also establish sufficient liability for known infringements and permit courts access to incriminating data regarding online piracy.

**ISP Liability Legislation** – Argentina's National Congress is developing ISP liability legislation that, as currently drafted, would affect creators' ability to fight piracy on the internet. In general, this initiative is problematic because it 1) provides an overly broad safe harbor for a non-exhaustive list of service providers, 2) suggests voluntary "self-regulation" measures for notice and takedown that are not likely to compel ISP cooperation with rights holders, and 3) imposes burdensome requirements for rights holders, out of balance with responsibilities it imposes on ISPs.



# Brazil

## MARKET ACCESS ISSUES

**Television Content Quotas** – Effective September 2011, Law 12.485/2011 imposes local content quotas for pay television, requiring every qualified channel (those airing films, series and documentaries) to air at least 3.5 hours per week of Brazilian programming during primetime. Moreover, half of this content must originate from independent local producers. Additionally, 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. Lawsuits challenging the constitutionality of these local content quotas, and the powers granted to ANCINE, are pending before Brazil's Supreme Court.

**Screen Quotas** – The most recent Presidential Decree on Screen Quotas imposes quotas for 2018 that are similar to prior years, requiring between 28 and 800 days of screening of local content, depending on the number of theaters in the theater complex. According to Normative Ruling 141, if the same screen displays two sessions, on the very same day, and if only one of the film titles is Brazilian, it will be computed as “half quota” (half day unit). However, if both films are Brazilian, it will be considered a “full quota” compliance (1 day unit). The Decree also continues to specify that a wide-release film may be limited to exhibition on 30 percent of the screens. Brazil's screen quota is facing a constitutional challenge at the Supreme Court, and competing legislative proposals have been introduced that would either loosen or tighten the restrictions. The MPAA opposes local content quotas because they limit consumer choice and can push consumers toward illegitimate content sources.

**Video on Demand (VOD) Tax** – For five years, Brazilian leaders have contemplated how to capture tax revenues from the nascent VOD marketplace. Brazil's existing tax model for audiovisual works is the CONDECINE, which is levied per title every five years on theatrical, pay-TV and home entertainment releases. Brazil's audiovisual regulatory agency, ANCINE, sought to extend CONDECINE to VOD through a 2012 normative ruling. MPAA is concerned about the extension of this tax to VOD and how it could affect revenues, future growth, and investment in the market. Taxes on VOD present a threat to the growth of the legitimate VOD business in a market; thus, any tax levied on legitimate VOD services operating in Brazil should be a low/ reasonable amount.

**Normative Ruling on Accessibility in Theaters** – In 2016, ANCINE, Brazil's audiovisual regulatory agency, sought public comment on a draft ruling to mandate audio description, closed-captioning, and sign language interpretation in Brazilian cinemas. The U.S. film industry supports measures to broaden access to its productions and to better serve patrons with special needs, and appreciates ANCINE's agreement to extend the sign language deadline and to form a technical committee of key stakeholders, including MPAA member companies. MPAA continues to collaborate with ANCINE and other affected parties to ensure timely and effective implementation of these accessibility tools in Brazilian theaters. As already seen in the U.S. market when similar accessibility features were implemented, the exhibition sector is still reluctant to bear the costs of implementation and has advocated for the utilization of cheaper, less secure technology to do so. MPAA is working closely with regulatory bodies to ensure that the accessibility features are implemented with a technological solution that is secure, efficient and meets global best practices.

## 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. A recent Brazilian government study estimated that 81 percent of Brazilians who downloaded music or films from the internet did so exclusively from illegal sources. Brazilian IP addresses ranked second worldwide among those engaged in unlicensed P2P downloads of TV content, and third for such downloads of movies. Brazil's film regulatory agency, ANCINE, recently established a special chamber to discuss best practices in curbing the country's piracy problem. MPAA applauds this bold step and plans to work with ANCINE and other stakeholders in the Chamber's discussions.

**Camcord Piracy** – From January through September 2018, 24 illicit audio and/or video recordings of MPAA member company films were traced to Brazilian theaters, up from 18 during the same period in 2017.

**Collective Management Organizations** – In September 2018, Brazil's Ministry of Culture issued a public consultation aiming to accredit three audiovisual collective management organizations (CMOs). These entities, representing directors, screenwriters and artists of audiovisual works, are seeking to assert remuneration claims via these CMOs for the communication to the public of audiovisual works in every exploitation window, including theaters, free-to-air, Pay-TV and digital distribution. This authorization is sought despite the fact that Brazilian law does not afford such rights to any of the mentioned rights holders. Consistent with a recent trend toward collective rights management of audiovisual works by CMOs in other countries in this region, this initiative would allow Brazilian CMOs to collect and distribute royalties in respect of rights not directly recognized by the law. Accreditation thus could provide a back door through which remuneration claims could be asserted notwithstanding absence of relevant rights in the law.

This Ministry of Culture initiative could be understood as a "recognition" of rights that have not been properly created via legislation, and could become a precedent for similar circumventions by other neighboring countries where collective management has not yet been introduced. This initiative, to the extent it would de facto lead to mandatory collective management of audiovisual works, would likely have a negative

impact on U.S. exports in the audiovisual sector through imposition of additional, unjustified increases in distribution and licensing costs. For example, some estimates indicate the Ministry's proposal, were it to be realized and applied notwithstanding the absence of relevant rights, would reduce box office revenues and thus earnings by U.S. exporters by some three percent in the theatrical window alone.

## Enforcement

The National Forum against Piracy and Illegality (FNCP) has assisted authorities in raids and improved enforcement training efforts and results. In March 2017, FNCP joined forces with the National Institute of Ethical Competitiveness and the legislature's Caucus against Smuggling and Counterfeiting to launch the campaign "The Brazil that We Want" at the Ministry of Justice. The campaign's goal is to enhance legal markets and create more jobs. During the launch event, the sponsors signed a federal agreement to combat piracy and counterfeiting. MPAA welcomes this coordinated effort to address longstanding IP challenges in Brazil. On the other hand, the National Council on Combating Piracy and Intellectual Property Crimes (CNCP), which had been effective in past years for its work on public awareness and enforcement campaigns, was underutilized in 2016-2017, and has reduced its visibility, to the detriment of rights holders. In 2018, the CNCP resumed the meetings and indicated an institutional willingness to prioritize the Ministry's anti-piracy initiatives. The Council has met periodically throughout the year and was able to move forward with a few initiatives related to payment processors.

Successful execution of these and other enforcement campaigns depends on the government's will to implement public policies to protect and enforce intellectual property rights. For example, Brazil has yet to establish a dedicated IP police department or an IP court, along with rules to reduce the timing and costs of inquiries and lawsuits. Brazil also needs to enshrine deterrent sentences for copyright theft.

## Legislation

**Copyright Reform** – Brazil's copyright review process, commonly led by the Ministry of Culture, is currently not an active issue within the Executive Branch, due to the country's protracted political crisis and turnover in the Ministry's leadership. The current Minister of Culture has signaled his interest in not restarting the debate on copyright reform.

However, in late 2016, Communist Party Rep. Jandira Feghali presented a report on Bill 6117/2009. This bill is a serious threat to rights holders, as it would alter a number of Copyright Law provisions, including: a broadening of exceptions and limitations, changes to audiovisual co-authorship, the exclusivity of broadcast transmission, the exhaustion of rights, compulsory collective management of copyrights, the private copy exemption and TPMs, and greater use of compulsory licenses. In 2017, the House Committee on Culture included the reform on their agenda for discussion; subsequently the rapporteur herself dropped this issue from the committee's agenda. The bill remains active in the Committee and could be revived in a future Congress.

**Camcord Legislation** – In 2016, a bill was introduced in Brazil's legislature to criminalize the unauthorized camcording of films in theaters. In May 2017, the bill was approved at the Committee on Culture of the Lower House, and currently awaits analysis by the Committee on Constitutional Affairs; then the bill moves to the Senate. MPAA supports this bill as a long-awaited means of deterring copyright theft in Brazilian theaters.

**Criminal Code Reform** – As currently drafted, the Criminal Code Bill (PL 236/2012), now under consideration in the Senate, would roll back protections for copyright, eroding the enforcement framework for Brazil's creative industries. The current draft would eliminate law enforcement's authority to take ex officio action against criminal copyright infringement and would undo an umbrella provision for criminal copyright infringement that gives law enforcement greater flexibility in prosecuting copyright-related crime. This bill has not progressed in 2018.

**Destruction of Seized Goods** – The Brazilian Senate is currently considering Bill 63/2012, long-pending legislation that would permit goods seized as evidence of infringement to be destroyed before the conclusion of enforcement or court proceedings and allow expert reports to be based on a sampling of the total. This bill would streamline criminal prosecutions for copyright infringement and reduce what are now significant costs involved in storing large amounts of seized materials until the conclusion of a criminal case. The bill was approved by the Committee on Constitutional Affairs in early 2018 and awaits a vote on the main floor.





# 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 percent of the group'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. As their licenses are being renewed, CPE obligations are being assigned to independent signals and to independent discretionary services that have over 200,000 subscribers. These quotas are effective starting September 1, 2018, depending on the date of license renewal, 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 percent Canadian programming from 6PM to midnight. The overall 55percent quota has been removed as of September 2017. Private English-language discretionary services (specialty and pay-TV) must exhibit not less than 35 percent Canadian programming overall.

**Non-Canadian Signal and Service Restrictions** – Canadian broadcasting distribution undertakings (BDUs), such as cable 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.

**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 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 percent of a licensee's Directors must be Canadian; and, 3) at least 80 percent 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 percent of the voting shares and votes, the CEO of the parent company is non-Canadian, or less than 80 percent 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.

**Simultaneous Substitution for the Super Bowl** – Starting with Super Bowl LI in 2017, simultaneous substitution of advertising is no longer allowed for Canadian broadcasts of the Super Bowl. This is the result of a 2015 CRTC decision, an appeal for which is pending at the Supreme Court of Canada (the hearing scheduled for December 4-6, 2018). If the CRTC's decision is upheld, the simultaneous substitution ban will continue to be applied to only one program, with significant prejudicial impact on the ability of the National Football League (NFL) and the existing Canadian licensee to monetize the Super Bowl in Canada. The recently negotiated USMCA, if implemented, would commit Canada to permit simultaneous substitution of advertisements during the Super Bowl.

**Québec Distribution Restrictions** – The Québec Cinema Act severely restricts the ability of non-Québec-based film distributors to do business directly in Québec. Since 1986, MPAA member companies may apply for a Special License for any film produced in English that meets the less restrictive requirements set out in an Agreement between the MPAA and the Québec Minister of Culture. The Agreement was revisited in 2015 and was extended for seven years.

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – 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 a BitTorrent site) are now subject to civil liability, there are aspects of the legal framework that do not provide appropriate legal incentives for ISPs (e.g. payment processors, online advertising networks, hosting providers) to cooperate with rights holders in deterring piracy. The framework also provides broad exceptions to copyright that remain untested.

**Criminal Enforcement** – General intellectual property crimes are not a strategic or operational priority for the Royal Canadian Mounted Police (RCMP). The policy challenges are compounded by the fact that RCMP and the Department of Justice are not provided with adequate financial and human resources to address piracy and counterfeiting. As such, the responsibility is then shifted down to local law enforcement who are equally under-resourced and cannot adequately address intellectual property crimes.

**Border Enforcement** – The Combating Counterfeit Products Act (CCPA) amended the Copyright Act and the Trademarks Act to add new civil and criminal remedies and new border measures in order to strengthen the enforcement of copyright and trademark rights and to curtail commercial activity involving infringing copies and counterfeit trademarked goods. While the CCPA is an important step toward addressing the long-neglected shortfalls in Canada's enforcement regime, more ambitious and comprehensive steps are necessary to further narrow the gap between Canadian enforcement standards and global best practices. The Canadian government should be encouraged to commit the resources and set the enforcement priorities that are needed to respond effectively to piracy and counterfeiting.

**Copyright Term** – It is imperative that Canada extend the term of protection for all works measured by the life of the author to life plus 70 years. Extension of the term of protection for copyrighted works has a direct benefit to the creators of these works, as well as consumers. An extended term creates entrepreneurial opportunities, encouraging investment in new creative works, as well as the preservation, restoration and reissuing of older works in exciting new formats. This provides consumers more choice and preserves our cultural heritage. More than 90 countries around the world agree that extending copyright terms to the global minimum standard is necessary and appropriate in today's highly inter-connected world with simultaneous distribution of a wide variety of copyright-based products. The recently negotiated USMCA, if implemented, would commit Canada to extend the term of copyright protection to match the global minimum standard.



# Mexico

## MARKET ACCESS BARRIERS

**Advertising on Broadcast and Pay-TV Services** – Under the 2014 Federal Telecommunications and Broadcasting Act, Mexico imposes advertising limitations on pay-TV channels. These rules aim to promote domestically-made programming through incentives and restrictions on advertising. Pay TV channels, which are primarily operated by foreigners and are less likely to exhibit domestically-made content, 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. Furthermore, a free-to-air channel that dedicates 20 percent of its programming to independent domestic content qualifies for an additional five percent bonus in advertising time. This unfair treatment harms existing business models and makes it more difficult to distribute foreign content within Mexico, suppressing U.S. industry's trade surplus.

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

## INTELLECTUAL PROPERTY PROTECTION

**Internet Piracy** – Online piracy is a serious, widespread problem in Mexico. There are currently over 170 film and TV piracy websites in Spanish Language with high audience within the country, including some with over 13,000 illegally reproduced titles. Apart from websites, illicit streaming devices (ISDs) have become increasingly present in Mexico's electronic-hardware grey markets, denoting increased preference for this type of illegal consumption. According to a 2017 study conducted by the Coalition for Legal Access to Culture, more than 35 million people consumed pirated films in Mexico in 2016. Although there are some local websites, many of the

infringing sites and services are hosted outside of Mexico but are routinely accessed by Mexican users. MPAA continues to urge Mexican authorities to use effective remedies against large-scale infringers, in addition to adopting site-blocking measures for local sites. More work, in particular, is needed to disable mirror websites in Mexico. The use of hardware devices, social networks, illicit streaming devices and software, to pirate television programming, including subscription streaming services, is increasingly sophisticated and ubiquitous.

**Camcord Piracy** – Mexico is one of the largest foreign sources of illegally recorded films, and the largest source in Latin America. From January through September 2018, 77 illicit audio and/or video recordings were traced to Mexican theaters, down slightly from 81 during the same period in 2017. In Mexico, successful enforcement against camcord piracy requires evidence of intent to distribute, that is, proof of a profit motive, which is very difficult to obtain.

By comparison, in the U.S. and Canada, the laws recognize the act of unauthorized camcording in a cinema as a crime by itself. The US-Mexico-Canada Agreement (USMCA), which awaits signature, contains strong anti-camcording commitments that, if properly implemented, should greatly enhance enforcement against camcording in Mexican theaters.