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October 25, 2017

Filed via 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 2018 National Trade Estimate Report on
Foreign Trade Barriers (Docket: USTR-2017-0013)

Dear Mr. Gresser:

At MPAA, we proudly support one of the country's most vibrant industries – the American motion picture, home video, and television sector. Here at home and around the world, imaginative storytelling 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 perspective on opening foreign markets and protecting U.S. intellectual property.

In the United States, the motion picture industry supports nearly two million high-paying jobs across all 50 states and paid \$134 billion in total wages in 2015. The industry employs nearly 319,000 workers in the core business of producing, marketing, manufacturing and distributing motion pictures and television shows. The industry generates another nearly 353,000 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.

Creative film and television programming represents one of our country's greatest exports. Around the world, audiences enjoy American storytelling, which accounts for \$17.8 billion in U.S. exports and registers a positive trade balance with nearly every country. Indeed, the American motion picture industry is one of the most competitive in the world. In 2015, U.S. audiovisual exports enjoyed a trade surplus valued at \$13.3 billion, or five percent of the total U.S. private-sector trade surplus in services. The industry runs a trade surplus larger than those in the advertising, mining, telecommunications, legal, or health related services sectors. In 2015, 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 U.S. borders 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.

Intellectual property theft is the primary threat to MPAA's member companies. The unique value of U.S. creative content is under attack by thieves, at home and abroad. An emerging global threat to our industry is streaming piracy,

enabled by piracy devices preloaded with software allowing users to stream unauthorized movies and television programs. Other forms of content theft, such as illegal camcording in theaters and the ever-expanding scourge of rogue websites, can also devastate the creativity and innovation critical to the development of new works.

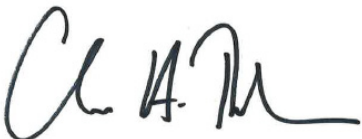
MPAA is committed to a strategy that expands the legitimate market and protects our member companies' content as it flows to consumers through a variety of traditional and new distribution platforms and channels. MPAA's member companies continue to invest in a variety of new platforms and channels for content. There are now more than 130 lawful online platforms for film and television content in the United States, and more than 480 such 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 the works of others, thieves deprive our content creators of the millions of dollars in remuneration that they would otherwise use to produce content, or pay wages or marketing costs.

In tackling the scourge of content theft, 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, calling for a U.S. trade policy that protects intellectual property and prevents foreign countries from stealing myriad 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 our industry's efforts to grow its 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), together with the Motion Picture Association (MPA) and MPAA's other subsidiaries and affiliates, serves as the voice and advocate of the American motion picture, home video and television industries in the United States and around the world. MPAA's members are the six major U.S. motion picture studios: Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; 21st Century Fox Film Corporation; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

These companies employ hundreds of thousands of U.S. workers, entertain millions across the globe, and, unique among U.S. industries, generate a positive balance of trade in virtually every country in the world.

For further information about this report, contact Julie Anglin, Director of Global Policy, 1301 K Street, NW, Suite 900E, Washington, DC 20005. This document is protected by copyright. It may, however, be reproduced or quoted with appropriate credit.



MOTION PICTURE ASSOCIATION OF AMERICA

MPAA COMMENTS REGARDING THE

2018 National Trade Estimate Report on Foreign Trade Barriers

(Docket: USTR-2017-0013)

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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 value added tax on all online transactions conducted in, from, or through South Africa. Currently levied at 14%, the tax includes online selling of content such as films, series, games, and e-books.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Online piracy continues to grow in South Africa. Growth in bandwidth speeds, coupled with lax controls over corporate and university bandwidth abuse, drive this piracy. Easy access to pre-released film and television content through international torrent, linking and cyberlocker sites, also fuels online piracy in the country. As South Africa lacks injunctive relief for rights holders, consumer access to these infringing sites continues unabated.

Piracy Devices and Apps – Set-top boxes and sticks pre-loaded with infringing apps continue to grow in popularity in South Africa. Consumers use these devices to bypass subscription services or to view unauthorized copyrighted content such as movies, TV series or sporting events. These devices are most commonly sold to South African consumers online.

Parallel Imports – The Copyright Law does not protect against parallel imports. As a result, the motion picture industry has sought protection under the Film and Publications Act. Industry stakeholders are in the process of developing a MOU with the Film and Publication Board, which will focus on joint cooperation on enforcement against parallel imports.

Enforcement

The Electronic Communications and Transactions Act (ECTA), read with the Copyright Act, is the legislation that rights holder rely upon for title, site, and link take downs. The lack of cybercrime inspectors continues to limit the full potential of this legislation. To facilitate a healthy online ecosystem, MPAA urges South Africa to appoint cybercrime inspectors and to develop a cybercrime security hub recognizing copyright as one of its priorities.

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 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 literally any electronic device, with verbally granted search warrants deemed sufficient to take action. Such a provision could invite abuse. The motion picture

South Africa

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 urges policymakers to revise the bill to offer more clarity, more specificity, and less onerous requirements for online stakeholders.



MOTION PICTURE ASSOCIATION OF AMERICA



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. Various Asia-Pacific economies maintain restrictive quotas, high tariffs and foreign investment limitations. Such policies harm both U.S. exporters and the local industries these policies purportedly aim to protect. Meanwhile, a growing array of piracy platforms in the online space threaten the vitality of the legitimate marketplace, creating barriers for U.S. audiovisual exports.

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, we hope this progress will not be undermined by some states' plans to introduce local municipal taxes at previous entertainment tax rates.

Indonesia created an enormous opportunity to attract foreign investment by relaxing its Negative Investment List (NIL) for the film sector in 2016. MPAA hopes this breakthrough is not undercut by plans to implement an inconsistent and stifling film quota.

Another recent breakthrough was the finalization of the Information Technology Agreement (ITA) expansion negotiations, which will ensure that customs duties for motion pictures are neutrally applied and do not unduly increase the costs of importing digital film and television products into Asia-Pacific markets. Countries such as India and Indonesia should be encouraged to sign on to the ITA expansion, which would help address issues such as customs valuation.

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.

Regulatory decision-making in the region sometimes occurs without adequate opportunity for industry input. For example, in 2014, the Chinese Government introduced online content

quotas, without prior private sector consultation. These quotas restrict foreign licensed content online to no more than 30% and impose further clearance requirements to the detriment of U.S. content providers, Chinese platform operators, and consumers.

The 2001 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.

MPAA members' business models, which remain buttressed by global 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 streaming platforms, linking sites, BitTorrent trackers and index sites, and cyberlockers 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 have to 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.

Asia - Pacific Overview

Every month, online piracy platforms attract millions of consumers in the Asia-Pacific region, particularly in India, Thailand, Vietnam, China, Taiwan, Australia, and even Japan. In many Asia-Pacific countries, in the course of one month, there can be multiple times the visits or page views to the top five piracy platforms as there are to the top five legitimate offerings. In such an environment, it is no wonder that legitimate platforms are simply unable to compete, much less flourish.

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 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, so 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, as the online marketplace represents a growing segment of the U.S. motion picture industry's global business.

The 1996 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 environment. Countries such as Vietnam, New Zealand, Brunei, Thailand, and India should join the WIPO Internet Treaties and implement these important protections for copyrighted works.

The international best practice 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, establishing such terms as the global norm. 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 2016 through September 2017, 179 illicit audio and video recordings of MPAA member films were forensically sourced to Asia-Pacific movie theaters. In 2011, APEC Members agreed on Best Practices that encourage the enactment of effective policies and laws to address camcorder piracy, including legislation that criminalizes unauthorized camcording in theaters, and 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 expanded market opportunities, facilitating the U.S. motion picture industry's global trade surplus. MPAA supports the negotiation of new trade agreements, working to address both the opportunities and challenges in today's digital 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% 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% drama programs in their schedules are required to spend 10% of their total drama programming expenditures on new Australian/New Zealand programs. Although the U.S.-Australia Free Trade Agreement (FTA) capped broadcast quotas for analog TV at the existing 55% level, and capped sub-quotas at existing levels, these limitations still pose a barrier to market entry. Moreover, Australia reserved the right to extend these quotas to digital broadcast TV, though the obligation can apply to no more than three multiplexed channels of any current broadcaster.

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%, 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. In August 2017, the Australian Government began an industry consultation

on the Australian and Children's Screen Content Review for the purpose of ensuring that Australian screen content continues to be available at home and overseas, regardless of platform. A report is due by the end of 2017. Australia should use this process to enhance its incentives to attract film and TV production, which would benefit local industry and boost production of Australian content.

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.

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.

New Copyright Recommendations – In December 2016, the Australian Productivity Commission made recommendations in its Final Report on Australia's Intellectual Property Arrangements that exhibited a breathtaking lack of understanding of longstanding international norms and the importance of copyright to Australia's creative industries. If the Commission's recommendations were adopted, they could result in legislative changes that undermine the current balance of protection in Australia. These changes could create significant market uncertainty and effectively weaken Australia's infrastructure for intellectual property protection. Of concern is a proposal to introduce a vague and undefined "fair use" exception unmoored from decades of precedent in the United States. Another proposal would expand Australia's safe harbor regime in piecemeal fashion. Still another would allow circumvention of geo-blocking and other technological protection measures.

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.

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 (\$1,600 USD). Such low penalties fail to reflect the devastating impact that this crime has on the film industry.



China

MARKET ACCESS ISSUES

Import Quotas – Notwithstanding China’s commitment under the U.S.-China Film Agreement to permit an additional 14 “enhanced format” foreign revenue-sharing films into its market annually, China still maintains an official quota of 20 foreign revenue sharing films per year.

Government Film Importation and Distribution Monopoly – The State Administration of Press, Publication, Radio, Film, and Television (SAPPRFT) permits only one film importer and two distributors of foreign films, which are both components of the same state-owned monopoly, China Film Group. While China affirmed in the Film Agreement that any properly licensed Chinese enterprise may distribute imported films, SAPPRFT 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 decreed 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 not only drives down theatrical revenues, but also contributes to increased piracy, as pirates meet consumers’ 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 – In recent years, the Chinese Government has issued a number of regulations that further

restrict the online media space. In September 2014, SAPPRFT issued regulations requiring that websites obtain permits, limit online distribution of foreign content to 30%, and submit content for censorship review. The censorship review requires the submission of full seasons of foreign TV series, compared to the previous practice of submitting TV shows on a per-episode basis. This rule has resulted in delays in the availability of TV series and has effectively curtailed 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 refused to comply. China’s online video policies create uncertainties and have disrupted the growth of China’s online video market.

Film Development Fund – In March 2016, 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% of a cinema’s total annual gross box office comes from Chinese films, that cinema will receive a 50% refund of the money generated from Chinese films within the 5% 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 – SAPPRFT, its local branches at the provincial level, and Chinese Central Television perform various censorship functions related to film, video, television and online content. Pirates 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 censorship process is transparent, predictable, and expeditious.

Foreign Investment Restrictions – China limits foreign investment in cinemas, film production companies and in-

home video distribution companies to 49% and prohibits all foreign investment in television. Foreign investments are also prohibited in pay-TV and OTT platforms. Such discriminatory foreign investment restrictions limit the ability of U.S. content creators and distributors to compete fairly and inhibit the film industry's growth.

Television Quotas – China limits foreign TV and film programming to no more than 25% of total airtime. China bans foreign programming during prime time between 7:00 and 10:00 p.m. Foreign TV series and movies are limited to 50 episodes. China restricts foreign animation to no more than 40% of total airtime, and importers of foreign animation must produce a like amount of domestic animation. Furthermore, foreign content on pay-TV cannot exceed 30% of daily programming on a domestic pay-TV channel. China further prohibits the retransmission of the entirety of a foreign channel on pay-TV.

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 Ministry of Culture (MOC) 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.

Restrictions on Retailers – Foreign retailers must enter a qualifying joint venture with a Chinese firm in order to sell home-video products. The government also prohibits the sale of legitimate audiovisual products in convenience stores, hypermarkets, super markets, and other chain stores.

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 April and June 2017, the Government issued two sets of rules to regulate these mini cinemas and chains concerning business operations, licensing and management. Instead of trying to legitimize the operations of these VOD mini cinemas and chains, 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 China 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. Meanwhile, infringing apps that aggregate pirated content, along with piracy devices and apps, are major concerns for the U.S. and Chinese motion picture industries.

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.

In July 2017, the NCAC kicked off its annual four-month campaign against internet piracy. This year's campaign targets the unauthorized dissemination of literature, music, movies, TV series, animations, software, books, audio-visual products and publications on video websites and e-commerce platforms, as well as the unauthorized dissemination of video content via cyberlockers and social media platforms. This year's campaign will also emphasize camcording, demanding that regulators enhance the management of VOD cinema releases.

The NCAC also requires local copyright law enforcement agencies to supervise aggregator applications for copyright

violations on mobile devices and piracy devices. Furthermore, the NCAC must continue to strengthen its supervision of e-commerce platforms to crack down on the distribution of infringing links.

At higher levels of the Chinese Government, including the State Council, continued involvement and commitment will be imperative to achieving effective deterrent enforcement actions as required by TRIPS.

Camcord Piracy – China remains a significant source of illicit camcords in the region. Between 2011 and 2017 to-date, a total of 143 illicit audio and video camcords were forensically matched to cinemas in China. The quality of camcordered films from China is increasing and is threatening the legitimate theatrical markets. China must impose 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, post-purchase 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 solicited public comments in June 2014. China should prioritize the legislative process to amend its Copyright Law. For example, China should lower the high threshold of commercial piracy necessary to trigger a criminal prosecution, implement this lower threshold across the major cities, 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.

To address its internet piracy problem, China must provide adequate protection in the digital environment by 1) criminalizing end-user piracy, 2) adding reference to the exclusive rights provided in the law, 3) criminalizing violations of the anti-circumvention provisions for TPMs and rights-management information, 4) criminalizing internet offenses that are without "profit motive" but that impact rights holders "on a commercial scale," and 5) eliminating distinctions between crimes of entities and individuals.

To foster legitimate electronic commerce, China should establish an adequate liability regime for ISPs for piracy-related offenses, and satisfactory measures for notice-and- takedown

of websites central to the piracy ecosystem. Such provision will foster a responsible partnership between the content industries and the delivery networks.



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. TRAI's authority to regulate content tariffs for TV services faces a challenge in the Madras High Court. The case remains pending.

"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.

Rate Regulation – Since 2004, TRAI has maintained price caps for pay channels in areas that have yet to migrate to digital services. Outside those areas, the implementation of digital

addressable systems has resulted in greater pricing flexibility and a gradual removal of overall caps, except for basic tier for free-to-air channels. The government, however, fixed wholesale price ceilings for DTH and IPTV systems at 50% and 42%, respectively, of the rates that are allowed to be charged to non-digital cable operators. Such rate regulation of a clearly competitive industry stifles its growth.

A recent TRAI tariff order mandates that broadcasters offer their pay channels on a stand-alone or a-la-carte basis, and specifies that no pay channel which is part of a bouquet is priced above Rs 19. Moreover, the discount on a bouquet of channels has been capped at not less than 85% of the sum total of the individual channel prices. Local stakeholders are challenging the order before the Madras High Court. TRAI should make a strong commitment to "adoption targets" for relaxing price controls as the U.S. FCC did when it deregulated cable TV rates.

Foreign Ownership Restrictions – In November 2015, the government announced an easing of foreign investment restrictions, allowing 100% foreign ownership for most pay-TV network operators. In addition, India also raised the foreign direct investment cap for Indian news channels from 26% to 49%. However, foreign investments above 49% 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%, 12%, 18% and 28%, 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% GST, while tickets priced above Rs.100 will be taxed at 28%. 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. Some states are proposing to introduce LBT at previous entertainment tax rates of 30-70%. These proposals would

defeat the purpose of introducing a national GST subsuming all indirect taxes. This behavior poses a disincentive to much-needed screen construction in the Indian market.

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. The recently adopted National IPR Policy places copyright jurisdiction in the Department of Industrial Policy and Promotion (DIPP). If properly implemented, the new policy 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 have been positive developments which may reap benefits both in internet piracy investigations and in the possible establishment of an infringing website list (IWL) in India. Such a list would be provided to ad networks to ensure that they, and the brands they represent and place, are not inadvertently advertising on the largest piracy platforms in India.

Camcording Piracy – India remains a hotbed of camcord piracy, with a total of 264 illicit recordings of MPAA member films traced to Indian theaters between 2011 and 2017 to-date. 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 and Telangana (TIPCU), in addition to the copyright issues moving under the purview of the DIPP, represent two positive changes which may signal a shift in India towards more effective IP protection and enforcement. MPAA continues to engage DIPP and key government stakeholders, highlighting the need for increased investigations into internet piracy rings, and encouraging the establishment of an infringing website list (IWL) as discussed above.

Now that copyright has moved to DIPP, it is critical that DIPP establish a national IPR enforcement task force, within the Cell for IPR Promotion and Management (CIPAM), to work with different Indian states in a coordinated, systematic and efficient

manner. The task force should be unrestricted by jurisdictional issues, collaborating to ensure protection of intellectual property– both at the source (including camcording) and online.

Indian courts have mixed results in dealing with internet piracy. For example, a recent decision by the Delhi High Court affirmed an order to block access to primarily infringing websites retransmitting live cricket matches. In that case, the judge was asked to order disablement of certain URL links to the matches, but disabled access to all 70+ sites as a proportionate remedy, given the infringing structure of the sites. By contrast, a Madras court ordered only the disabling of access to certain URLs, essentially equivalent to court-ordered notice-and-takedown. While the current law permits such orders as those issued by the Delhi High Court, the law could be improved by imposing a no-fault, permanent, site-based injunctive relief, rather than the current system, which is title-based. ISPs in some cases are not following these judicial orders. Thus, monitoring and enforcement are essential.

Legislation

Cinematographic Act – Approximately 90% of newly released films in India appear illegally online, due to camcording in cinemas. Amendments to the Copyright Act in 2012 fell short on anti-camcording provisions. The Indian Government should swiftly enact the draft Cinematographic Bill 2013 which includes effective amendments to outlaw unauthorized recording of all or part of an audiovisual work in a cinema. MPAA appreciates U.S. Government engagement with the Minister of Information and Broadcasting to encourage passage of this bill.

Copyright Legislation – In 2012, the Indian Government enacted amendments to India's Copyright Act intended to meet the minimum threshold requirements of the 1996 WIPO treaties. However, the amendments fell short of these objectives in certain key respects, particularly in the area of preventing circumvention of technological protection measures. More concerning, however, is the extension of new compulsory licenses to foreign works, in favor of local broadcasters. These compulsory licenses appear inconsistent with India's commitments in the Berne and TRIPs agreements. Certain other provisions in the copyright amendments, related to ownership and remuneration, have spurred at least five separate legal challenges now pending before the courts.

Structurally Infringing Websites – India should amend Section 69A of the Information Technology Act 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. Such a provision is especially needed in light of the above-referenced Copyright Act amendment which fell short of effective provisions on technological protection measures.



Indonesia

MARKET ACCESS ISSUES

Foreign Ownership Restrictions – In May 2016, the Indonesian Government issued Decree 44, enabling 100% foreign direct investment in the film production, distribution and exhibition sector. This positive move should be accompanied by the issuance of clear guidelines on the implementation process of the decree.

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 have harmful effects on Indonesian consumers' access to foreign TV channels. The timeline for revising the Broadcasting Law remains unclear.

Film Law – Since removing film from the Negative Investment List in 2016, the Ministry of Culture and Education has drafted implementing regulation to enforce the 2009 Film Law, which would impose significant new barriers in the film market.

First, the draft regulations include a 60% screen quota for Indonesian films and measures to limit the importation of foreign films. If implemented, such protectionist measures would likely lead to lost revenue in local theaters and limited choices for Indonesian consumers. Such measures would also limit local industry's exposure to the expertise and skill of foreign producers. Moreover, such quotas often leave a huge opening for the purveyors of pirated content.

Second, MPAA also objects in principle to Article 43 of the 2009 Film Law which, if enforced, would ban dubbing of imported films. This is a discriminatory and protectionist policy that is contrary to the interests of Indonesia's own citizens. Dubbing of imported films into a local language is a commercial decision

that should be based on business considerations and market forces.

Third, the Film Law includes some ambiguous provisions that purportedly aim to limit unfair trade practices or monopolistic conduct, such as restrictions on vertical integration. These provisions could have unintended consequences such as restricting foreign participation in the market and curbing business efficiency. Indonesia should revise the draft regulations 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. To be sure, the Indonesian government should permanently and officially abrogate this local replication requirement as soon as possible, as it would impede U.S. rights holders' ability to control the print quality or to trace the source of camcording piracy.

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 – In Japan, the dominant ratings service company 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 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. The Intellectual Property Strategy Headquarters (IPSH) under the Cabinet Secretariat has concluded that so-called "leech" sites (linking sites) must be prohibited in Japan, and has recommended an immediate legislative fix. MPAA appreciates IPSH recognition that more must be done to tackle internet piracy and we urge the government to introduce a remedy.

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 technological protection measures (TPMs).

The Agency for Cultural Affairs (ACA) is in the process of revising the copyright law. Because Japan has historically used exceptions and limitations under clearly specified circumstances, MPAA urges the government to ensure that any changes do not result in overly-broad, unclear or difficult to interpret limitations and exceptions, especially concerning fair use. Japan should ensure that any changes considered be aligned with the internationally-recognized three-step test.

ISP Liability – Japan should amend its ISP liability law to require ISPs to act more expeditiously in response to rights holders' requests to remove infringing content, and to disclose the identity of suspected infringers when feasible. Such amendments would be a significant response to the unfair advantage sellers of illegal content have over legitimate enterprises in the Japanese marketplace.



Malaysia

MARKET ACCESS ISSUES

Broadcast Quota – Malaysia requires that broadcast stations, through broadcast licensing agreements, devote 80% of terrestrial airtime to local Malaysian programming. Broadcast stations are also banned from broadcasting foreign programming during prime time. Such quotas significantly limit the development of the television sector and limit opportunities for U.S. exports.

Cinema Entertainment Tax – The entertainment tax for theater admissions imposed at the state government level, at 25% of the gross ticket price, is among the highest in the region, and limits the growth of the theatrical industry by artificially increasing box office prices. Despite the introduction of a nationwide 6% Goods & Services Tax (GST) in April 2015, the Malaysian government has made no attempt to reduce the entertainment tax or otherwise subsume it within the GST, thus pushing the effective rate of taxation on a cinema ticket up to 31%, among the highest in the world.

Foreign Ownership Restrictions – Foreign investment in terrestrial broadcast networks is strictly prohibited in Malaysia. The Malaysian government also imposes a 30% limit on foreign investment in cable and satellite operations through licensing agreements.

FINAS Fees – In September 2013, Malaysia's National Film Development Corporation (FINAS) issued a rule requiring payment of fees for Digital Cinema Packs transmitted electronically and replicated locally, even though those activities do not constitute acts of importation under the controlling legislation, the FINAS Act. These fees await implementation. These fees – which await implementation – would increase costs and negatively impact the expansion of the theatrical sector. Moreover, such fees may potentially be inconsistent with the expanded Information Technology Agreement, which Malaysia adopted in 2015.

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 the country. 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 – Six audio and video recordings of MPAA member films were forensically sourced to Malaysian theaters in the 2015-2016 timeframe. Although Malaysia passed anti-camcord legislation in 2011, no legal action has been taken against known infringers.



New Zealand

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Rampant online piracy in New Zealand remains a concern to rights owners. The government should take steps to strengthen copyright protection in the digital environment, including TPMs, which are vital to the creation and sustainability of online distribution models.

Piracy Devices and Apps – 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 the last year. Approximately five to ten well-established distributors of these products cater to the New Zealand market. In addition, blank media boxes, which permit the installation of third-party, post-purchase applications, are especially problematic for the authorities' enforcement efforts. MPAA urges the Government to enact legislation to deal with this increasingly threatening form of piracy.

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 such as technological protection measures (TPMs) and copyright term. The government is expected to launch an issues paper on copyright in 2018. MPAA 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.

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.



Philippines

MARKET ACCESS ISSUES

Foreign Ownership Restrictions – Under the Philippines Constitution, foreign investment in mass media, including the pay-TV or terrestrial broadcast sector, is prohibited. However, 40% 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% income tax on net profits, a 5% withholding tax on gross receipts chargeable to income tax liability, and a 10% tax on the distributor's share of the box office. A municipal license tax of 0.75% of a company's prior year gross receipts is also imposed on motion picture companies. Moreover, the Philippines imposes 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 – For one week in August 2017, the Film Development Council of the Philippines (FDCP) organized a local independent film festival. During the festival, FDCP allowed only local independent films to be screened in cinemas nationwide. Similarly, during the 10-day annual Metro Manila Film Festival held every December, authorities have limited all screen time exclusively to locally-produced films. While the local distributors and exhibitors celebrate the development of the local film industry and have complied with these orders, 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 2012 through September 2017, a total of 86 illicit audio and video recordings of MPAA member 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 U.S.-Korea FTA 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.

Moreover, in October 2016, lawmakers proposed two similar bills to amend the Motion Pictures and Video Products Act. These bills would restrict vertical integration of film distribution and exhibition, and would “fairly” allocate screens to all movies. The bills’ provisions are broad and fail to clarify how the proposals would promote the diversification of the Korean film industry. Korean lawmakers should carefully consider these proposals to avoid any unintended consequences 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% of program duration and no more than 20% 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 470 primarily infringing sites. Unfortunately, problems remain, such as with sites that “migrate” (i.e., change domains or server locations), and a number of websites have now enlisted content delivery networks to help them hide from authorities. We encourage the Korea Copyright Protection Agency (KCOPA) and other relevant government agencies to continue engaging in effective enforcement of audiovisual rights.

VOD Piracy – With the emergence of 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 most other countries, leaked content from Korea is spreading to torrents and cyberlockers, 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% of the operator's total issued shares. Foreign investment in satellite television broadcasting services is also restricted to no more than 50%. Such investment restrictions limit the ability of U.S. companies 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. The price cap has never been adjusted, although the consumer price index has risen substantially since 1990. The rate cap has hindered the development of the cable TV industry, satellite operators, and content providers.

Local Content Quotas – In January 2017, new quotas for broadcast and satellite TV took effect in Taiwan. These rules require that, 1) terrestrial TV stations to broadcast at least 50% locally-produced drama programs between 8:00 pm and 10:00 pm, and 2) local satellite TV channels broadcast at least 25% locally-produced children's programs between 5:00 pm to 7:00 pm and at least 25% 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% newly produced programs. Furthermore, a cable TV service must provide at least 20% 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.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Taiwan's rampant online piracy situation is growing out of control in the absence of government action to address the problem. In one month, there were three times

as many page views to the top five piracy websites as there were page views to the top five legitimate offerings in Taiwan – i.e., almost 75% of all page views that month were of pirated content. This anecdotal evidence matches other evidence from a 2014 Sycamore Research study finding that 73% of Taiwanese admitted to participating in piracy, with 57% active users. 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 – Proposed copyright amendments would make certain positive changes to Taiwan's law, including expressly protecting temporary reproductions. However, these amendments are being held in abeyance in the Legislative Yuan. Moreover, the 2009 amendment imposing a graduated response system for Taiwan's ISPs has never been implemented.



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% directly or more than 50% 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. The Ministry of Culture is in the process of amending the MPVA in 2017 and should take the opportunity to delete Section 9(5) and the related Section 68. Such limitations can adversely affect Thai distributors and exhibitors and impede the development of the local film industry. These quotas would limit the variety of entertainment available to Thai consumers, and could 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. 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 regulatory 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. Local Thai film producers are profoundly harmed by internet pirates, who specifically target Thai users with Thai language sites. In one month, there were twenty times the page views to the top five piracy sites in Thailand as there were page views to the top five legitimate websites. This means that, in a given month, well over 90% of all page views in Thailand go to pirate sites.

Camcord Piracy – Thailand remains a significant source of illicit camcording in the region, with a total of 158 MPAA member titles forensically matched to cinemas in Thailand from 2011 through 2017.

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.

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 technological protection measures and ISP liability fell short of international expectations.

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, without requiring a link to copyright infringement, would empower law enforcement to intercept illegal recordings before they enter the online pirate ecosystem.

Safe Harbor for Notice and Takedown – Thailand is currently amending Section 32/3 of the Copyright Act which contains a Notice-and-Takedown process that requires a court order be issued to ISPs before they are required to take down infringing URLs. When amending the law, Thailand should establish clear obligations for intermediaries who receive a safe harbor.



Vietnam

MARKET ACCESS ISSUES

Screen Quotas – Under Cinema Law/Decree 54, Vietnam requires that at least 20% of total screen time be devoted to Vietnamese feature films. Vietnam should remove this quota, which is currently not enforced. Locally-produced films now command over 20% market share in Vietnam, rendering this quota irrelevant.

Broadcast Quotas – In the television sector, foreign content is limited to 50% of broadcast time, and foreign programming is not allowed during prime time. Broadcast stations must also allocate 30% 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 are subject to government approval and a 51% ownership ceiling.

Pay-TV Regulation – In March 2016, Vietnam enacted pay-TV regulations requiring the number of foreign channels on pay-TV services be capped at 30% 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. 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, if fully implemented, will be unduly restrictive and could severely impede the growth and development of Vietnam’s pay-TV industry.

Censorship and Film Classification – Traditionally, all films are subject to censorship by the Department of Cinema under the Ministry of Culture, Sports and Tourism (MCST). The results are unpredictable and arbitrary. Films that require editing are subject to a re-review, but importers are not assured a right of appeal. Notably, Vietnam’s new regulation on film classification took effect in January 2017. This long-expected regulation is widely seen as a relaxation of the government’s discretion in film censorship. MPAA is hopeful that the new system will encourage a greater expression of creativity and allow more diverse film entertainment in the Vietnamese marketplace.

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.

Television Piracy – The unauthorized reception and redistribution of foreign satellite channels using illegal decoders remains a recurring problem throughout the country. In addition, Vietnam’s terrestrial and pay-TV platforms continue to air individual programs and movies without authorization. Vietnam should revoke the licenses of channels and platforms that routinely violate intellectual property rights.

Legislation

Copyright Legislation – While Vietnam made some notable improvements in its copyright regime in 2010, the regime is still not yet fully compliant with Vietnam's international obligations.



MOTION PICTURE ASSOCIATION OF AMERICA

A large, dark teal silhouette of the European continent is centered on the page, serving as a background for the word "Europe".

Europe

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, 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.

MARKET ACCESS ISSUES

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 restrictive provisions for foreign program suppliers.

Some EU Member States, such as France, Italy, and Spain, have taken measures which are far more restrictive and discriminatory than required by the basic provision of the TVWF Directive. These measures include 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.

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 proposal includes 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 20% 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 funds) to VOD services under their jurisdiction and, under certain conditions, to VOD services established elsewhere but targeting their national audience. Member States are able to waive obligations in discreet, specific cases.

In April 2017, the CULT Committee of the European Parliament adopted the final report on the proposal for a directive amending Directive 2010/13/EU. This document, representing the position of the EU Parliament, includes the following elements:

- 30% share of EU works in VOD catalogue and the prominence obligation. That share shall include works in the official languages of the territory in which they are distributed.
- Member States may require VOD providers, whether established inside or outside their territory, to make a financial contribution to the national film fund, if their business targets audiences within the national territory.
- Mandatory exception for 1) providers with a low turnover, or low audience, or small and micro enterprises or independent producers, and 2) where it would be impracticable or unjustified by reason of the nature or theme of the on-demand audiovisual media services.

On May 23, 2017, the Council reached a General Approach to amend Directive 2010/13/EU (AVMS-D). This document, representing the position of the Member States of the European Union, includes the following elements:

- 30% share of EU works in VOD catalogues and the prominence obligation.
- Where Member States require linear broadcaster & VOD provider, under their jurisdiction, to contribute financially to the production of European works, they may also require Linear Broadcaster & VOD provider, targeting audiences in their territories, but established in other Member States, to make such financial contribution.
- Mandatory exception for providers with a low turnover or low audience and an optional exception where it

European Union Overview

would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services.

Currently, the three Institutions (Commission, Parliament and Council) are negotiating the final compromise text of the new AVMS-D, which may be released by the end of 2017.

The Commission's proposal includes some positive elements, including more flexibility vis-à-vis advertising rules, and some critical norms, such as a derogation to the country of origin principle in order to "tax" non-domestic VOD players targeting a given Member State. MPAA supports a final compromise text that could mirror as much as possible the initial proposal of the European Commission.

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% 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.

INTELLECTUAL PROPERTY PROTECTION

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." 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 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 paramount 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.

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 discs manufacturers, preferring a voluntary code of practice. The Directive also fails to significantly improve the Community's damages regime.

European Union Overview

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.

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 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.

An EC Communication released in May 2016 indicated that the Commission did not foresee a reopening of the E-Commerce Directive, but will further assess the necessity of targeted policy measures (regulatory, self- or co-regulatory) on the basis of clearly identified problems and in-depth evaluation of the adequacy of the existing regulatory framework. The EC is expected to publish a Communication in Fall 2017 (current working title "Tackling Illegal Content Online – Towards an

enhanced responsibility of online platforms") that will provide soft law guidelines to encourage platforms to take more voluntary action and step up the fight against illegal content online.

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 the Directive.

The digital age has made certain rights in the copyright bundle 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 the Directive into national laws.

Notably, the Directive contains an exception for digital private copying that, if implemented incorrectly, 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, 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.

European Union Overview

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 Copyright 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.

As discussed above as part of the DSM initiative, the EC has proposed legislation on the harmonization of exceptions that would have an impact on the Copyright Directive.

Copyright Enforcement and Privacy Rules – EU Member States have implemented a number of privacy directives to protect individuals' personal data. A key instrument is the Framework Directive on Data Protection, which was adopted in 1995.

The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) was adopted on April 27, 2016, and replaces the data protection directive (Directive 95/46/EC) of 1995. It intends to strengthen and unify data protection for all individuals within the EU but also addresses the export of personal data outside the EU. The GDPR becomes enforceable from May 25, 2018, after a two-year transition period. Unlike a directive, the GDPR does not require national governments to pass any enabling legislation, and is thus directly binding and applicable. The GDPR raises concerns on the use of certain personal data in copyright enforcement. In the 1995 Directive, rights holders relied on Article 13, which provided derogations to the rules on data processing referring to the respect of the "rights and freedom of others." The GDPR still provides such a derogation to the rules on data processing (Article 23), however it is subject to very strict and defined conditions. 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 parallel to the GDPR, the Commission adopted a directive on the processing of personal data by police and judicial authorities against criminal offences. In addition, the Commission released a proposal on January 10, 2017 to amend the E-privacy Directive, offering a broader scope and stricter rules for the text.

Concerning data retention, the EU Court of Justice (CJEU) cancelled the Data Retention Directive (2006) in April 2014. Since then, there has been a series of court cases, including a recent one in December 2016, that could have an important impact. Regarding the transfer of data outside of the EU, the December 2016 case led to a ruling that personal data can,

as a matter of principle, only be transferred to countries that provide an adequate level of protection. If there is no adequacy, specific mechanisms/safeguards must be implemented. Increasingly, the CJEU is also making it very difficult to retain and access data – subject to very strict conditions in very specific circumstances, where the purpose must be to fight serious crimes. Rights holders, including MPAA members, continue to argue that the legislature should not forget the "rights and freedoms of others," per Article 13 of the general Data Protection Directive and Article 15(1) of the E-privacy Directive. However, this December 2016 decision is poised to severely limit rights holders' defense of the "rights and freedoms of others."

In July 2016, the so-called "safe harbor" mechanism for the transfer of data to the United States was replaced by the "privacy shield." In January 2017, the Commission also released a Communication on exchanging and protecting personal data in a globalized world. The Commission is expected to issue further decisions allowing the transfer of data to specific countries in America and Asia.



Belgium

MARKET ACCESS ISSUES

Video-on-Demand (VOD) – VOD services face two barriers in Belgium. First, on-demand services must place particular emphasis on European works by using a prominent presentation in their catalogues. Second, Belgium requires two types of financial contribution. For “publishers of television services,” up to 2.2% 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% 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.

Enforcement

Police cooperation in Belgium 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 illegal content/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. Though rather slow, their actions have resulted in some successes, and their skills and experience continue to grow.

On the civil front, besides a 2011 precedent case, BEA initiated a new civil site-blocking case against the main ISPs. The case is pending.

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.



France

MARKET ACCESS ISSUES

Broadcast Quota – French broadcast quotas exceed the requirements established by the EU Broadcast 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% of feature films and audiovisual works broadcast must be of EU origin. Thus, 40% must be exclusively of French origin, and an additional 20% 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.

Screen Quota – 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 interindustry “commitments” (sourced in the Cinema Code - L. 212-19 à L. 212-23), and more recently in a May 2016 interindustry 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. MPAA opposes these VOD constraints because they hinder the growth of this new medium, and in doing so, they fuel demand for pirated content.

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. MPAA disagrees with the French government’s imposition of de-facto discriminatory taxes or levy schemes on the film industry, as the government uses the monies collected to finance subsidies allocated on a discriminatory basis.

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% 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.

Ban on Advertising Feature Films on Television – Advertising on television is controlled by statutory limitations, many of which were drafted to protect French press revenues. A variety of goods and services are not allowed to promote their activities on television. The advertising ban, which includes advertising for theatrically released feature films, continues to be detrimental to film distributor interests in France, because television advertising is a particularly effective means of marketing motion pictures. (This ban on advertising for theatrically released feature films is not applicable to cable/

satellite/DTT-carried cinema channels.) The Ministry of Culture and Communication has launched a new consultation on the need for more flexibility in television advertising to eliminate discrepancies in competition in the digital environment; a report is pending.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Internet piracy is a major source of concern in France as a result of high broadband penetration, the popularity of P2P systems, and, more recently, streaming and direct download (DDL) illegal offers. In 2009, the Government adopted groundbreaking legislation (Law No. 2009-669 of June 12, 2009 and Law No. 2009-1311 of October 28, 2009) to address online piracy through a graduated response sanctioning a lack of control over the subscribers' internet access. Since then, the Government, through the high authority HADOPI, has been educating internet users through successive notifications (10 million email notifications had been sent as of September, 2017). It should be noted that the Government repealed internet access suspension in June 2013. Fines remain in place, but they must be imposed by a judge. The increased use of direct download and streaming services is expected to be mainly addressed through Article L-336-2 of the IP Code.

Médiamétrie concluded in a March 2016 study that piracy levels in France were relatively stable over 2014-2015. Thirty percent of internet users visit websites dedicated to audiovisual piracy on a monthly basis – 31% use streaming technology (without Youtube and Dailymotion), 36% use DDL technology, and 33% use P2P technology. In February 2017, Médiamétrie reported that overall piracy levels have declined by 8 percent since 2015, mainly due to the impact of court decisions.

Legislation

EU Copyright Directive Implementation – France implemented the EU Copyright Directive and very usefully 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. The National Assembly enacted helpful reforms related to hard good piracy in March 2014 and proposals to strengthen the notice-and-takedown system remain under consideration.

Enforcement

Public Investigative Departments do not treat copyright infringement as a priority, despite continued cooperation from local content protection organizations. The deterrent effect of criminal enforcement in France is limited by weak sentences imposed by French courts, even if recent court decisions show enhanced consideration for the issue, in particular, through the granting of significant damages (e.g., Wawamania case: 1 year jail time and €13 million in damages) or the preventative imprisonment of a site's administrator (e.g. full-stream.net and zone-telechargement.com). Generally, sentences are suspended for first time offenders, consistent with general criminal sentencing practices. However, if the defendant subsequently is convicted for re-offending, both the new sentence and the previously suspended sentence must be served.

In practice, the most effective deterrent to piracy in France has been the civil damages regime. French courts proved to be receptive to the use of civil (directive 2001/29.EC) 8.3 actions in order to get injunctions against internet intermediaries. The French Supreme Court was the first in Europe to rule that costs for implementing measures to protect copyrighted works should be borne by the internet intermediaries, and not by the right holders. In addition, the French Supreme Court decided to maintain a ruling of the Paris Court of Appeals, which had confirmed that search engines are covered by the local implementation of 8.3. In July 2017, through a new Paris court decision, search engines have received again an injunction to delist entire structurally-infringing sites from their results, an order limited to internet users accessing the internet via a local subscription.



Germany

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 domain names.

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. And, the judiciary has 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 of limited use against online sites that facilitate copyright infringement on a massive scale. Significant case law at the Supreme Court level is pending, with regard to cyberlocker-liability.

Legislation

Copyright reform – Germany's private copy exception (PCE) 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 – that indirectly upheld the all-too broad scope of the PCE 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 obliged 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.

In June 2016, the Bundestag passed a reform of the country's Telemedia Act that will end the principle called 'Störerhaftung' under which private and business WiFi hotspot providers can be held liable for their users' illegal online activities. Individuals and businesses opening their internet access to users will be considered access providers. As such, they will be subjected to limited liability. This reform, therefore, renders virtually impossible any IP right enforcement for infringements via (public) WiFi hotspots.

EU Copyright Directive – The German government has failed to implement Article 8.3 and, rather, refers rights holders to general liability principles developed by the courts. This inadequate implementation of EU law precludes blocking orders against infringing websites. Unlike the majority of other EU countries, not a single website in Germany has been blocked by ISPs due to IP infringements.

In March 2014, the CJEU held in the Kino.to decision (C-314/12), that Article 8.3 of the Enforcement Directive does provide a basis for blocking injunctions against access providers; however, lower German courts have yet to apply the ruling in favor of such claims. Further, proceedings are ongoing against two German domain name registrars to block notoriously infringing domain names. However, rights holders have to rely on German general liability principles which do not provide the legal tools as per Article 8.3. All of this poses a barrier to rights holders trying to protect their copyrights in Germany.

MARKET ACCESS ISSUES

Audiovisual quotas – In 2010, Italy amended Art. 44 of the Broadcasting Law, which now reserves: 1) the majority of their annual transmission time to EU works and 2) at least 10% of the annual transmission time to EU works produced during the last five years of which 20% must be reserved for RAI – Italy's national public broadcasting service. Newscasts, sports, game shows, advertising, and teleshopping are excluded from the EU-works calculation. At least 10% of their net annual revenues (15% for RAI) must be reserved as financial contributions to the production of and acquisition of rights in European works created by producers who are independent of broadcasters. Within this quota, 3.2% (i.e. 3.2% of the total net revenues) of the budget must be reserved for Italian movies (3.6% of the total net revenues for RAI).

The quotas for non-linear services originally introduced by AGCOM (the Italian Communications Authority) were modified by Deliberation 188/11/CONS. As a result, on-demand services can, alternatively, either reserve 20% of their catalogue to European works or invest 5% of revenues from audiovisual content in the production and acquisition of EU works.

In 2015, the regulation establishing the EU quotas was amended to introduce prominence as a third criterion for promoting European works on VOD services. The definition of the technical and editorial criteria of prominence was determined by an advisory of interested stakeholders. Adherence to prominence is voluntary.

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 contents 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. During 2016, Italy was the source of 12 audio-source thefts and 14 illegal video-camcords of MPAA member films. In the first eight months of 2017, five audio-source and 12 video tracks thefts of MPAA member films 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 civil/administrative side, AGCOM's intervention has been useful in support of civil cases, especially injunctions, that lead to sentences capable of mitigating the negative impact of Italy's ISP liability legislation (detailed below).

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. The approval process is expected to conclude by the end of 2017.

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, on January 17, 2008, and on February 28, 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.

Enforcement

Dutch police and public prosecutors are reluctant to become involved in internet piracy cases. They often do not respond when rights holders request criminal investigation of Dutch aspects of an international operation involved in 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 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 ISP's 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. 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% 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 \$45 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 contravenes 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. According to Alexa rankings, and The Pirate Bay has

until recently remained the most popular BitTorrent site for Norwegian internet users. Since The Pirate Bay was among the seven piracy sites ordered blocked by eight major Norwegian ISPs on September 1, 2015, it has seen a remarkable decrease in popularity. In total, 15 websites have been blocked based on the specific site-blocking legislation introduced in 2014. On January 5, 2017, the injunction was extended to 7 more ISPs.

Illegal streaming websites located overseas have, however, dramatically increased in popularity. Popcorn Time, a hybrid streaming and BitTorrent app, has now overtaken The Pirate Bay as the most popular piracy site for Norwegian internet users. On June 2, 2017, members of MPAA initiated legal proceedings to obtain an injunction ordering the ISPs to block access to the service. The case is ongoing.

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 of their subscribers where such subscribers 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 – In April 2017, the Ministry of Culture presented a white paper, followed by hearings, related to copyright reform. In addition to revising and modernizing the structure and language of the law, the Ministry is also considering a number of material changes to the Copyright Act. MPAA is pleased to see that the White Paper is more balanced

than previous policy documents, although the proposed new legislation appears to imply a need to strengthen the position of original authors and performers, while offering little or no assessment of the possible negative impact on content creation and distribution.

MPAA would welcome a provision that clarifies that streaming of content from illegal sources is illegal. Such a provision will help enshrine users' respect for the fundamental rights of authors. 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).

Furthermore, the Ministry proposes to strengthen the law's sanction regime in line with MPAA's previous suggestions. This is important in order to remove barriers to effective enforcement of copyright in Norway.

On the negative side, the Ministry proposes what is described as a clarification that the use of works in "classrooms" is private and thus does not implicate copyright. MPAA has urged the Ministry to reconsider this provision. Finally, it should be noted that the Ministry proposes a number of changes related to transfer of rights, such as a codification of the principle of specialty, a statutory right for authors to terminate certain agreements if the transferred rights are not exercised, and a statutory right to equitable remuneration. MPAA finds these amendments, which may be detrimental to investments in content creation, both unwelcome and unnecessary. Due to intense public criticism, the government has postponed the adoption of the Copyright Act reforms until after the September 2017 general election. As a result, the measures are not likely to be adopted before the end of 2017.



Poland

MARKET ACCESS ISSUES

Broadcast Quotas – Poland’s broadcasters must dedicate at least 33% 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% of their catalogues to European works.

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%.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – Internet piracy is steadily growing in Poland. BitTorrent remains a very popular way of pirating movies in Poland, but linking sites (direct download), hosting sites and streaming video are also on the rise. 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 greatly complicates enforcement activities.

Enforcement

A recent Deloitte study concluded that online content piracy generated PLN 3 billion in GDP losses in Poland in 2016. 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 police will become uninterested in 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 physical value of carrier medium. This is contrary to standard international practice. Such assessments are a form of double taxation, since royalties are also subject to withholding, income, value-added and remittance taxes.

Foreign Ownership Restrictions – As a general matter, foreign legal entities and Russian legal entities with foreign participation exceeding 50% are prohibited from: 1) sponsoring television and radio channels as well as television and radio programs; 2) establishing broadcasting organization channels capable of being received reliably in more than half of Russia’s territory or by more than half of Russia’s population; and, 3) broadcasting to more than half of Russia’s population. The law also forbids the transference of stock in a channel or radio or television program that results in over 50% foreign ownership. MPAA opposes such restrictions because they are discriminatory, reduce consumer choice, and unreasonably favor local investors.

The Mass Media Law bans foreign entities or persons from establishing certain media platforms, including television and radio companies. Existing media companies covered by the law with foreign participation must take measures to limit the foreign share of participation to no more than 20%. In cases of non-compliance, foreign shareholders could lose important rights within the company, and the law could affect the company’s existing business arrangements. As noted, MPAA opposes these types of restrictions which reduce consumer choice and unreasonably favor domestic investors.

Advertising Ban on Pay-TV – Russia has enacted new legislation that bans advertising on pay- and scrambled-signal channels. While the law has no practical effect on state-owned

television channels, it will have 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 – Proposed legislation would introduce large fees for theatrical distribution, while another proposed measure would limit the percentage of screens that can be occupied by a single film. MPAA opposes these restrictions, which, if adopted and implemented, would constrain the 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 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. Given Russia’s improved bandwidth performance, streaming sites are now the principal form of infringing site in Russia, accounting for 46% of infringing sites. Many pirate sites have moved to foreign hosting locations after the implementation of the so-called “Internet Anti-Piracy

Law.” The recently-enacted “Third Anti-Piracy Law” would allow blocking mirror sites of pirate websites as well, which should substantially improve the effectiveness of the law. Infringement on Russian social media platforms is also a significant concern to rights holders.

Camcord Piracy – Russia continues to be a source for illicit camcording, though this problem has steadily diminished over the past few years.

Enforcement

Russia needs to increase its enforcement activity well beyond current levels to provide adequate and effective enforcement of IPR violations, including the imposition of criminal deterrent penalties. The recently-enacted amendment to the Anti-Piracy law should constrain the ability of wrongdoers to simply modify their internet sites and continue to operate in violation of the law. Further, 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.

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) – Spain requires that VOD services reserve 30% of their catalogues for European works (half of these in a Spanish official language) and financially contribute to the funding of audiovisual content with at least 5% of their turnover.

Film Dubbing (Catalonia) – In 2010, the Catalan regional government adopted new language restrictions on films released in Catalonia. In September 2011, film distributors, 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 agreed to fund the dubbing. After the European Commission found Article 18 of the legislation to be discriminatory towards other European countries, the Catalan Government removed European works from the scope of the obligation and threatened to re-introduce the quotas absent any satisfactory renewal of the cooperation agreement. The MPAA notes that this legislation may not align with Spain's WTO commitments.

Investment Obligation – Spain maintains discriminatory investment provisions whereby audiovisual media service providers, including broadcasters, must annually invest five 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 future 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 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 the development of Spain's theatrical market.

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 improve the very poor results of the IP Commission's administrative procedure. Lawmakers also amended the Criminal Code, providing 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 manner more consistent with the European Directive. In an encouraging signal, Spanish courts recently issued court orders to block the websites bajui.com and elitetorrent.net. A bail of 400,000 euros was imposed on the administrator. In June, Spanish courts also blocked the sites torrentsdrv.com, rinconpeliculas.com, and universopeliculas.com.

Camcord Piracy – In 2016, 14 illegal recordings of MPAA member films, all audio, were linked to Spanish theaters. Spanish police and judicial procedures are proving extremely slow in reaction to gnula, one of the most prolific Spanish release groups.

Enforcement

Despite the above-mentioned legal amendments and some positive judicial decisions finding that linking constitutes a "communication to the public," cases against link/facilitator sites are difficult, slow and mainly advanced by private prosecution. In general, judicial action in Spain is slow, but this is even more the case in relation to IP-related crimes: it is not unusual for cases to lapse due to these delays. On a positive note, in 2018, the Ministry of Justice will create a public prosecutor's office focusing solely on IP offenses.

With regard to administrative law procedures, the Intellectual Property Commission (IPC) has failed to address complaints against linking sites and cyberlockers, which are usually located outside of Spain.

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 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 taking action against internet users who infringe copyright.



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 400 million illegally streamed and downloaded movies and episodes in the region, 209 million (52%) were downloaded and streamed in Sweden.

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. In May 2016 alone, Swedish users illegally streamed 51.7 million films and 84 million television episodes. This is a significant increase from 2013, when Swedish users illegally streamed 13.9 million films and 25.6 million television episodes. While Swedish law is clear that downloading from an illegal source is illegal, the government still hasn't clarified that it is illegal to use illegal streaming services.

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 in Sweden, and a significant amount of infringing content flows through Swedish release groups every year. Swedish authorities have recently taken some action against these groups, but more action is needed.

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 awarded in one case have been adequate. Suspended jail time is the standard even for individuals deeply involved in copyright theft.

Law enforcement are not 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 Appeal 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.

Legislation

In light of the exponential growth of illegal streaming, Swedish law must provide clarity on the issue of temporary copies from illegal sources. The current legal framework provides little deterrence.

Swedish law must also change in order to curb organized commercial piracy, as evidenced by the difficulties thwarting The Pirate Bay – an operation the court system has already deemed illegal. These necessary changes should include better tools for the police, and aim to stop illegal sites that keep running after being raided by the police, and even after being convicted by a court of law. The maximum penalty for copyright infringement is two years.

Finally, the Swedish government has initiated an inquiry investigating if longer/harsher penalties for organized copyright crime are needed; results are expected in 2018.



Switzerland

MARKET ACCESS ISSUES

Film Act Amendment – Effective since 2016, a Film Act amendment 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. Exploitation of a film in any media in Switzerland now requires control over all language versions exploited in Switzerland, 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) to what extent broadcasters’ ancillary on-demand rights (such as Catch-up) are excepted; or 3) the extent of “grandfathering” protection for existing contractual fragmentation of film rights. 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. Moreover, the private copy exception is very broad and permits on-demand services 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 has published a draft revised Copyright Act and opened a public hearing which lasted through March 2016. The draft Copyright Act shows significant shortcomings and will not significantly improve copyright protection. The Swiss government has already indicated that basic elements of internationally accepted elements of anti-piracy legislation will not be introduced into Swiss law, such as the legal source requirement for private use, and access blocking. Furthermore, the road block created by data protection for civil litigation will remain, leaving only criminal prosecution open. Any changes to the law would be unlikely to take effect before 2020 under the proposed schedule.



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, a new Customs Code was adopted 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

The Government of Ukraine, as part of its effort to promote the stable rule of law, should take significant steps to change the conditions that allowed Ukraine to become a haven for internet piracy under the previous regime.

Camcord Piracy – Source piracy from Ukraine remains a serious concern for MPAA member companies. In the first six months of 2017, eight illicit recordings of MPAA member films were linked to Ukrainian theaters, a slight reduction from the same period in 2016.

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 will screen pirate digital copies of films without a State Certificate, which is a punishable offense. In the first six months of 2017, six such acts were registered. Ukrainian law enforcement investigated these acts and shut down all 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. The Government of Ukraine should provide the specialized intellectual property rights unit within the customs service with the mandate to effectively combat infringement, including ex officio authority.

In November 2015, Ukraine created the Cybercrime Police as a separate unit of National Police, for the purpose of combating cybercrimes, including internet crimes/piracy. To date, the newly created units are not supported by new legislation adequate to the current challenges of online piracy.

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," offering new mechanisms to combat

copyright infringement on the internet. The updated law includes definitions of relevant terms such as hyperlink, electronic information, camcording and hosting provider. Notably, the law also declares camcording illegal. The law awaits implementation.

Criminal Procedure Code – Article 477 of the Criminal Procedure Code, which was amended in November 2012, precludes ex-officio actions. 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, with streaming and P2P the two most popular methods of accessing infringing film and TV content online. However, in the past year, piracy devices and apps – in particular, TV set-top boxes and devices – have exploded in popularity. Approximately 19% of UK residents now say they own such a box. These devices are drop-shipped in their legal blank form from Asia, but then configured with infringing apps and sold to customers. MPAA is working with other rights holders to address this growing challenge.

MPAA continues to work closely with the City of London's Police Intellectual Property Crime Unit (PIPCU), which is critical to ensuring investigative success. Helpfully, PIPCU's funding was recently extended for two more years.

Organized criminal gangs, still heavily involved in optical disc piracy, are also getting involved in the importation, configuration and marketing of the afore-mentioned piracy devices and apps. MPAA appreciates the increasing interest from the Border Agency in dealing with this problem.

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. Instead, the Intellectual Property Office initiated a call for views, with results expected by the end of 2017. Rights holders do not anticipate this process will lead to new legislation; rather, the effort will

most likely initiate and/or reinforce several other practical initiatives, including additional training for Trading Standards Officers.



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 and investment with 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. Canada maintains a web of discriminatory and outdated content quotas for broadcast and pay-TV which artificially inflate the total spend on Canadian programming.

The U.S. motion picture industry also faces barriers in the form of foreign ownership caps, advertising restrictions, and high taxation 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. Moreover, Uruguay (22%) and Argentina (21%) maintain two of the highest value-added tax (VAT) rates in the region.

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. MPAA is working closely with law enforcement and other IP stakeholders on strategies to address this challenge, 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 has grown exponentially over the last few years in Latin America, tracking the development of camcorder technology, which makes detection difficult and copies nearly perfect. A total of 413 illicit audio and video recordings of MPAA member company films were sourced from Latin American theaters from January 2015 through December 2016. Preliminary figures from January to September 2017, however, indicate a 33% reduction in camcord piracy across Latin America, compared to the same period in 2016. Additionally, authorities in Brazil, Chile, Peru, Ecuador and Mexico have arrested cammers and/or online release group leaders 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, 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 complicate rights holders' efforts to obtain cooperation from law enforcement and prosecutors.

Western Hemisphere Overview

In Central America and the Caribbean, including Honduras, Guyana, and Guatemala, rogue cable operators are unlawfully receiving and retransmitting channels and content of international programmers. While governments in the region, including Honduras and Trinidad and Tobago, have 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 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, Colombia, 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. Efforts underway to modernize the North American Free Trade Agreement (NAFTA) are an opportunity to enable our industry to compete more fairly and expand the U.S. trade surplus with these vitally important trade partners.

A modernized NAFTA should do no harm to existing protections and market access for the U.S. motion picture industry. As NAFTA was negotiated before the advent of the internet and the proliferation of online commerce, its intellectual property provisions are inadequate to address online piracy. To address online infringement, the updated agreement should establish secondary liability, promote accountability and the rule of law, and create incentives for intermediaries to cooperate with

rights holders. One element of NAFTA that does not need updating is its article on exceptions and limitations to copyright, which includes a clean recitation of the three-step test, providing both rights holders and users a familiar and widely accepted framework for exceptions and limitations to copyright. Further, a modernized NAFTA should ensure non-discrimination online. An updated NAFTA should compel Canada to extend its term of copyright protection, and revisit Canada's carve-out of the cultural industries from the scope of its obligations. NAFTA should also address Mexico's outstanding commitment to implement the WIPO Internet Treaties; criminalize the act of unauthorized camcording; and, enact criminal sanctions for commercial scale infringement, civil enforcement procedures, statutory damages, and criminal and customs enforcement remedies. Finally, NAFTA modernization is an opportunity to improve foreign direct investment opportunities for our industry in Canada and Mexico. Modernizing the NAFTA as described above will allow the U.S. film and television industry to expand its exports throughout North America.



Argentina

MARKET ACCESS ISSUES

Media Convergence Legislation – Argentina’s far-reaching 2009 audiovisual media law contained a variety of discriminatory and protectionist provisions that have significantly hampered the growth of Argentina’s TV market and limited choice for Argentina’s consumers in recent years. Such provisions included local content and screen quotas, advertising restrictions, child appropriate content hours from 6:00 am until 10:00 pm, unequal tax treatment for foreign versus local companies, and limits on the number of broadcast licenses to be held by a single licensee. In December 2015, President Macri enacted Decree 267, establishing a commission to draft a bill to update and converge Argentina’s media and digital laws. The commission is expected to offer draft media convergence legislation in 2018. As this legislation may touch upon copyright, production incentives, quotas, and digital market services, MPAA would appreciate the USG’s cooperation in engaging the Argentine government throughout the reform process to ensure the bill doesn’t prejudice the interests of foreign rights holders.

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 – P2P piracy is the most prevalent form of online content theft for the U.S. motion picture industry in

Argentina. Downloading, cyberlockers and linking sites also enjoy widespread use in Argentina. This activity harms many legitimate vendors as they attempt to enter the marketplace. Moreover, Argentine ISPs often ignore takedown notices submitted by rights holders.

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.

In 2017, Argentina’s copyright authority announced plans for copyright reform, which will be an opportunity to update and strengthen Argentina’s protection and enforcement of copyrights, particularly 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 – In late 2016, a draft ISP liability bill passed in Argentina’s lower chamber and awaits further consideration. This problematic bill would make copyright enforcement unworkable in Argentina, leaving rights holders without protection against online piracy. Specifically, the bill provides an overly broad safe harbor for a non-exhaustive list of service providers, and the safe harbor provisions do not include important threshold requirements as in U.S. law. The bill also requires a court order for a service provider to “obtain knowledge” of infringement, and requires a court order to compel service providers to remove infringing content.



Brazil

MARKET ACCESS ISSUES

Local Content Quotas – A Presidential Decree took effect in 2017, continuing a 2015 mandate for a local content screen quota ranging from 28 to 800 days, depending on the number of screens per theatrical complex. The rule also limits a single title to be shown on no more than 30 percent of a theater's screens.

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.

Video on Demand (VOD) Tax – In 2012, ANCINE (national cinema regulator) published a normative ruling requiring that the CONDECINE tax on audiovisual works be paid for works released in the VOD market. This ruling, which has yet to be clarified, would impose tax in addition to the CONDECINE tax already assessed for audiovisual works for the theatrical, TV and home entertainment segments. The CONDECINE tax is currently assessed per title in several different release windows every five years. Extending the CONDECINE tax for VOD works in this way could limit the content choices available to Brazilian consumers in the nascent online content market and other VOD channels. The Ministry of Culture is expected to send draft legislation on VOD taxation to the legislature by the end of 2017.

Digital Cinema Regulation – In April 2014, ANCINE issued a regulatory notice of its intent to regulate the digital distribution of audiovisual works for exhibition in theaters. The notice included limitations on freedom of contract, lower virtual print fees (VPFs) for Brazilian distributors than for foreign distributors, and local encoding requirements. MPAA filed comments in opposition to the regulatory notice, emphasizing that these provisions exceeded both the scope of ANCINE's mandate to grow the industry, and ANCINE's legal and constitutional powers. MPAA continues to engage ANCINE on these yet to be implemented provisions.

Accessibility in Theaters – In 2016, ANCINE submitted for public consultation the draft of a normative ruling aiming to set procedures for visual and audio impaired accessibility tools to be implemented by distributors and theatrical exhibitors. MPAA supports the adoption of measures that will ensure greater access to its audiovisual productions and benefit a diverse public of special needs patrons. The ruling mandates functionalities such as audio-description, closed-captioning and sign language. Initially, ANCINE issued rules demanding that distributors implement these new tools within 6 months. Stakeholders argued that this was an unreasonably tight deadline given that the sign language (LIBRAS) lacks a global technical standard. ANCINE agreed to extend the deadline to 12 months for implementation of the sign language functionality and agreed to form a technical chamber composed of key stakeholders including MPAA members. MPAA continues to collaborate with the regulator and other affected parties to ensure timely and effective implementation of these accessibility tools in Brazilian theaters.

INTELLECTUAL PROPERTY PROTECTION

Internet Piracy – The prevalence of online piracy in Brazil has stunted the legitimate online marketplace. Over 400 piracy sites target the Brazilian market, offering consumers access

to tens of thousands of stolen audiovisual works. Stronger protection and enforcement of copyrights would create more opportunities for legitimate online commerce to flourish.

Camcord Piracy – Unauthorized camcording in Brazilian theaters, including audio recording, is a significant source of piracy and a serious concern to the MPAA. From January 2016 through September 2017, at least 44 illegal recordings (image, sound or both) originated in Brazilian theaters.

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.

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 – The draft copyright bill has several provisions that are inconsistent with Brazil's international obligations and would likely deter investment in Brazil's creative industries. The draft includes new exceptions and limitations that are overly broad and conflict with the widely accepted three-step test. The draft also includes a compulsory license that does not comport with Brazil's Berne obligations. The draft bill also appears to require the registration/recording of all assignment of rights, which would impose undue costs and burdens on assignors and may diminish the ability of assignees

to exercise their rights. Further, the bill unnecessarily amends Brazil's current policy of national exhaustion. MPAA believes national exhaustion protects against parallel imports and allows copyright owners to control the distribution of their work. The bill is currently dormant in the Civil Cabinet.

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.

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 is still in the Senate and must go back to the House for consideration.



Canada

MARKET ACCESS ISSUES

Television Content Quotas – The Canadian Radio Television and Telecommunications Commission (CRTC) imposes two types of quotas that determine both the minimum Canadian programming expenditure (CPE) and the minimum amount of Canadian programming that licensed Canadian television broadcasters must carry (Exhibition Quota). Such quotas are discriminatory and artificially inflate the amount expended on, or the time allocated to, Canadian programming.

First, large English-language private broadcaster groups have a CPE obligation equal to 30% of the group's 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 renewed, CPE obligations will be assigned to independent signals and to independent discretionary services that have over 200,000 subscribers. These quotas will be effective September 1, 2018, and will be based on historical levels of actual expenditure.

Second, per the Exhibition Quota, private conventional broadcasters must exhibit not less than 50% Canadian programming from 6PM to midnight. The overall 55% quota has been removed as of September 2017. Private English-language discretionary services (specialty and pay-TV) that are not part of a large private broadcasting group must exhibit not less than 35% 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 an all-Canadian basic tier for not more than \$25 per month, but may also offer an alternative basic tier that includes one set of "U.S. 4+1" (ABC, CBS, FOX, NBC

and PBS). All other U.S. signals and services must be offered on a discretionary basis. A 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, 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% of a licensee's Directors must be Canadian; and, 3) at least 80% of the licensee's voting shares and votes must be beneficially owned and controlled by Canadians. If the licensee is a subsidiary corporation, its parent must be Canadian and at least two-thirds of the voting shares and votes of the subsidiary must be beneficially owned

and controlled by Canadians. No other developed market in the world maintains such discriminatory foreign investment limitations.

Québec Distribution Restrictions – The Québec Cinema Act severely restricts the ability of non-Québec-based 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 product.



Mexico

MARKET ACCESS BARRIERS

Advertising on Broadcast and Pay-TV Services – Under the 2012 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 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 bluntly interrupts 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 a vast number of infringing websites popular across Latin America, many of which are specifically targeting the Mexican market. The most prevalent digital platforms enabling piracy are P2P file sharing services, cyberlockers, forums and social networks, BitTorrent index sites and blogs. In 2016, Mexico ranked 14th globally in the number of connections by peers participating in unauthorized file sharing using consoles, 14th using mobile devices, and 19th using personal computers. More work in particular is needed to disable mirror websites in Mexico. MPAA continues to urge

Mexican authorities to use effective remedies against large-scale infringers, in addition to adopting site-blocking measures for local sites.

Camcord Piracy – Eighty-five audio and video recordings of MPAA member company films were linked to Mexican theaters in 2016, placing Mexico as the most egregious foreign market globally for unauthorized camcording of MPAA member company films. In recent years, Mexican authorities have convicted camcording criminals in several highly-publicized cases, but only because prosecutors were able to prove other related crimes. In Mexico, successful enforcement against camcord piracy requires proof of a profit motive, which is very difficult to obtain. In order to prove a profit motive, investigators are required to witness the thieves actually record the movie, walk out of the theater, hand a copy to the people who hired them, and then wait for the film to be widely distributed. MPAA continues to advocate for legislation in Mexico to criminalize the act of camcording. In 2016, Mexico's Attorney General (PGR) and MPAA collaborated to place warning notices in most movie theaters in Mexico to deter camcording incidents. In addition, rights holders have worked diligently with exhibitors to combat and deter camcording through educational campaigns and training programs for theater employees.

Copyright Reform and Digital Environment Regulation – It is imperative that Mexico fully implement the WIPO Internet Treaties and its other international obligations, particularly with regard to the making available right in the online space and technological protection measures. Civil enforcement in Mexico is hampered because of limitations in the recently-reformed Telecommunications Law that prohibit ISPs from disclosing a customer's personal information to rights holders seeking civil recourse against alleged infringers. Mexican government agencies must correctly implement this recent telecommunications reform if internet piracy is to be effectively addressed.