



**MOTION PICTURE ASSOCIATION  
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October 28, 2015

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

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

Re: MPAA Comments Regarding the 2016 National Trade Estimate Report on Foreign Trade Barriers (Docket: USTR 2015-0014)

Dear Mr. Gresser:

The creativity and magic of American motion pictures continue to delight audiences worldwide, in addition to providing a powerful stimulus to the US and global economies. The six major studios of the Motion Picture Association of America (MPAA) member companies generate billions of dollars annually from filmed entertainment distributed to more than 140 countries around the globe, returning a positive balance of trade in nearly every country in which the companies do business. Notwithstanding this singular achievement, the US movie industry faces daunting barriers in many markets as well as relentless challenges to the integrity of its product, challenges extracting an increasingly unbearable cost.

On behalf of MPAA and its members, I want to express our appreciation for the critical assistance the US government provides the industry's efforts to grow its foreign sales. We welcome this opportunity to present our assessment of priority foreign trade barriers for consideration as you and your team compile the National Trade Estimate Report on Foreign Trade Barriers. In reviewing our submission, I note that while we have made substantial progress over the last year -- and I heartily applaud the commitment you and your colleagues in the Administration have made to protecting our members' content -- many of the barriers we identify in this report have appeared in past years' reports.

A defining characteristic of the motion picture and television industry is its decentralized nature. More than 94,000 businesses in all 50 states comprise the US motion picture and

television industry - 85 percent of which employ fewer than ten people. While perhaps not exporting directly overseas, these 94,000 small- and medium-sized companies are providing inputs into a US product that relies heavily on open and secure foreign markets.

Before highlighting key points in MPAA's annual assessment of trade barriers facing its members, let me elaborate on the unprecedented threat intellectual property theft continues to pose to MPAA members, and all US creative industries. The economic and cultural vitality of the creative industries is, I believe, one of our nation's most valuable assets; however, its unique value is under attack by pirates, at home and abroad. Content theft, particularly in the form of illegal camcording in theaters and the expanding scourge of rogue websites can devastate the creation and innovation of new works, and in turn the nation's economic growth.

In tackling the theft of creative content, MPAA is committed to a strategy that couples content protection with improving market access. In many important markets, pirates have a significant competitive advantage over MPAA member companies and other legitimate businesses: pirates operate unencumbered by quotas, duties, internal taxes, distribution restrictions, licensing requirements, and other government policies which impose a cost of doing business on legitimate companies. Moreover, market access restrictions that limit the ability of MPAA members to enter markets have absolutely no effect on restricting the availability of infringing content in the market. Pirates freely supply the market without heed to or burdened by the policies applied to legitimate businesses. Indeed, one of the most effective tactics in fighting movie theft is ensuring that thieves do not have the market to themselves.

Political speech is integral to a functioning democracy and it must be protected; of this, there is no doubt. I am concerned, however, that repression of political speech continues to be conflated with the protection of individuals' creative works from theft. Theft is not political speech and to suggest that protecting an individual's work from theft may foster repression of political speech is to commit an injustice to the creators of speech – including the companies I represent – and to deny that throughout our history, democracies have been able to balance rights and responsibilities. The US government must not falter from being a champion of protecting intellectual property rights, particularly in the online market.

Moreover, I am concerned by assertions that the protection of intellectual property somehow impedes the development of a healthy online marketplace. To the contrary, intellectual property underpins and drives the online marketplace. American audiences had access to 112 lawful online video services at the end of 2014. They used these services to access 66.6 billion television episodes and 7.1 billion movies in 2014. Copyright protections drive the production and distribution of television programming and films. Perhaps less appreciated is that copyright protections also enable the functionality of these diverse services; without legal protection for access controls, copyright owners could not securely offer streaming services to mobile phone users, online access to televised content for cable and satellite television subscribers, or cloud-based audiovisual content services, such as Ultra Violet.

I also want to draw your attention to a worrisome trend that potentially presents a new guise for a familiar barrier: protectionism against MPAA's products cloaked in the name of cultural promotion. We find that governments are considering carving motion pictures out of the scope

of market opening initiatives, including in the online space. Such policies would not only cause our industry serious harm, but would also limit consumers' choice and access to content. We are committed to the promotion and protection of cultural diversity; indeed, I believe the wealth and diversity of the filmed entertainment the US film and television industry produces each and every year is prima facie evidence of that commitment.

On behalf of the millions of men and women MPAA member companies employ, the companies and their investors, the staff of the MPAA, and the billions worldwide who continue to thrill at the enduring genius of the US film industry, I extend our collective deepest appreciation for the invaluable assistance of the dedicated men and women at USTR. While USTR spearheads these efforts, I am not unmindful of the valuable contribution of so many others in the Executive Branch: the Departments of Commerce and State, which negotiate and enforce market access and high standards of intellectual property protection and are the industry's frontline advocates; the copyright experts in the Patent and Trademark and Copyright Offices; and, the enforcement agencies that protect our members content from theft.

As you develop your strategy for the coming year, the MPAA offers its full assistance and cooperation toward combating the theft of intellectual property, securing effective copyright protection, and ensuring a competitive global market. As always, the Motion Picture Association of America and I look forward to continuing to work with you and your colleagues in confronting the challenges that lie ahead. If we can assist you in this work, please let me or my staff know.

With best personal regards,

A handwritten signature in black ink, appearing to read 'Joanna McIntosh', written in a cursive style.

Joanna McIntosh  
Executive Vice President  
Global Policy and External Affairs

## **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 US government those countries' policies and practices that merit Special 301 listing. With this in mind, MPAA's Trade Barriers submission highlights principal concerns with countries' intellectual property regimes and defers to the IIPA Special 301 report for a comprehensive discussion of countries' adequate and effective protection of US 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 US motion picture studios: Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

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

For further information about this report, contact Anissa Brennan, Senior Vice President of International Affairs and Trade Policy, 1600 Eye St., NW, Washington, DC 20006. This document is protected by copyright. It may, however, be reproduced or quoted with appropriate credit.

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## SOUTH AFRICA

### **MARKET ACCESS BARRIERS**

Broadcast Quota – The Independent Communications Authority of South Africa (ICASA) published local content regulations for subscription television in 2006. These regulations introduce local content regulations for satellite and revise the quota for terrestrial and cable subscription services. ICASA published a discussion document in July 2014 on the *Review of Regulation on South African Local Content: Television and Radio* and the general public was invited to submit comments on the Regulations. On September 30, 2015, notice was given of public hearings to be held regarding the *Position Paper and Drafting Regulations on South African Local Content: Television and Radio*. The hearings were October 1-2 2015. MPAA maintains that market forces should determine programming allocation rather than discriminatory quota regimes.

Value added Tax - Regulations were published taking effect May 2014 relating to registration and payment of value added tax on all online transactions conducted in, from or through SA. The Regulations specifically includes online sales of content such as films, series, games, e-books.

### **INTELLECTUAL PROPERTY PROTECTION**

Internet Piracy – Online piracy has seen a dramatic increase in South Africa. This is in part due to the landing of large capacity undersea cables which dramatically increase bandwidth speeds, large choice of service providers offering competitive packages, as well as lax controls over corporate and university bandwidth abuse and access of pre-released film and television content through international torrent, linking and cyberlocker sites, growing market in top box offering (lack of site blocking or any internet legal precedent).

Hard Goods Piracy – There has been a significant increase in piracy facilitated through the auction sites and on-line trading sites supplying counterfeit content on various storage devices. The availability of pirate content on optical disc remains the major problem facing the territory, predominantly through locally burned DVD-Rs but with an increase in content available on BD-R (recordable Blu Ray discs), external hard drives and USB flashdrives.

Informal markets and traders continue to pose a significant challenge to the motion picture industry. The import of pressed discs declined dramatically over the past few years although multi-titled discs imported from the far east currently account for all pressed discs seized annually in SA.

### **Legislation**

National IP Policy of 2013 -- The national draft IP policy of the Department of Trade and Industry includes several troubling recommendations that would impair both the South African



and the US motion picture industry. These include discouraging accession to the WIPO Copyright Treaty and a broad copyright exception that would allow unrestricted copying of copyrighted works for “personal” use. The Department Trade and Industry has confirmed that the project team is in process of working through comments in order to publish the final draft.

Copyright Act – Following the publication of a Copyright Amendment Bill (the “Bill”) by the Department of Trade and Industry (“DTI”) in July 2015, the DTI invited stakeholders to submit comments with a very short deadline over the summer. While the Bill has some marginally good points (e.g., collecting society oversight, basic legal protection for TPMs), this poorly drafted instrument is larded with proposals that will disincentivize movie production in South Africa and under protections for creators (e.g., new exceptions to copyright coupled with an US style fair use clause and a range of limitations on contractual freedom and market interventions in the content sector).

Counterfeit Goods Act – Most hard goods enforcement actions are currently taken under the Counterfeit Goods Act, a relatively strong piece of legislation. However, the Act contains some cumbersome requirements, including providing strict time limits and requiring complainants to pay storage and destruction costs of seized goods.

Films and Publications Act (Parallel Imports) – There is no direct protection against unauthorized parallel importation for local distributors under the Copyright Law. The industry has sought protection against parallel imports through the publication certification process required under the Film and Publications Act, which provides criminal remedies, including seizure and/or administrative fines.

## ASIA-PACIFIC

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 high tariffs, restrictive quotas and foreign investment limitations which seek to promote domestic film and television industries to the detriment of US exporters and the local industries these policies purportedly aim to protect.

We remain concerned about customs and tax problems that have in the past arisen in the Asia-Pacific region that could restrict the US motion picture industry's access to several Asian markets. In at least five territories in the past five years, local customs authorities have sought to change the duties applied to imported films from a computed basis derived from the value of the carrier medium to a transaction value that sought to include the value of royalties paid to the producer of the film. The proposed new rates represented substantial increases, threatening the continued commercial viability of those markets to the industry. Additionally, MPAA and its members are extremely concerned that the problem could migrate across the region from country to country. It is expected that the Information Technology Agreement (ITA) expansion negotiations will mitigate this problem in ITA expansion member countries and MPAA encourages participants in these negotiations to eliminate tariffs immediately.

While MPAA recognizes the right of countries to regulate to protect their citizens, the censorship regimes of some Asia-Pacific economies, such as Vietnam and China, are opaque, unpredictable and slow and can often result in *de facto* discrimination against foreign content. MPAA encourages countries utilizing censorship regimes to consider a 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 foreign industry input. For example, in 2014 the Chinese Government introduced, without prior consultation, online content quotas restricting foreign licensed content to no more than a 30% level and imposing further clearance requirements to the detriment of both United States content providers, Chinese platform operators, and consumers.

MPAA is grateful for USTR's attention in addressing China's many market access restrictions. The 2001 WTO case on market access has provided useful leverage, leading to the 2012 US-China Film Agreement and other positive developments in the commercial relationships between US motion picture companies and Chinese theatrical and home entertainment licensees. The American film industry would benefit from USTR's continued dialogue with Chinese counterparts to remove barriers to allow greater development and realization of the Chinese market's true potential. A fundamental prerequisite to this goal will be encouraging policies that result in more rapid expansion and availability of legitimate product in China. Encouraging progress had been made in this respect; continued US Government oversight of this important issue is essential.

While the Asia-Pacific marketplace is still impaired by physical piracy, particularly in territories such as India, Indonesia, the Philippines, and Vietnam, as elsewhere in the world, Internet piracy has emerged as the fastest growing threat to the audiovisual industry. This is especially true in markets with increasing levels of broadband penetration such as Australia, China, Japan, and South Korea. Downloading and streaming platforms, including User Generated Content sites, BitTorrent sites and ecosystems, and networked access to cyberlockers have gained popularity and migrated consumers away from sites focused on the sale or distribution of hard goods. Mobile penetration, particularly in markets such as India and China, has unfortunately resulted in high levels of piracy on mobile platforms.

MPAA urges governments to enact effective laws and regulations to protect copyrighted content on the Internet, including provisions designed to encourage cooperation between copyright owners and Internet service providers and other intermediaries in response to unauthorized or illegal activity over the internet. Such legislation is increasingly critical as the online marketplace represents a growing and important segment of MPAA members business.

Although certain countries in the Asia-Pacific have ratified and implemented the 1996 WIPO Internet Treaties, which when properly implemented to improve protection of copyrighted content and provide essential tools for ensuring the protection of copyrighted content in the digital age, other regional countries including Vietnam, New Zealand, Brunei, Thailand and India have yet to ratify the treaties. The recently concluded TPP negotiations include an obligation for Vietnam, New Zealand, and Brunei to ratify and implement these important treaties.

Extension of copyright term beyond the minimum requirements set forth in the over one-hundred year old Berne Convention reflects the clear modern trend as evidenced by the more than 90 countries that now have longer terms of protection. As countries throughout the Asia-Pacific region look to bolster their creative industries and attract foreign direct investment in the creative industries, they should extend their terms of protection in line with this trend. The recently concluded Trans-Pacific Partnership (TPP) negotiations address this concern with respect to those countries and should serve as a model for other countries in the region.

Recognizing the strong linkages between organized crime and copyright infringement throughout the Asia-Pacific region, the MPAA would appreciate US Government assistance in securing copyright infringement as a predicate offense under organized crime laws or money laundering laws.

Illicit camcording remains a serious problem in Asia. 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. The TPP includes a provision that if properly implemented will result in effective camcording legislation in TPP countries. It is particularly critical that Australia, India, and New Zealand pass anti-camcording legislation. Legislation enacted in Thailand in 2014 is considered inadequate.

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.

As demonstrated by the high standards achieved by Free Trade Agreement (FTA) negotiations with Singapore, Australia, and Korea, the FTA process can provide an important means for enhancing intellectual property rights protection in the digital age in Asia. These agreements also create critical opportunities for MPAA members to participate in the marketplace. We anticipate similarly high standards in the TPP agreement and look forward to reviewing the text.

MPAA's interests in the historic TPP negotiations cut across several FTA chapters including intellectual property, services and investment, electronic commerce, customs, and goods. Eliminating tariffs on filmed entertainment products, including digital products; removing foreign direct investment limitations; eliminating discriminatory quotas; and, strengthening intellectual property protections through the TPP will foster the development of home-grown entertainment industries within the important trading partners in those negotiations, which comprise approximately 40% of global GDP.

## AUSTRALIA

### **MARKET ACCESS BARRIERS**

Broadcast Quota – Section 9 of the Australian Broadcasting Authority’s Content Standards requires that 55% of all free-to-air television programming broadcast between 6:00 a.m. and midnight be of Australian origin. The Convergence Review Final Report published by the Department of Broadband, Communications, and the Digital Economy in 2012 recommended that, although these quotas should ultimately be phased out, the Government should maintain them for an indefinite transition period, with a further specification that Australian drama, documentaries, and children’s programming should be increased by an additional 50%. 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 programming budget on new Australian drama programs.

While the Australia-US Free Trade Agreement 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, but the obligation can apply to no more than three multiplexed channels of any current broadcaster.

In addition, Australia reserved the right to increase existing investment restrictions, or impose new restrictions, in the audiovisual sector, a right that, if exercised, will further impede the ability of US content producers and distributors to exploit the full potential of the market. Those potential restrictions include an investment quota 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. The finding process, if ever initiated, must be transparent and open.

### **INTELLECTUAL PROPERTY PROTECTION**

The key piracy problems in Australia are online infringement and locally replicated discs. Australia has consistently ranked amongst the highest incidence of per capita P2P infringement of MPAA member company films in the region.

Australia currently has a strong intellectual property framework which has fostered the growth of Australia’s creative industries. Some of the recommendations in reviews previously initiated by the Australian Law Reform Commission and the Attorney General’s Department into Copyright and the Digital Economy and Technological Protection Measures, if pursued, could result in legislative changes that undermine the current balance of protection in Australia, create

significant market uncertainty, and effectively weaken Australia's infrastructure for intellectual property protection. However, legislation enacted by the Government providing for judicial relief against overseas rogue sites presents is very helpful and should significantly enhance Australia's legislative environment.

## **Enforcement**

Difficulties intermittently remain in obtaining police assistance for intellectual property enforcement. These challenges are magnified by undue delays by some Federal Police when referring matters to the Federal Director of Public Prosecutions.

## **Legislation**

MPAA is closely monitoring two ongoing reviews, one to consider a vague and undefined "Fair Use" exception under the Copyright Act and another to consider new exceptions to rules restricting the circumvention of technological protection measures. Australia has one of the most vibrant creative economies in the world and its current legal regime has helped it become the site of major production investments. Policymakers in Australia should take care to ensure that its vibrant market is not inadvertently impaired and that any proposed relaxation of copyright and related rights protection does not undermine Australia's international obligations under existing or proposed norms and initiatives.

On a more positive note, the Copyright Amendment (Online Infringement) Bill enacted in June extends very helpful protection to rights owners in the digital environment by amending Australia's liability provisions and providing for injunctive relief against overseas infringing sites.

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 cammer 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. These lax penalties fail to recognize the devastating impact that this crime has on the film industry. The recently-concluded TPP negotiations provide a useful vehicle for Australia's adoption of more effective enforcement mechanisms.

## CHINA

### **MARKET ACCESS BARRIERS**

Import Quotas –Notwithstanding China’s commitment under the US-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.

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 to the detriment of the ability of the US producer to obtain full value of the film.

Blackout Periods During Peak Seasons – The Chinese Government has historically decreed “black-out periods” during which no new foreign 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 titles during peak season not only drives down theatrical revenues, it contributes to increased piracy, as pirates meet consumers’ demand for foreign blockbuster titles.

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

Censorship – Both the SAPPRFT and the Chinese Central Television perform various censorship functions of film, video, and television content. Pirates freely and easily move unauthorized content into the market with no censorship concerns and no delays. A voluntary, age-based classification system would help eliminate this disparity. Alternatively, China should ensure that its censorship process is transparent, predictable, and expeditious.

Foreign Investment Restrictions – China limits foreign investment in cinemas and in-home video distribution companies to 49% and prohibits all foreign investment in television. Such discriminatory foreign investment restrictions limit the ability of the US industry to compete fairly and inhibit the film industry’s potential growth.

Television Quotas –Foreign television and film programming are limited to no more than 25% of total airtime, and other foreign programming to no more than 15% of total air time. Foreign programming is banned during prime time between 19:00 to 22:00 hrs and may not constitute more than 30% of pay television channels. Foreign TV series and movies are limited to 50 episodes. Foreign animation is restricted to no more than 40% of total airtime and importers of foreign animation must produce a like amount of domestic animation.

Retransmission of Foreign Satellite Signals – The US industry is almost totally excluded from China’s pay TV market. Local cable networks cannot carry foreign satellite channels without government approval or landing permits, which are limited to Guangdong 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 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 are precluded from selling home-video products without entering into a qualifying joint venture with a Chinese firm. The number of legitimate distribution points remains far less than the number of pirate distribution points. It is essential that the government eases the restriction against selling legitimate audiovisual products in convenience stores, hyper-markets, 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 and US content is frequently used for unauthorized public performance exhibitions and distributed to hotels by some pay-TV operators.

Local Printing/Duplication Requirement – China continues to require that film prints be made in local laboratories, without the requested watermarking for digital prints, reducing rights holders’ ability to control the print quality, the attendant costs, or trace the source of camcording piracy.

Online Content Quotas – In 2014 SAPPRFT announced that all foreign films and TV programs distributed online require both screening permission and registration with the agency, and that licensed foreign content cannot exceed 30% of the total licensed content for 2014 – effectively setting a cap on foreign films and TV shows distributed online. Although the policy has not yet been implemented, uncertainty surrounding it (particularly regarding registration and censorship reviews), has had a disruptive impact on Chinese websites and the licensing of audiovisual content.

## **INTELLECTUAL PROPERTY PROTECTION**

Internet Piracy – Illegal downloading and streaming of MPAA member company films remain a serious concern in China. While the number of User Generated Content sites with widespread infringement has declined, hundreds of smaller linking sites have sprung up. Many of these sites utilize P2P networks and applications to provide instant streaming of infringing copies of movies and TV shows to Internet users. Finally, Internet cafes remain a significant source for consumer-viewing and downloading of pirate movies.



The 2010-2011 and subsequent annual NCAC-initiated Special Enforcement Campaigns have resulted in positive and lasting results in the video-hosting site landscape and helped pave the way for a growing legitimate digital economy in China. China must now continue the process of shifting its focus to the rogue sites problem and the P2P networks which form its backbone, and together pose the greatest threat to the continued growth of legitimate business. The MPAA has begun focusing on these P2P streaming sites as well as the advertising networks, payment processors, and ISPs that allow them to function and make money providing infringing content. Copyright owners have been coordinating referrals of infringing Internet activity to the National Copyright Administration of China (NCAC). China must also continue to secure high-level Chinese Government, including State Council, involvement and commitment, in order to achieve “effective action” and a “deterrent to further infringements” as required by TRIPS. Signs of improvement within the past twelve months include helpful enforcement by the authorities against online piracy services such as *QVOD*, *shooter.cn*, *Yyets* and *DY161*.

Export Piracy – The export and trans-shipment of pirate optical discs from China continues pose a significant problem, especially pirate DVDs and Blu-rays of US films and TV shows, which are supplied in large volumes to businesses and consumers throughout the world over Chinese retain and auction websites. Many of these products are made to a high standard and have become increasingly difficult to distinguish from legitimate product once they have reached retail points around the world. Trans-shipments flow out of China to destinations worldwide, including the US, through express mail and courier companies.

Optical Disc Piracy – In addition to unauthorized replication by licensed factories, burner labs remain a problem.

Television Piracy – Many of China’s 300 Government-controlled and 3,000 provincial and city-level television stations make unauthorized broadcasts that include popular member company titles. These stations use pirate DVDs or false “letters of authorization” or “broadcast rights” from companies in Hong Kong, Thailand or Taiwan which purport to convey broadcast rights. Some stations also try to hide behind the “fair use” exception, broadcasting heavily edited versions of MPAA member company films under the guise of being an “introduction to the film.” Additionally, cable-TV operators in China serving more than 425 million TV households routinely include pirated products in their programming.

Set-Top Box Piracy - Increasingly, set-top boxes with pre-installed (or in some cases post-purchase installed) applications allowing consumers to stream unauthorized live TV channels or Video on Demand content into homes via an internet connection have emerged as yet another problem. In particular, ‘blank’ set-top boxes which permit the installation of third-party, post-purchase applications are especially problematic to the authorities’ enforcement efforts.

## **Enforcement**

The continued need for enhanced and effective coordination, transparency, and adequate enforcement programs remains one of the key causes for the failure of piracy rates to decline in China. China should continue to strengthen focus, coordination and effectiveness of the various

enforcement agencies through strong direction from the top Chinese leadership on a sustained basis, as is done during the Government's special campaigns for crackdowns on Internet piracy.

This problem is exacerbated when trying to address challenges with the Internet. China has more than ten different Government bodies claiming control or influence over the Internet, with inconsistent policies, which creates uncertainty for potential investors and limits investment and growth in the sector. China would benefit from the development of consistent, centralized, and transparent Internet policies with one authority with clear administrative powers. Internet policies are necessary components of the legitimate audiovisual industry, as digital piracy severely curtails the growth of the new and existing marketplaces for entertainment product.

To address its optical disc piracy problem, China should intensify governmental supervision of licensed optical disc manufacturers and initiate criminal prosecutions against those engaged in illegal replication activities.

### **Legislation**

To effectively deter piracy, China should lower the high threshold of commercial piracy necessary to trigger a criminal prosecution, effectively implement it across the major cities, and establish stronger penalties beyond the current fines that are not sufficiently deterrent. The government should also make the act of illegal camcording in cinemas subject to civil, administrative, and criminal remedies. Moreover, to address its Internet piracy problem, China must provide adequate protection in the digital environment by criminalizing end-user piracy, adding reference to the exclusive rights provided in the law, criminalizing violations of the anti-circumvention provisions for TPMs and rights-management information, criminalizing Internet offenses that are without "profit motive" but that have impact on rights holders "on a commercial scale," and eliminating distinctions between crimes of entities and individuals.

To foster legitimate electronic commerce, it is imperative that China establish adequate liability for ISPs for piracy-related offenses and satisfactory measures for notice-and-takedown of websites offering pirate materials. Such provision will foster a responsible partnership between the content industries and the delivery networks.

## INDIA

### **MARKET ACCESS BARRIERS**

Broadcast Regulations – The Indian Government regulates the uplink and downlink of satellite signals beaming into India. Foreign broadcasters are required, among other things, to set up offices in India licensed by the Government, and to pay prescribed fees per channel beaming into India. More generally, TRAI imposes an onerous set of regulations on the broadcast sector, stifling innovation and hindering competition in this sector.

Telecommunication (Broadcasting and Cable Services) Interconnection Regulation – Broadcasters are prohibited from granting exclusive contracts with any distributors and must provide channel programming to all requesting distributors on a non-discriminatory basis. The exclusive contract prohibition, along with “must provide” requirements, eliminates all potential for competition and any incentive to develop programming or buy any “rights.” Consultations on tariffs for non-Digital Addressable System areas are ongoing.

The Direct to Home (DTH) Guidelines include, among other things: prohibitions against DTH operators from entering into exclusive contracts with any broadcaster and prohibitions against DTH operators 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 and guidelines limit choice and undermine competition laws.

Rate Regulation – TRAI maintains price caps for pay channels in areas with set-top-boxes and also price bands for firms that offer bouquets (to ensure that the price per individual channels is not much higher than the price of a bouquet). TRAI says they will relax the price controls once other television platforms are widely adopted (satellite TV, Internet TV). Such rate regulation of a clearly competitive industry stifles its growth. TRAI should make a strong commitment to “adoption targets” for when they will relax price controls as the US FCC did when we deregulated cable TV rates.

Foreign Ownership Restrictions – In August 2013, the Government proposed an increase in foreign investment caps for most of the pay-TV distribution platforms up to 100%, but on the condition that foreign direct investment beyond 74%<sup>1</sup> (and up to 100%) would continue to require prior Government approval. In addition, India still imposes a foreign direct investment cap of 26% for radio/up-linking of news and current affairs TV channels. This cap should also be lifted to 100%.

Service Tax – A service tax imposed by the Ministry of Finance against the temporary transfer of intellectual property rights went into effect in July 2010. Under the service tax policy, the Indian distributor of foreign films is liable to pay the service tax under reverse charge on the payments made to the offshore film producers at the revised rate of 16% (originally set at 10.3%, subsequently raised to 12.36%, and subject to two additional taxes totaling 3% on top of the

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<sup>1</sup> Presently FDI levels of up to 49% are allowed automatically, with an additional 25% (to a present maximum level of 74%)

service tax), raising the total amount of central, state, and municipal indirect taxes to between 30 to 60%, constituting double taxation by both the state and national government(s). Although service taxes against the temporary transfer of copyrights were subsequently placed on the Negative List with effect on July 2, 2012, constitutional challenges filed in the Delhi and Mumbai High Courts for the period under dispute remain pending.

Entertainment Taxes – Entertainment taxes vary widely among Indian States, ranging from 15 - 40% in some key markets, 40 - 70% in other states, and in a small number of states, to 100% or more of the admission price. The average tax rate, computed on a countrywide basis, is estimated to be between 27-36%, and constitutes a significant disincentive to much needed cinema construction. A proposal to subsume all such taxes – whether imposed by the central, state, or municipal governments – within a national Goods and Service Tax rate estimated to be around 18% remains under consideration, but will require a constitutional amendment supported by at least 2/3 of Parliament and 50% of the individual states. MPAA supports this initiative as a means to reducing the regulatory burden imposed upon the film industry in India.

## **INTELLECTUAL PROPERTY PROTECTION**

Optical Disc Piracy – Pirate optical discs of popular foreign titles are available in major cities well before their local theatrical release. Due to the lack of optical disc legislation, optical disc factories operate without any government interference. There is no movement within the Government to even consider regulating the optical disc industry.

Cable Piracy – The approximately 40,000 cable systems in India often transmit MPAA member company product without authorization. These cable systems seriously affect all MPAA member company business in India, including theatrical, home video, and legitimate television. Restraining orders issued by the Civil Court (Delhi High Court) against entire networks (including all franchisees, distributors and cable operators forming part of the network) as a result of MPAA civil actions have proven to be a deterrent. However, the constant monitoring and initiation of new criminal prosecutions for copyright violation and contempt of court proceedings is a costly and time consuming process.

Internet Piracy – Digital India, the Indian Government's initiative to increase penetration of broadband across the country and the growing population of Internet users (India now accounts for the world's third largest population of Internet users following the United States and China), illegal Internet downloads and Internet-based hard good sales of optical discs have become a further threat to legitimate sales and distribution.

Camcording Piracy – India remains a regional hotbed of camcording piracy, with 30 instances of video camcording and 9 instances of audio recording have taken place in 2014, although there has been a marked decline in 2015 with 10 instances of videocamcording and 5 instances of audio recording thus far. A total of 185 forensic matches of camcorded copies have been traced to Indian theaters between 2009 and 2014. Despite arrests resulting from enforcement operations in 2013 and 2015, the lack of focused legislation and enforcement resources from the local authorities means India will inevitably remain a hotbed of camcording for the near future.

## **Enforcement**

The lack of criminal enforcement continues to be a significant problem. The police will only seize raided pirate goods when a specific complaint has been made, and even then copyright infringements are not typically accorded high priority. An additional difficulty is that criminal enforcement in India is a state matter; there is no national coordination or enforcement standard, resulting in a wide divergence in capability and outcomes throughout the country.

Processing a defendant is time consuming and often poorly managed. It can take police up to a year to prepare the charge sheet and the related post-arrest investigations are often cursory. Copyright offences are typically bail-able, so defendants can resume business within three days of the initial arrest. If and when charge sheets are finally presented in court, cases are routinely dismissed. It can take up to 12 years for a case to proceed to conviction in the overburdened Indian court system, and the police, prosecutors, and judiciary often lack sufficient knowledge about copyright issues pertaining to source and online theft.

## **Legislation**

Cable Piracy Legislation – The Cable Television Networks (Regulation) Act 1995 has a significant loophole. Section 18 of the Act provides that no court can recognize any offense under the Act except upon a written complaint by an Authorized Officer. Since criminal procedure requires the personal presence of the complainant at all relevant hearings throughout the subsequent prosecution, the Authorized Officers are reluctant to become complainants.

Copyright Legislation – The Indian Government has enacted amendments to India's Copyright Act intended to meet the minimum threshold requirements of the 1996 WIPO treaties. However, the amendments as enacted fell short of these objectives in certain key respects, particularly in the area of protection against the circumvention of technological protection measures. More concerning, however, are the extension to foreign works of new, Berne and TRIPs-incompatible compulsory licenses in favor of local broadcasters. Certain other provisions extending to ownership and remuneration are the subject of at least five separate legal challenges now pending before the courts. MPAA had also encouraged the Government of India to incorporate anti-camcording provisions into the proposed amendments and was disappointed that they were not included in the enacted legislation.

Cinematographic Act – Given that Parliament chose not to include anti-camcording provisions within its Copyright Act amendments, it is gratifying that the Special Committee overseeing the review of this legislation productively address the issue in the Draft Cinematographic Bill of 2013, which has been tabled for enactment.

## **INDONESIA**

### **MARKET ACCESS BARRIERS**

Film Law – In September 2009, Parliament passed a new film law that, if implemented as enacted, will impose significant new barriers to entry into that market.

The law includes a 60% local content quota for local exhibitors. Similarly, the draft law aims to limit imported films to the benefit of domestic films. If implemented, the industry would expect the same repercussion as experienced in other markets with like provisions: limits on the local industry's exposure to the expertise and skills of foreign producers, loss revenues to local theaters, and a huge opening to the purveyors of pirated content.

The law includes some ambiguous provisions that purportedly aim to limit unfair trade practices or monopolistic conduct such as restrictions on vertical integration that could have unintended consequences including restricting foreign participation in the market and curbing business efficiency. To avoid creating those new barriers, in writing implementing regulations, the Government should recognize international best practices, notably the exclusive right of rights owners to determine whether, how and where their works are made available.

MPAA also objects in principle to Article 44 of the draft law which bans dubbing of imported films. Dubbing of imported films into a local language is a commercial decision that should be based on business considerations.

Local Replication Requirement (Regulation Number PM 55) – On November 25, 2008, the Minister for Culture and Tourism issued a regulation requiring that all theatrical prints and home video titles released in Indonesia be replicated locally effective January 1, 2009. The Ministry postpones the effective date annually. This regulation, if it came into force, would limit or possibly eliminate the importation of films printed outside of Indonesia, with serious negative consequences on the long-term viability of Indonesia's burgeoning film industry and most immediately on MPAA member companies. This harmful regulation should be permanently abrogated as soon as possible.

Customs Valuation – In 2010, the Government sought to impose a methodology for determining the customs duty on theatrical prints imported into Indonesia that would have sought to capture the royalties paid on the films. Not only was this formulation inconsistent with the WTO Customs Valuation Agreement, but US industry believes that the regime which replaced this proposal may be as well. A new specific tariff that is based on the running time of the film has since been imposed, resulting in a new barrier to the Indonesian market in the form of a significant increase in the amount of customs duties paid for the importation of foreign films.

Foreign Ownership Restrictions – The latest iteration of the Indonesian Government's so-called "Negative Investment List" enacted in 2010 maintains a long-standing prohibition against any foreign investment in most audiovisual services. This year the Government announced it would slightly ease restrictions by allowing foreign participation of up to 47% in any publicly-listed

exhibition facilities, and direct foreign investment in certain technical sectors. Such onerous foreign direct investment restrictions continue to stunt the growth of Indonesia's creative sectors.

Advertising Restrictions – Indonesia's Broadcasting Law passed in 2002 and includes a requirement that any advertising aimed at the local market must be locally produced. The requirements have not yet been enforced (due largely to concerns that the indigenous capacity to produce advertisements is insufficient to meet the demands of the market) and regulations issued in 2007 provided a series of exemptions. However, statements by Indonesian regulators in 2014 called for its implementation, raising concerns about the possible deleterious effects of such a requirement.

Censorship Restrictions – In October 2015, the Indonesian Broadcasting Commission (KPI) sent a letter to platform operators expressing concerns about content on certain channels, suggesting that such content may violate the *Broadcasting Ethics and Broadcast Program Standard (P3SPS)* 2012 and that violations are subject to fines and imprisonment.

# **JAPAN**

## **MARKET ACCESS BARRIERS**

Competition Policy –The role of a television ratings agency is to independently determine the popularity and viewership level of a given channel or program in an unbiased and transparent manner. Such data is essential for advertisers to determine media platforms and commercial fees and is, therefore, critical for advertising revenue for pay-TV, free satellite channels, and other TV platforms. In Japan, the exclusive ratings service company has driven competitors out of the market and distorts the market in favor of the largest market players by refusing to allow all channels within a given industry subsector to use comparable rating, and by failing to provide ratings data that is comparable across industry subsectors. In response to ratings manipulation scandals in 2003, 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 –While Japan’s market is open to US producers and distributors of filmed entertainment, the spread of Internet-based film and television piracy impedes the industry’s competitiveness. For example, easier Internet access has led to a dramatic increase in online infringing activities such as the sale of pre-release unauthorized DVDs on Internet auction sites or downloaded using popular file sharing software named “Winny” and “Share.” In May 2008, the Government established the Consortium against Copyright Infringement via File-sharing (CCIF). While the CCIF has made some progress in addressing P2P infringement, it has not met its full potential due to the low volume of notices sent to offenders, associated vendor costs, and insufficient participation by Japan’s ISPs.

Optical Disc Piracy – Street vendor piracy has re-emerged, including in the form of videos dubbed into foreign languages for immigrants and temporary workers.

Public Performance Piracy – Unauthorized public performances of motion pictures remains a problem; some hotels, public health facilities, and tour buses continue to offer unauthorized screenings.

## **Enforcement**

Generally, although police are cooperative, they will only initiate enforcement actions after a copyright owner files a complaint, which by law must be presented to the authorities by a locally-qualified attorney. Copyright owners must bear the burden of filing such complaints and pay associated legal costs before prosecutors will pursue piracy cases. This requirement is a substantial impediment to effective law enforcement, severely limiting the number of copyright offenders who can be prosecuted.



## **Legislation**

Copyright Legislation – While the 2011 amendments to the Unfair Competition Prevention Act did address the trafficking in circumvention devices, these amendments do not address the act of circumvention. Japan’s law, specifically the Copyright Law, should be amended to provide for criminal penalties against the unauthorized circumvention of TPMs.

Internet Service Provider Liability – If Japan were to amend its Internet Service Provider liability law to require ISPs to act more expeditiously in response to rights holders’ requests to remove infringing content and disclose the identity of suspected infringers where feasible, it would be a major and significant response to the unfair advantage sellers of illegal content have over legitimate enterprises. Amendments to Japan’s Telecommunications Act restricting access to overseas infringing sites contemplated by the Intellectual Property Strategic Headquarters (IPSH) and announced in Japanese press reports in May 2015 would also be helpful to the legitimate industry.

## **MALAYSIA**

### **MARKET ACCESS BARRIERS**

Broadcast Quota – Broadcast stations are required, through a licensing agreement, to devote 70 to 80% of terrestrial airtime to local Malaysian programming. Broadcast stations are banned from broadcasting foreign programming during prime time. Such restrictions significantly limit expansion of the television sector. The market should determine programming allocations and MPAA appreciates US Government assistance to eliminate such quotas.

Cinema Entertainment Tax – The entertainment tax for theater admissions, 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 in April, the Malaysian Government made no attempt to reduce the entertainment tax or otherwise subsume it within the GST, thus taking the effective rate of taxation on a cinema ticket up to 31%..

Foreign Ownership Restrictions – Foreign investment in terrestrial broadcast networks is strictly prohibited. The Malaysian Government also imposes a 20% limit on foreign investment in cable and satellite operations through licensing agreements.

FINAS Fees – In 2012, the National Film Development Corporation Malaysia (FINAS) announced its intention to triple the fee imposed on foreign film prints imported into Malaysia for exhibition as a means to stimulate and support local production. Although to date this decision has not been implemented, in September 2013, FINAS demanded 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.

Screen Quota – In 2013, FINAS doubled the number of local films required to be screened under the 2005 Compulsory Screening Scheme to two films weekly.

### **INTELLECTUAL PROPERTY PROTECTION**

Internet Piracy – With the continued penetration of broadband both in homes and Internet cafes, illegal Internet downloads and Internet-based hard good sales will become more of a threat to legitimate sales and distribution.

Retail Piracy – The retail piracy situation remains bleak. In several fixed premise locations in Klang Valley (particularly in Bangsar, Sg Wang, Petaling Jaya, and Shah Alam), Penang (Prangin Mall) and Johor Bahru (Holiday Plaza) pirates openly sell illegal products.

## **Enforcement**

Although enforcement against unlicensed factories is encouraging, serious problems remain with prosecutions against licensed operations. The government has yet to fully exercise its powers under the optical disc law against errant licensed factories. The Ministry of Domestic Trade, Cooperatives, and Consumerism (MDTCC) must utilize their powers to issue warnings and eventually cancel licenses.

## **PHILIPPINES**

### **MARKET ACCESS BARRIERS**

Foreign Ownership Restrictions – Foreign investment in mass media, including the pay-TV sector, is strictly prohibited under the Philippines Constitution. MPAA opposes these types of restrictions which impede investment, limit consumer choice, favor domestic investors, and stifle development of the cable television market.

Advertising Restrictions – The current draft cable legislation contains undue restrictions on the duration and placement of advertisements, limiting advertising to only 10 minutes per programming hour and requiring exhibition at only the start and/or end of the program. Restricting ad placement reduces the utility of advertising, leading to a reduction in advertising-based revenue, further impeding the development of the television industry.

Taxation - Taxes imposed on film companies remain inordinately high. US 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, duties imposed on all prints and trailers imported into the Philippines and a tax on all related advertising materials and royalty remittances all combine in aggregate oppressive tax burdens that detrimentally impact the continued development of a legitimate audiovisual business.

### **LACK OF INTELLECTUAL PROPERTY PROTECTION**

Optical Disc Piracy – Optical disc piracy remains a significant problem in the Philippines, negatively affecting the legitimate theatrical and home video markets as pirates sell pirated versions of recently released titles. The problem is most severe in Manila and Cebu province.

Cable Television Piracy – The unauthorized transmission of MPAA member company motion pictures on cable systems continues to hurt legitimate businesses.

Internet Piracy – With the continued penetration of broadband both in homes and Internet cafes, illegal Internet downloads and Internet-based hard good sales will become a growing threat to legitimate sales and distribution.

### **Enforcement**

The Philippines should more aggressively address its piracy situation. The protection and enforcement of intellectual property rights appears to remain a low priority for the Philippine Government and the police. Cases are rarely initiated unless copyright holders make specific complaints and follow through with administrative assistance. Officials need to more effectively utilize the 2003 optical disc legislation to ensure better enforcement.

The prosecutorial and court systems remain marred by delays and arcane procedural hurdles. The Philippine justice system is largely ineffective in dealing with piracy and the court system is extremely crowded.

Lack of resources for government agencies remains a major factor contributing to ineffective enforcement. The Optical Media Board (OMB) has been conducting raids focused on retail outlets since May 2004 and seizing millions of discs, despite budget constraints. The OMB, supported by the Philippine National Police (PNP) and the National Bureau of Investigation (NBI) has also been responsible for enforcing the Anti-Camcording Act 2010. However, notwithstanding these commendable efforts, the enforcement body continues to be hindered by a lack of funds for enforcement actions.

The law does not clearly and adequately address how to effectively address cable-TV piracy, which contributes to the lack of enforcement.

## **SINGAPORE**

### **MARKET ACCESS BARRIERS**

Cross-Carriage Requirement -- The Singapore Government's March 12, 2010, amendments to the Code of Practice for Market Conduct in the Provision of Mass Media Services remain a grave concern to MPAA member companies. These amendments – implemented in August 2011 – require pay-TV retailers who hold subscription television service licenses to make their channels/content acquired on an exclusive basis available to other subscription television retailers on a so-called “cross-carriage” basis. MPAA still believes there is insufficient market justification for this severely interventionist requirement which unduly injects the government into private contractual arrangements, stifles further innovation in the packaging and delivery of new content to the detriment of consumers, and threatens continued investment in the market. The policy decision was to have come up for review in March 2013 but the Government has thus far failed to undertake any steps whatsoever to initiate that review. Absent any compelling evidence of its benefit to consumers or any further necessity to maintain it, the policy should be abandoned.

### **INTELLECTUAL PROPERTY PROTECTION**

#### **Legislation**

Cross-carriage requirement – As discussed above, in 2010 Singapore amended the Code of Practice for Market Conduct in the Provision of Mass Media Services, mandating the cross-carriage of “exclusive” channels/content by pay-TV retailers. MPAA views this requirement as a violation of Singapore’s obligations under TRIPS as well as the US-Singapore Free Trade Agreement for the exercise of exclusive rights. The policy should have been reconsidered during the seemingly abandoned 2013 review.

Anti-Camcording Legislation – Legislation making the illicit camcording of a film in a theater a criminal offense is a critical anti-piracy tool endorsed by the APEC Ministers in 2011 as an essential “Best Practices” component to ensure effective protection for intellectual property. Singapore should swiftly adopt anti-camcording legislation to address this pernicious form of source piracy.

Odex Decision – One Singapore Court has held that Singapore’s Copyright Act does not permit agents or other persons authorized to act on the copyright owner’s behalf to initiate proceedings to disclose the identity of online infringers. Although this was clearly contemplated under the Singapore-US FTA, the court found Singapore’s law to be insufficiently enabling in this regard and held that primary or subsidiary legislation would be required in order to meet its FTA obligations in this respect.

Online infringement – Singapore has recently enacted legislation that will provide for much needed protection of rights holders in the digital environment by allowing them to petition courts for orders restricting access to overseas infringing sites. Given that Singapore has among the highest per-capita P2P infringements of MPAA member company titles in the region, these

amendments, when implemented, should help nurture the continued growth of the legitimate online market.

Technological Protection Measures Exemptions – A public consultation undertaken in 2012 resulted in further exceptions for the circumvention of technological measures on cinematographic films for various purposes that were unsupported by any of the statutory requirements set out in Singapore’s Copyright Act.

## **SOUTH KOREA**

### **MARKET ACCESS BARRIERS**

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

Screen Quota - Notably, the Korean government already agreed in 2006 to reduce by half its screen quota to 73 days prior to the US-Korea FTA negotiations. While still limiting full access to and competition within its market, this measure is a significant opening of the Korean theatrical market.

Television Restrictions – The FTA significantly liberalized Korea’s television market. However, regulatory restrictions on local advertising and local language dubbing for retransmitted foreign channels still remain.

### **INTELLECTUAL PROPERTY PROTECTION**

#### **Enforcement**

The Korean authorities aggressively enforce anti-piracy laws and the prosecutor’s office reacts quickly to information concerning pirate activity. Korean courts typically issue administrative penalties for piracy offenses without opting for more significant penalties, which would more properly reflect the gravity of the offense. The Korean Government has begun more strenuous efforts to address pervasive levels of online piracy, including the enactment of the so-called “Webhard Registration Act” and enforcement against unauthorized Korean-language subtitlers that, if sustained, should be highly effective.

However, it should be a requirement that in order to comply with the Webhard Registration Act, webhards must demonstrate comprehensive content protection measures rather than the mere requirement that they contract with an approved technology vendor. Korea should also be aware that as the effectiveness of the Webhard Registration Act increases, Internet traffic will divert to other forms of online piracy, in particular illegal used of peer-to-peer networks, so efforts should be made to address this issue as well.



## TAIWAN

### **MARKET ACCESS BARRIERS**

Foreign Investment Restrictions – The Cable Radio and Television Law limits foreign direct investment in a domestic cable television services to 20% of the operator’s total issued shares and a 60% cap on total direct and indirect foreign investments. Foreign investment in satellite television broadcasting services is also capped at 49%. Such investment-restrictions limit the ability of the US industry to compete fairly and inhibit the pay-TV industry’s potential growth.

Pay-Television Services – Taiwan maintains a price cap on monthly cable television fees for analog cable television services, while monthly rates for digital cable television are not regulated. This contributes to an overall uneven regulation between different platforms that further undermines the potential growth of the pay-television sector in Taiwan.

### **INTELLECTUAL PROPERTY PROTECTION**

#### **Enforcement**

Internet Piracy – Illegal downloading and streaming of MPAA member companies’ films remains a tremendous concern in Taiwan. Although the law enforcement authorities have traditionally been very proactive in addressing unauthorized hard goods distributed over the Internet, the lack of a sufficient legislative infrastructure to properly address P2P infringement and sites hosted outside of Taiwan’s jurisdiction have contributed to unacceptably high rates of Internet piracy.

#### **Legislation**

The Legislative Yuan amended the Taiwan Copyright Law in 2009 requiring ISPs to undertake specific and effective take-down actions against online infringers to avoid liability for the infringing activities of users on their networks. The law’s regulations, however, failed to indicate clearly what constituted an infringement, how notifications should be handled, and other procedural matters. As a result, the law has never been effectively implemented.

Amendments to the copyright law proposed by the Taiwan Intellectual Property Office (TIPO) in April and subsequently withdrawn did not resolve these deficiencies, and the measure lacks provisions to address overseas infringing sites. A further set of amendments anticipated to have been released in late September failed to materialize.

## **THAILAND**

### **MARKET ACCESS BARRIERS**

Foreign Ownership Restriction – Foreign ownership/investment in terrestrial broadcast networks is prohibited. Proposed changes in the law would still severely limit such investment to an unacceptably low 25% share.

Motion Picture and Video Act (MPVA) – Section 9(5) of the MPVA allows the Film Board to establish ratios and quotas against foreign films. If implemented, such restrictions would have a significant impact upon the theatrical sector as local productions account for around 25% of total films released.

Must Carry Requirements – In 2012, the National Broadcasting and Telecommunications Commission hastily approved “must carry” provisions requiring free-to-air television channels to be carried nationally on an equal basis by all platforms, including online/video-on-demand services. Although such rules applying to cable and satellite are not uncommon, in this particular case the regulations have not been clearly drafted and have raised important intellectual property rights issues.

### **INTELLECTUAL PROPERTY PROTECTION**

Optical Disc Piracy –Retail piracy remains entrenched, with little or no enforcement undertaken by the authorities in traditional “hotspot” areas throughout metropolitan Bangkok or in outlying provinces.

Camcord Piracy – Thailand remains a significant source of pirate camcording in the region, with a total of 148 MPAA member titles forensically matched to cinemas in Thailand from 2009 through 2014.

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 with many hotels outside Bangkok retransmitting unauthorized videos over in-house movie systems and bars in tourist areas openly exhibiting films without authorization. A growing number of bars and restaurants have also added “private” rooms to screen illegally MPAA member company product.

### **Enforcement**

MPAA recommends that the Thai government make permanent the special task force created by the Central Investigation Bureau of the Royal Thai Police to ensure the sustained effectiveness of its operations.

## **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 for sufficient remedies against the piracy of audiovisual product over the Internet. Amendments enacted in 2014 regarding protection for technological protection measures and internet service provider liability fell short of international expectations.

Landlord liability and minimum penalty provisions – The majority of unauthorized optical disc retailers in Bangkok’s notorious “hotspot” malls are temporary tenants. Landlords rent out space to new lessees whenever raids are undertaken thus diminishing the effectiveness and deterrent value of enforcement. Landlord liability would impose liability against the owner or the person in possession of a building who has reason to know that its lessee is using the property for purpose of copyright infringement. Such legislation is critical to providing meaningful enforcement against the merry-go-round of infringement occurring in Thailand’s malls.

Anti-Camcording Legislation – Although anti-camcording provisions were enacted in 2014 within the context of Thailand’s copyright amendments, the provisions are considered inadequate in comparison with international best practices.

## VIETNAM

### **MARKET ACCESS BARRIERS**

Screen Quotas – Although not enforced, under the Cinema Law/Decree 54, Vietnam requires that the screening of Vietnamese feature films must be at a ratio of at least 20% of total screen time. In July 2013, Vietnam issued a draft “Strategy for the Development of the Motion Picture Industry to 2020 with the Vision to 2030” that proposes to further restrict access for international films by increasing the local screen quota to 30% by 2020 and by allocating prime time screening for Vietnamese films during weekends. These restrictions, if ever enforced, would be a significant barrier to the importation and distribution of foreign films in Vietnam and impede the development of the film industry.

Broadcast Quotas -- In the television sector, foreign content is limited to 50% of broadcast time, and foreign programming is not allowed during prime time.

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.

The Vietnamese government owns and controls all terrestrial television stations in the country; it does not allow private or foreign-owned TV stations or foreign investment in broadcast stations.

Local Performance Requirements - A foreign investor cannot establish a distribution network if it does not engage in manufacturing and foreign investors may only engage in videotape, VCD, and DVD production in Vietnam in the form of a joint venture with local interests.

Regulatory Intervention -- Regulations for the pay-TV industry enacted in 2011 require foreign channel operators to appoint and work through a locally registered landing agent to ensure the continued provision of their service(s) 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. These measures, if fully implemented, are unduly restrictive and could severely impede the continued growth and development of the pay-TV industry 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.

Censorship Process/Classification – All films are subject to censorship by the Department of Cinema under the MCST. The results are unpredictable and arbitrary. Films that require editing are subject to a re-review, though importers are not assured a right of appeal. MPAA believes a classification and rating system would spur development of the theatrical market. Encouragingly, draft regulations for classifications according to age were released in 2014.

## **INTELLECTUAL PROPERTY PROTECTION**

Internet Piracy – The illegal downloading of MPAA studios’ films and television programs is an increasing concern in Vietnam. A growing number of locally registered rogue sites routinely offer unauthorized studio content sourced from illegal downloads or counterfeit DVDs, charging their customers a fee. While the Ministry of Culture, Sports and Tourism previously had administrative oversight over copyright infringement taking place over the Internet, recent announcements enhancing the Ministry of Information and Communication’s authority to address online infringement will hopefully result in more meaningful enforcement and deterrent sanctions. For example, local media reported in late September that the authorities have shut down hayhaytv.vn, a highly popular, locally-hosted unauthorized streaming site featuring MPAA studio titles.

Optical disc piracy - The majority of pirate VCDs and DVDs are imported from China; however, the lack of optical disc legislation may stimulate the development of an indigenous pirate manufacturing base.

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.

### **Legislation**

Copyright Legislation – While Vietnam amended its law, effective January 2010, making some notable improvements in its copyright regime, the regime is still not yet fully compliant with Vietnam’s international obligations.

## **EUROPEAN UNION (EU)**

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 BARRIERS**

European Content Quotas – The EU Directive on Broadcasting, initially adopted on October 3, 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 provisions 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.

On December 19, 2007, amendments to the TVWF Directive entered into force, i.e. in the form of an Audiovisual Media Services (AVMS) Directive. The AVMS Directive replaced the TVWF Directive. The AVMS Directive widens the scope of the TVWF Directive (which already included traditional broadcasting, whether delivered by terrestrial, cable or satellite means) 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. This could be interpreted as the financial contribution made by such services to the production and rights acquisition of European works or as the prominence of European works in video-on-demand services' catalogues.

The European Commission is regularly publishing reports on the application of the AVMS Directive at the national level, both with regard to the “content quotas” provisions and the other general requirements included in the directive. In some cases, infringement proceedings have been launched for late and/or unsatisfactory national transposition.

Between April and September 2013, the Commission ran a public consultation on a Green Paper: Preparing for a Fully Converged Audiovisual World, Growth, Creation, Values. This consultation involved a wide range of issues of utmost importance to the audiovisual media industry including potential regulatory challenges posed by the massive arrival of “connected TV sets” (i.e., smart TVs with Internet connectivity) and, more generally intensifying media convergence.

In September 2014, the European Commission followed this initiative with a Summary of responses received. A REFIT (Regulatory Fitness and Performance) evaluation has been conducted in order to assess the appropriateness of existing rules in the convergence environment. The European Commission recently organized a consultation process on the AVMS Directive to examine whether/how the current rules applying to broadcast and to on-demand services need to be further adapted. A proposal to revise this Directive could be presented during the first half 2016.

Electronic Commerce VAT Reform – EU Member States impose a value-added taxation (VAT) on companies established in a third country that sell and deliver services 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, 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– The European Commission led by President Juncker adopted on May 6, 2015, a Communication on the Digital Single Market which announced “legislative proposals before the end of 2015 to reduce the differences between national copyright regimes and allow for wider online access to works by users across the EU, including through further harmonization measures. The proposals will include: (i) portability of legally acquired content, (ii) ensuring cross-border access to legally purchased online services while respecting the value of rights in the audiovisual sector, (iii) greater legal certainty for the cross-border use of content for specific purposes (e.g. research, education, text and data mining, etc.) through harmonized exceptions, (iv) clarifying the rules on the activities of intermediaries in relation to copyright-protected content and, in 2016, (v) modernizing enforcement of intellectual property rights, focusing on commercial-scale infringements (the 'follow the money' approach) as well as its cross-border applicability.”

Those reforms could negatively impact contractual freedom, territoriality, exceptions to copyright, and copyright enforcement, harming MPAA member companies, as well as other producers - international and European. 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.

The legislative initiatives adopted by the previous European Commission have focused on issues that affect the audiovisual producers/distributors to a lesser degree than other types of rights holders. For instance, the adoption of the Directive on Collective Rights Management and Multi-Territorial Licensing of Rights in Musical Works for Online Uses adopted on February 26, 2014, generally recognizes that collective management is not a one-size-fits-all model and that with regard to the audiovisual sector, exclusive rights must be maintained and collective rights management should remain voluntary. After the Proposed Directive was released, one of the main concerns for the AV sector was the possible inclusion of the AV sector in Title III relating to multi-territorial licensing of music authors' rights online, which would have undermined both the way that national copyright regimes regulate the sector as well as the way the sector itself functions. However, such an amendment to the Proposed Directive never emerged as a real threat.

Generally, the Directive laudably aims to ensure that right holders have a better say in the management of their rights and envisages better functioning collecting societies as a result of set standards across Europe. The Directive is also meant to ease the licensing of authors' rights for the use of online music as well as to improve access to and increase the availability of online music. Publication of the Directive in the Official Journal took place on March 20, 2014, and, under Article 43 of the Directive, the deadline for implementation by Member States is April 10, 2016.

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, providing for the right of information and for injunctive relief to request ISPs to block infringements. These tools are invaluable to combating Internet piracy. 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. With regard to the dissuasiveness requested by the Directive, it would have been preferable if more Member States had, similar to Austria, Greece, Lithuania, Poland, Romania and Slovenia, taken the opportunity to grant damages exceeding just one hypothetical license fee.

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 the obtaining of information about infringers..



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 Internet Service Provider (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 to 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 unclear ban on "general monitoring" (Article 15(1)) has interfered with injunction proceedings which seek to bring serious infringements to an end. 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 January 2012 indicated that the Commission did not foresee a reopening of the E-Commerce Directive. However, the Communication on the Digital Single Market announced that the "Juncker" Commission intends to "clarify the rules on the activities of intermediaries in relation to copyright-protected content" before the end of 2015.

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 presents major challenges to the audiovisual industry in terms of securing the digital transmission of its copyright works. 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. Specifically, the German private copy exception 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 necessary for the protection of copyright 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 technological protection measures. They do not provide adequate sanctions against the act of circumvention and preparatory acts facilitating circumvention (this is the case in Germany and Luxembourg). Some (Finland, Sweden) do not provide adequate protection against the acts of circumvention. Other countries (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. In Germany, the act fails to provide appropriate sanctions against the act of circumvention and preparatory acts facilitating circumvention. It also provides a right of action for individuals and associations against rights holders who fail to accommodate certain exceptions.

The Copyright Directive requires the provision of injunctions against intermediaries whose services are used by a third party to infringe copyright even where an intermediary's activities may be exempt from liability under the Copyright Directive. Some laws are not worded to ensure these injunctions, which are a key tool in the fight against digital piracy (Finland, Germany, Poland, and Sweden).

Following the stakeholders dialogue "Licenses for Europe" during 2013, the European Commission (EC) launched a "Public consultation on the review of the EU copyright rules." In July 2014, the Commission published a Report on the responses to their Public Consultation which creates some misleading impressions about the 11,000 comments they received. On a parallel track, the EC has commissioned several studies (notably on territoriality, exceptions and limitations, and the application of the Copyright Directive) and finalized an Impact Assessment. Together they suggest little need for, and even less evidence to justify, an overhaul of EU Copyright rules.

As part of the Digital Single Market initiative, the EC announced initiatives on the harmonization of exceptions that would have an impact on the Copyright Directive.

Copyright Enforcement and Privacy Rules - Privacy has always been a major issue in the European Union. 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. Two EC proposals presented in early 2012 to update this Directive are now being discussed by the Member States and the European Parliament. These proposals have been extremely controversial and discussions have been advancing rather slowly. There is strong political pressure for adoption of this instrument by the end of the year. Some of the proposed amendments could be highly problematic for copyright holders as they could negatively impact enforcement actions.

The Framework Directive on Data Protection was completed by another Directive in 2002 on privacy and electronic communications, which was reviewed in 2009 as part of the EU's

Telecoms Package. Differences between these two texts are now being interpreted, making enforcement actions against Internet infringements very complicated. Although there have been helpful court cases on the interaction between privacy and copyright rules in the past few years at the national and at the EU level, the situation remains extremely complex and difficult. It also diverges significantly between countries. Moreover, as explained below, privacy continues to be used against initiatives related to copyright protection.

All EU Member States have detailed data protection laws. These rules, often very strict, are subject to the interpretation of the national data protection authorities. These authorities, which have significant discretionary power, work together and regularly adopt opinions and recommendations at the EU level. Most of them consider IP addresses as personal data and believe that the privacy rules apply to their use.

In recent years, the situation has become very problematic for copyright holders and their representatives in many EU countries and at the EU level. Many national data privacy authorities, and the “Article 29 Working party” (which groups these authorities), strictly interpret data protection rules and tend to consider that privacy rules are more important than other norms. Further, the “European Data Protection Supervisor” has in the past years published documents illustrating its restrictive views as regards the interface between privacy and copyright. Telecommunications operators and ISPs constantly invoke data protection rules to avoid any meaningful cooperation with the content sector.

Such restrictive interpretations preclude meaningful cooperation with Internet intermediaries, such as telecommunications operators and ISPs, in particular cooperation to combat IP theft. Somewhat encouragingly, in January 2008, the EU Court of Justice (CJEU) in *Telefónica v. Promusicae*, clarified that privacy rules and the protection of other fundamental rights, such as effective access to judicial procedures, have to be appropriately balanced and that it is up to lawmakers in the first instance, and judges if necessary, to strike that appropriate balance. While this CJEU judgment is very important for the respect of privacy and the protection of private property (in this case copyright-protected content), there remains a risk of fragmentation throughout the EU’s Internal Market as Member States take divergent approaches (e.g., some Member States may allow the processing of personal data for enforcement in civil cases, while other Member States might choose only to restrict the processing of personal data to criminal cases).

Finally, on October 6, 2015, the CJEU annulled the Safe Harbour scheme which had been adopted in 2000 following an agreement between the US Government and the European Commission, and that since then had been used by thousands of companies to transmit data to the US. The CJEU particularly criticized the generalized access by US public authorities to European citizens' data compromising the essence of the fundamental right to privacy in the EU legal order and the lack of recourse for EU citizens. The Safe harbor had been subject to criticisms for a number of years and these criticisms were exacerbated in the context of the Snowden revelations. Still this invalidation, effective immediately (no transition measures), is still a surprise. Although other procedures could be put in place for the transfer of data to the US, the implementation of these procedures could create further costs and burdens for companies,

and by the time of their implementation, the transfer of data to the US for investigation purpose will be more difficult.

Cancellation by the CJEU of the EU Data Retention Directive – This Directive was adopted in March 2006 and aimed to harmonize data-retention obligations for ISPs and telecommunications operators. It required these operators to retain traffic and location data for between six months and two years for the purpose of the investigation, detection, and prosecution of serious crimes. These data could be accessed by the competent national authorities in specific cases and in accordance with national law.

On April 8, 2014, the CJEU deemed the Data Retention Directive invalid. The Court recognized that retention is important for the prevention of serious crimes and that data retained could be a valuable tool for criminal investigations, but decided that “by adopting the Data Retention Directive, the EU legislature has exceeded the limits imposed by compliance with the principle of proportionality.” For the CJEU, the Directive did not provide adequately clear and precise rules and contravened the Charter of Fundamental Rights of the EU. Data-protection advocates, who have argued that right holders should not profit from this Directive, claimed that this decision was a victory.

Data retention remains a very valuable tool for law enforcement. Right holders have always claimed the need for reasonable rules and legal certainty. This decision has created even more legal uncertainty in this field. Member States have started to respond to the consequences of this decision with legislation and some have invalidated their rules. It is not yet clear whether or when the European Commission will propose another harmonizing instrument. National data protection authorities have recently called on the European Commission to provide guidance on the consequences of the judgment, have offered their expertise to those conducting legislative reviews, and have requested to be duly consulted should a new instrument be envisaged at the European level on these matters.

# **BELGIUM**

## **INTELLECTUAL PROPERTY PROTECTION**

Optical Disc Piracy – Pirate labs in Brussels supply infringing discs to street vendors, stores, and video rental shops.

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

### **Enforcement**

Police cooperation is generally good although IP cases tend to rank lower 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. While the Minister of Interior Affairs did not include counterfeiting and piracy as such in the new “Federal Safety Plan” of 2012-2015, IT-related crime was incorporated into the list of priorities. In addition, the action plan "Digital Belgium" for 2015-2020 (aiming to put Belgium more firmly on the digital map) 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. This has not lead 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 to collect awarded damages. Smaller cases are often classified without results as well; the Brussels prosecutor views the seizure of counterfeit goods and revenue as sufficiently deterrent.

In October 2012, the Belgian Anti-Piracy Federation 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 (about 30 cases) and their skills and experience continue to grow.

### **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 result in significant burden.

EU Copyright Directive Implementation – Belgium has implemented the Copyright Directive. Article 8(3) has been implemented correctly and 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. The mechanism to deal with the relationship between technological protection measures on copyrighted content and exceptions could also be problematic.

Privacy – The Belgian Privacy Commission condemns certain content protection activities against file-sharing, effectively leaving rights holders with no ability to fight P2P-theft. The Commission posits that Internet Protocol addresses are personal data under the Belgian Data Protection Law and that when collected in the context of copyright infringement, they constitute “legal data” which can only be processed through legal proceedings. However, since Belgium has implemented the Enforcement Directive, there is a legal basis for the communication of user data with a court order from ISPs to rights holders.

## **DENMARK**

### **INTELLECTUAL PROPERTY PROTECTION**

Internet piracy – High rates of broadband penetration make the illicit sharing of large quantities of motion pictures on cyberlockers and streaming sites a concern in Denmark. Even though legal online platforms for film exist online, illegal downloading and distribution of films continues to be an increasing concern. Data from the Danish coalition of rights holders, RettinghedsAlliancen, shows that illicit file sharing on P2P networks is not increasing but is rather stagnating.

#### **Enforcement**

While criminal enforcement is still insufficient and IP crimes garner a low priority among police forces, there is an increasing recognition of and willingness to take on online copyright infringements cases. Unfortunately, there is a huge lack of resources for this area of crime.

The Ministry of Culture has been very active in facilitating stakeholder dialogues and encouraging effective enforcement. As a result, cooperation between right holders, ISPs and other relevant stakeholders has improved, including a Code of Conduct to address online infringement and promote legal services.

The State Prosecutor has again launched a number of new initiatives that aim to strengthen IPR enforcement in Denmark, marking a notably positive development.

#### **Legislation**

The Copyright and Enforcement Directives are well implemented in Danish law. In particular injunctions against intermediaries whose services are used by third parties to infringe have shown to be a successful tool to address online piracy.

## FRANCE

### **MARKET ACCESS BARRIERS**

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.

There is also a 192 movies per channel per year cap (and hourly sub-quota). Certain days and time slots are also closed to feature films, and similar constraints apply to pay-television through the use of multiple watersheds depending on the nature of the channel (e.g. heritage, first-run, cinema).

Screen Quota – By Government decree, agreements with the French Centre National de la Cinematographie (CNC) have led cinemas to reserve five weeks per quarter for the exhibition of European feature films, therefore a total of approximately 30-40% of the films shown in the cinema must be European, or four weeks per quarter for theaters that include a French short-subject film during six weeks of the preceding quarter.

Additionally, operators of multiplexes and cinemas agreed to a CNC undertaking by which any one film will not be shown with more than two prints, or through interlocking, in such a way as to exceed 30% of the multiplex's weekly shows. MPAA does not support any type of quota restriction that limits the ability to distribute film product based on market demand.

Video-on-Demand (VOD) – The French government, through the 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. Although windows gained some flexibility in 2010, a 36-month waiting period before movies can be commercialized on subscription VOD platforms constitutes a barrier to the roll-out of those services in France. MPAA opposes such constraints because they hinder the growth of this new medium, which is in the early stages of development. The Government has, however, recently provided more flexibility on release windows, but they nevertheless remain statutory.

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 imposition of de-facto discriminatory taxes or levy schemes on the film industry to finance subsidies allocated on a discriminatory basis.



Film Rental Terms – The CNC determines the terms under which a film may be licensed (the percentage of gross box office revenues remitted to the film distributor). All French cinemas have been limited to a maximum of 50%. 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 since television advertising is a particularly effective means of marketing motion pictures.

In the face of a challenge to these regulations by EU retailers before the European Commission, the French government has maintained the advertising ban for theatrically released feature films, in spite of having liberalized for other similarly affected sectors (e.g. press, publishing, retail). The French government defends the ban on film advertising based on cultural diversity and sector-based protection arguments. MPAA encourages lifting the ban on television advertising of feature films so that film distributors may enjoy the liberty of choosing their marketing channels.

## **INTELLECTUAL PROPERTY PROTECTION**

Internet Piracy – Internet piracy is a major source of concern in France as a result of high broadband penetration and the popularity of P2P systems. 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. Since then, the Government, through the high authority HADOPI, has been educating Internet users through successive notifications (3 million email notifications had been sent as of June 30, 2014). It should be noted that the Government repealed Internet access suspension in June 2013 – whereas fines remain in place. The increased use of direct download and streaming services is expected to be addressed through Article L-336-2 of the IP Code, the local implementation for Article 8.3 of the EC Copyright Directive (Injunctions against intermediaries).

Médiamétrie, on behalf of the ALPA, concluded in a study in March 2015 that 30% of Internet users visit websites dedicated to audiovisual piracy on a monthly basis – 31% of which use streaming technology (without Youtube and Dailymotion), 36% of which use DDL technology, and 33% of which use P2P technology.

Optical Disc Piracy – There is a continued online/offline convergence with seasonal sales of pirate DVDs in flea markets. Movies are mostly sourced from the Internet and sold by foreign criminal organizations.

### **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. Fines are low and prison 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 has been the civil damages regime. Courts tend to grant immediate interim enforcement of their decisions on the civil side, which discourages pirates from lodging systematic appeals for procedural obstruction and delay.

As regards Internet piracy, research shows that France's efforts to address online piracy through Laws No. 2009-669 and No. 2009-1311 have already delivered substantial results in terms of content theft reduction since its roll-out in October 2010 with regard to P2P technology. As mentioned above, the graduated response mechanism that emanated from those laws has been modified as a result of a broad-scope review of the cultural sector (the Lescure Review) – the Internet access suspension penalty has been abrogated. France has ramped up its content protection efforts in 2015 by implementing a dual follow-the-money approach (advertising & payment processors) targeting egregious sites.

## GERMANY

### **INTELLECTUAL PROPERTY PROTECTION**

Internet Piracy – Internet exchange of illegal copies, P2P, DDL, and streaming are the primary piracy concerns in Germany.

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 current 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. Camcording of theatrical releases also remains a problem in Germany.

Optical Disc Piracy – Pirated films from the Internet are a source for burning operations of DVD-R intended for illegal sale. Although illegal street sales and the Czech and Polish border markets, which target German consumers are generally down, they do continue to cause concern, along with groups issuing “bogus licenses.”

### **Enforcement**

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 such as Kino.to with deterrent sentences being imposed by the judiciary. These copyright infringements are on a commercial scale and are recognized as organized criminal activities.

While it is possible to attain an injunction under civil law, it is 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 with 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 measures and provisions for the seizure, delivery, and destruction of illicit circumvention devices (i.e., devices that serve to circumvent technological protection measures).

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, 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.

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, and the severe limits create only another obstacle for rights holders pursuing legitimate claims of infringement.

EU Copyright Directive - The 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 due to IP infringements.

On March 27, 2009, 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. Lower German courts have yet to apply the ruling in favor of such claims.

The Supreme Court has two significant copyright-related cases related to remedies for rights holders and access providers: one on behalf of the German collecting society GEMA and one on behalf of the International Federation of the Phonographic Industry (IFPI). The verdicts are expected during 2015.

## ITALY

### **MARKET ACCESS BARRIERS**

Broadcast quota - In 2010, Italy amended Broadcasting law Art. 44 which now reserves: 1) the majority of their annual transmission time to EU works; 2) at least 10% of the annual transmission time to EU works produced during the last five years (20% for RAI, Radiotelevisione italiana – Italy’s national public broadcasting service). Newscasts, sports, game shows, advertising, teletext services, 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, 32% (i.e. 3.2% of the total net revenues) of the budget has to be reserved to 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) with Deliberation 66/09/CONS and Deliberation 607/10/CONS were modified by Deliberation 188/11/CONS, so that now on-demand services can, alternatively, either reserve 20% of their catalog to European works or invest, 5% of revenues from audiovisual content in the production and acquisition of EU works. With further Deliberation 186/13/CONS, the AGCOM indicated the criteria upon which the controls shall be made over the broadcasters with respect to the established EU quotas within the schedule of programming of the various platforms. Such audit shall be conducted by AGCOM.

### **INTELLECTUAL PROPERTY PROTECTION**

Optical Disc Piracy - Locally burned DVD-Rs are still an issue in Southern Italy. The illicit market is managed mainly by people with priors for copyright infringement and distribution is still delegated to illegal immigrant networks. Distribution takes place in local markets and on the street.

Internet Piracy - In Italy continues the massive use of linking websites that share illicit contents through cyberlocker services (streaming and download). This is the more used type of illegal sharing, but persists also the use of torrent sites (download).

There has been an increase of illicit contents shared through UGC platforms (streaming).

Illegal Recording - Italy is the source of significant audio source-theft in which individuals record local soundtracks and then match them with camcords to create unauthorized copies of films in theatrical release, localizing pirate content and undermining legitimate commerce in the Italian market. During 2014, 26 incidents of audio-source theft occurred in Italian theaters, and at least 17 illegal video-camcords occurred. During the first nine months of 2015, the illegal recording of 5 audio tracks and 15 video tracks has occurred in the country’s theaters.

## **Enforcement**

While law enforcement and prosecutors have indicated a willingness to tackle Internet crime, overall enforcement efforts in Italy continue to suffer from a lack of deterrent sentencing by the courts. Although civil cases can proceed with appropriate speed through the Italian courts, significant delays throughout the legal process plague the criminal system. Criminal sentences are often low, and those that include incarceration are often suspended or dismissed due to procedural delays. The recent introduction of Art. 131-bis in the Criminal Code that foresees the possible dismissal of the pending criminal cases punished to up five years jail in case of “particular tenuity of the crime” might worsen the enforcement of the criminal provisions included in the Copyright Law.

## **Legislation**

From March 31, 2014 the AGCOM Framework is fully on force. The aim is to protect copyright over electronic networks. The Framework’s expeditious procedures and effective removal of infringing material represent significant progress. During this first period the DNS of several illicit sites were blocked proving the effectiveness of the Authority’s regulation.

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 -- with the result that 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 - 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 - The Decree implementing the E-Commerce Directive requires takedown procedures to be subject to a prior notice by the “relevant authorities.” This referral to an intervention by an undefined judicial or administrative authority is contrary to the E-commerce Directive and prejudicial to cross-industry agreements on takedown procedures.

## **NETHERLANDS**

### **INTELLECTUAL PROPERTY PROTECTION**

Internet Piracy – The Netherlands houses both locally-oriented pirate Internet sites (many in languages other than Dutch) 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 evidently unlawful sites offline, many sites have left the Netherlands. However, many cyberlockers (aka file hosters) that foster infringement are hosted in the Netherlands as hosting providers have been reluctant to take cyberlockers offline if they have a notice and takedown policy for content linked to publicly accessible link sites.

#### **Enforcement**

The police and public prosecutors are reluctant to become involved in Internet piracy cases. Therefore, practically 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 Supreme Court heard the appeal by BREIN in November 2014 and is due to decide by the end of November 2015. The Advocate-General concluded that the Appeals Court applied a much too broad effectiveness test but also advised to ask pre-judicial questions to the CJEU.

#### **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 is required.

## NORWAY

### **MARKET ACCESS BARRIERS**

Video Taxes – Three different sets of taxes or 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 distributed 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. US copyright holders receive no benefit from the fixed levy. The high VAT and the licensing scheme for retail outlets continues 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 44 US dollars).

Fair Compensation – Rights holders' compensation for legal reproductions made for private use is funded through yearly allocations in the government budget (approximately 5.8 million US dollars has been proposed for 2016<sup>2</sup>). 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 contravenes Norway's international national treatment obligations under the Berne and TRIPS agreements.

### **INTELLECTUAL PROPERTY PROTECTION**

Internet Piracy – Internet piracy is a significant problem in Norway. 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 7 piracy sites which were ordered blocked by 8 major Norwegian ISPs September 1, 2015, it is likely that the site will decrease in popularity.

Illegal streaming websites located overseas have, however, dramatically increased in popularity and Popcorn Time, a BitTorrent site "wrapped up" in an app and presented as a streaming service, has now probably overtaken The Pirate Bay as the most popular piracy site for Norwegian Internet users.

Due to a successful effort to target piracy networks during the last few years, there are no open illegal networks located in Norway. Networks established abroad targeting Norwegian users remain a significant challenge.

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<sup>2</sup> The yearly allocation in NOK is marginally increased in the 2016 budget proposal from the Government. The decrease year over year in US dollars is due to a substantially stronger dollar measured against kroner than in recent years.



## Legislation

Extended Collective Licensing – The MPAA has concerns about an amendment to the Norwegian Copyright Act including a general extended collective license (ECL) 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 made statements in their recommendation to the Parliament clarifying that the purpose of the legislation is *not* to limit the opportunity to enter into directly with the rights holder, and that the existing principles governing the relationship between individual licensing and collective licensing shall remain unaltered.

Furthermore the majority underlined, with reference to the White Paper, that collective licensing shall *not* cover areas where individual licensing may take place. This may for example include areas where licensing today takes place through individual agreements with the rights holders or their organizations. 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. The approval process shall ensure that the criteria for adopting new collective licenses are fulfilled.

It is vital that the Ministry of Culture acts in accordance with these principles when implementing the new provisions to ensure proper protection of the individual exercise of exclusive rights.

Revision of the Copyright Act – The Ministry of Culture has for quite some time been preparing a complete rewrite of the Copyright Act. A Green Paper and subsequent hearing is expected in the autumn/winter of 2015/2016. In addition to revising and modernizing the structure and language of the law, the Ministry will also be considering a number of material changes to the Copyright Act and has invited stakeholders to submit input. This is an important opportunity to clarify and strengthen some key areas of the law, notably to ensure that the law protects digital works. The Ministry should also clarify that streaming of copyrighted works from illegal sources is illegal in the same way that making copies of copyrighted works from illegal sources is illegal. The Ministry should also consider strengthening the law’s sanction regime. Without such modernization, the copyright legislation will in effect remain a barrier to effective enforcement of copyright in Norway.

## **POLAND**

### **MARKET ACCESS BARRIERS**

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.

Discriminatory Tax Treatment of US Audiovisual Works – The 2005 Film Law includes taxes on box office and on DVD sales to finance subsidies for Polish and European films. These taxes, besides having a detrimental effect on the Polish audiovisual market, unfairly burden MPAA member companies with the cost of financing the government's cultural policy. Further, the language of the text appears to allow a double taxation burden on distributors, including MPAA members.

Foreign Ownership Restrictions – Foreign ownership in a broadcasting company is limited to 49%. MPAA promotes the reduction and elimination of such restrictions in order to stimulate the foreign investment necessary for the continued development of the television industry.

### **INTELLECTUAL PROPERTY PROTECTION**

Optical Disc Piracy – Locally burnt discs, which sometimes contain multiple titles, are still a problem in Poland and pose a threat to the theatrical and home entertainment markets. However, this threat has diminished in the past couple of years due to effective enforcement and the uptake of Internet piracy. The vast majority of pirate optical discs are sold at public markets in Wroclaw and Krakow, and at bazaars along the Polish-German border.

Internet Piracy – Internet piracy is steadily growing. BitTorrent remains a very popular way of pirating movies in Poland but linking sites (direct download), hosting sites and streaming video are very much on the rise. Sites offering illegal Polish subtitles are also a serious concern as the uploading of pirate copies of new releases are invariably followed by the posting of a Polish language dialogue list, enabling the creation of localized subtitled pirate copies.

#### **Enforcement**

Over the last few months there has been no indication of government interest in strengthening the protection of intellectual property rights.

The Polish courts are seriously backlogged. While the majority of piracy cases brought to court conclude with guilty verdicts, sentences are insufficient. There is a real concern that police will become disinterested in working with rights owners and their representatives as a result of languishing court cases and disappointing sentences.

## **Legislation**

The controversy surrounding ACTA led to worrisome discussions on the scope of copyright protection on the Internet. Parliament announced that the period for retention of telecommunication data has been reduced by half, i.e. from 24 to 12 months, and legislative process is underway to expand the scope (notably to the online space) of permissible public use of protected works by public cultural institutions, libraries, etc. which may affect the legitimate market.

Electronic Services Act – Discussed changes to the Electronic Service Act would extend service providers liability exceptions. The proposal to establish a detailed notice-and-takedown procedure is useful although it should be less burdensome and limit discretionary elements. Although the process for this proposed legislation has been suspended, the situation requires careful attention.

Copyright Law – The enforcement provisions of Poland’s Copyright Law need to be strengthened. In particular, police must have the right to initiate investigations ex officio, which is not currently the case. In addition, the unauthorized downloading of copyrighted files onto personal computers should be added to Article 118 of the Copyrights and Related Rights Act. Further, Article 70 makes it difficult for foreign works to resist collective management of author and performer remuneration rights.

EU Copyright Directive – There are significant problems with Poland’s implementation of the Directive. The principal problems are: (1) lack of implementation of Art. 8(3) of the Directive (2) inadequate legal protection of technological measures (the language suggests that circumvention for private use may be legal); (3) inadequate protection of rights management information; (4) new exceptions; (5) too broad of a private copy exception; and, (6) no express implementation of the three-step test.

EU Enforcement Directive – Polish law does not correctly implement Articles 9 and 11 of the Enforcement Directive on injunctions, since it requires the establishment of liability or co-liability of intermediaries. According to the Enforcement Directive (and the European Copyright Directive), injunctive relief is granted irrespective of the liability of the intermediaries. This shortcoming poses a major obstacle in combatting Internet piracy as entities often operate from outside Poland and thus enjoy practical immunity from copyright enforcement efforts.

## RUSSIA

### **MARKET ACCESS BARRIERS**

Customs Duties – Russia’s customs authorities continue to assess duties on the royalty value of imported audiovisual materials, such as television master tapes, DVDs, etc., 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. Equally important, they are a barrier to further growth of the Russian audiovisual market.

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 newly enacted Mass Media Law provides for a ban on 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 – New legislation has been enacted that establishes a ban on 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 laws like this that interfere with the market and hinder the growth of the pay TV industry.

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 national 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 (VAT) to non-Russian films and not to domestic (Russian-made) films.

Moreover, the RF Ministry of Culture proposed this year to introduce VAT for cinema tickets for films of foreign origin (currently the cost of tickets is VAT exempt as a cultural good). However, the draft law was not supported by the economic ministries and criticized by the local film business. As a result the draft has not been promoted and supported by the RFG..

## **INTELLECTUAL PROPERTY PROTECTION**

Optical Disc Piracy – Russia remains one of the world’s largest producers and distributors of illegal optical media, and intellectual property theft continues to threaten Russia’s burgeoning legitimate home-entertainment market.

The production and distribution of optical discs has, however, diminished considerably during the past three years, with a steep drop during 2013 in Russia’s major cities.

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 in Russia. Many pirate sites have moved to foreign hosting locations after the implementation of the so-called “Internet Anti-Piracy Law.” Most of the sites started to take down infringing content immediately after receiving cease-and-desist letters. Three criminal cases against the owners of pirate sites were brought to the courts with successful prosecutions. The number of legitimate platforms has also increased.

Camcord Piracy – Russia continues to be a source for illicit camcording, though this problem has steadily improved 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. Internet piracy enforcement in Russia is severely hampered by Russia’s inadequate legal framework. The ability of wrongdoers to simply modify their Internet sites and continue to operate in violation of the law manifests a clear need for reform. A critical element of the US-Russia bilateral IPR agreement is element two, which obligates Russia to provide for effective enforcement of IPR online; Russia will need to amend its legal framework to meet this obligation. While MPAA lauds the Government’s re-establishment of a special sub-unit within Department K to deal exclusively with IP Internet cases, this office needs additional staff and resources if it is to reasonably respond to Russia’s serious online piracy problem.

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. Prosecutors back off when defense attorneys raise the issue of private copy and have challenged the damage claims. Given these obstacles to effective enforcement against unauthorized camcording in Russian theaters, recommendations have been made for this issue to be reviewed by the sub-group reviewing IP legislation.

MPAA fully supports the International Intellectual Property Alliance (of which MPAA is a member) recommendations that the Government of Russia improve its IPR enforcement. Prosecutors need to coordinate their efforts with the police, bring more IPR cases, and conduct expeditious investigations.

The development of instructions by the MOI and the General Prosecutor's Office with an updated and detailed methodology for investigations of copyright infringements would help to increase the quality and effectiveness of IPR enforcement activities. Further, the appointment of IPR special prosecution investigators and police officers, at both the federal and regional levels, throughout Russia would be useful. An intensification of criminal investigations and obtaining criminal convictions against principals is sorely needed. There needs to be a focus on criminal enforcement targeted against corrupted LEAs and organized crime syndicates. More and improved criminal proceedings in general, along with speedier investigations and trials are needed.

### **Legislation**

Russia has made progress on several important legal reforms, including: amendments to the Criminal Code; a Supreme Court resolution that provides guidance on IPR enforcement; and, most recently, amendments to the Information Law and Civil Code that provide for injunctive relief, notice-and-takedown and reasonable liability provisions. However, it is too early to assess the effectiveness of these recent amendments.

Although the new version of the Part Four RF Civil Code was enacted in March of 2014, the provisions of Article 1253.1 (concerning intermediary liability) were not updated and remain obscure with regard to ISP liability and IPR violation. Due to unsatisfactory legal formulations, User Generated Content and other websites dealing with third-party activities (such as cyberlockers, P2P services, and torrents) receive exemptions from liability typically reserved for telecommunications-access providers.

Camcording Law – It remains important that Russia enact an effective anti-camcording law.

## SPAIN

### **MARKET ACCESS BARRIERS**

Film Dubbing (Catalunya) -- The Catalan regional government adopted new language restrictions on films released in Catalunya. While the Law was passed in 2010, implementing measures have not been released. In September 2011, film distributors and exhibitors and the Catalan Government entered into a cooperation agreement. This Agreement established a network of movie theaters exhibiting films dubbed in Catalan, with distributors committing to provide 25 prints in Catalan for new films each year. The Catalan Administration committed to fund the dubbing. After the European Commission found Article 18 of the legislation 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 would note the possible conflict between the legislation and World Trade Organization treaties.

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 US and non-EU country films and stifle 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 passed amended the IP Law, which should improve the very poor results produced by the administrative procedure conducted by the IP Commission. The Penal code was also amended providing higher penalties against copyright infringement and more expressly including linking sites' activity under the scope of the article 270. Distribution and even the use of circumventing devices are now more consistent with the European Directive. It is hoped that enforcement and judicial reviews will improve following these amendments.

However, Peer-to-Peer (P2P) piracy continues to be perceived as an acceptable cultural phenomenon; recently, the Secretary of State of Culture announced that it may participate in projects to improve public awareness, especially among young people.

Optical Disc Piracy – Consistent police investigation and municipal enforcement reduced street piracy, especially in larger cities. The 2015 amendment to the Penal Code should reverse the

negative impact of a previous amendment reducing penalties for illegal street peddling and introducing a threshold on the value of items sold, which led to increased tolerance of illegal optical disc sales. In August 2015, a street vendor died when his flat was being raided by Catalan regional police; this unfortunate event provoked demonstrations across the country and opened a debate mixing the street vendor's activity with the refugee phenomenon.

Illegal Recording -- During the first nine months of 2015, 5 illegal theater recordings were identified (2 video and 3 audio). This represents a significant reduction compared with previous years. Some judicial actions against cammers and Release groups have had a deterrent effect.

## **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 pushed by private prosecution. Following those legal amendments, the 2006 General Attorney's Circular became obsolete and a new Circular is being prepared, hopefully encouraging public prosecutors to present charges against linking sites infringing copyright. The IPC has failed to address complaints against linking sites and cyberlockers, which are usually located outside of Spain. The legislative amendments and more human and financial resources should improve the situation.

## **Legislation**

EU E-Commerce Directive – Spanish e-commerce law (*Ley de Servicios de la Sociedad de la Información y de Comercio Electrónico, "LSSI"*) creates a limitation on liability for ISPs that goes beyond the standard permitted by the EU E-commerce Directive. The LSSI 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 IP Commission'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, corrects its 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 action against Internet users who infringe on copyright.



## **SWEDEN**

### **INTELLECTUAL PROPERTY PROTECTION**

Internet Piracy - Sweden is a major contributor to worldwide Internet piracy. Due to its widely known status as a safe haven, significant source piracy infrastructure and group membership have flourished in Sweden. Recent studies also show that Sweden has more digital pirates than any other Nordic country. Out of 102.4 million illegally downloaded movies in the region, 60.4 million were downloaded in Sweden. Further, Swedish ISPs host approximately 50 infringing sites that target users outside of Sweden.

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 Chat, 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. There have been some actions by Swedish authorities against such groups recently, but more is needed.

New illegal sites continue to evolve. There has been an explosion in the usage of illegal streaming sites. Metrics from May 2015 show that 65.5 million films and 97.7 million television episodes were illegally streamed during the past year. Comparative figures from 2013 indicate 13.9 million films and 25.6 million episodes were illegally streamed.

### **Enforcement**

The CJEU-ruling on data retention led to a government paper stating that the Swedish legislation on data retention is still valid. However a number of ISPs are challenging this. The Board of Police has filed a legal action against one of the larger ISPs for failing to retain the requisite data.

During the spring of 2006, authorities raided The Pirate Bay and seized their servers. While the Supreme Court issued its judgement in the beginning of 2012, confirming the appellate verdict with criminal sentences for the founders of the site, The Pirate Bay remains up and running. The prosecutor is trying to seize the domain, and the case is pending at the Svea Court of Appeals.

There is a special unit for IP-crimes within the Police and Prosecutor’s offices. The police unit reorganized in January 2015 so they now have nationwide jurisdiction. Several court hearings regarding IP-violations are scheduled for the end of 2015. The 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 the Scene.

### **Legislation**

Copyright Legislation –The legal regime for technological protection measures is inadequate and falls short of the norms set by the WIPO Internet Treaties. Further, the implementation of

Article 8(3) of the Copyright Directive in Swedish law is insufficient. In Swedish case law, intermediaries must aid and abet copyright infringement in order to be held liable, which is inconsistent with the EU Directive's liability standards. Moreover, conflicts with the CJEU's ruling in the *UPC Telekabel Wien* case (regarding ISP injunctions) must also be resolved.

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

The law must also change in order to effectively curb organized commercial piracy, as evidenced by the difficulties thwarting The Pirate Bay – an operation the court system has already deemed illegal. This means better tools for the police that aims at stopping illegal sites that keeps their activities after being raided by the police, and also after being found convicted by court of law. The maximum penalty for copyright infringement is two years. Recognizing that these illegal sites are very well-organized and commercial, it is imperative that these penalties be extended if they are to be effective and deterrent.

## **SWITZERLAND**

### **MARKET ACCESS BARRIERS**

In June 2015, Swiss Parliament passed an amendment to the Film Act, extending the existing “unique distributor clause” and related regulatory provisions for the Swiss film market from theatrical to other forms of exploitation (including DVD/physical home entertainment and all forms of video-on-demand/online distribution, with the exception only of linear television broadcast). Under the new law which is to come into force as of January 1, 2016, exploitation of a film in any media in Switzerland will require a license for all language regions and versions in Switzerland. This will be accompanied by reporting duties. The wording of the new provisions is vague in many respects and the scope and effects of the new legislation are not predictable.

### **INTELLECTUAL PROPERTY PROTECTION**

Internet Piracy – Switzerland lacks meaningful remedies and effective enforcement against copyright infringement online. 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. 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 take expeditious efforts to bring Switzerland into compliance with the Berne Convention/TRIPs, WIPO Internet Treaties, and internationally acceptable enforcement standards. Necessary minimum changes would include: 1) ensure liability under Swiss law for parties who facilitate, encourage, and profit from widespread infringement; 2) meaningfully engage ISPs in the fight against online piracy; 3) affirm that current law does not permit copying from unauthorized sources; and 4) implement adequate civil and criminal enforcement tools.

Following AGUR12 expert group recommendations, the Swiss Government is considering changes to its copyright law. However, any changes to the law would be unlikely to take effect before 2020 under the proposed schedule.

## **UKRAINE**

### **MARKET ACCESS BARRIERS**

Compulsory Manufacturing of Film Prints – Ukrainian law requires the production of film prints locally (by statute, in effect March 18, 2010); this rule requires local film print production for the issuance of a state distribution certificate. The required local production rule was reiterated by the State Film Agency and entered into effect on August 15, 2012.

Customs Valuation – In May 2012, a new Customs Code was adopted which affirms the dutiability of royalties on both theatrical and home entertainment imports. These valuation procedures are governed by CMU Resolution No. 446. This methodology is both burdensome in terms of assessment and severely impacts distribution revenues. The Ukrainian Supreme Court has taken an opposite view a number of times but its decisions seem to be disregarded by the Customs authorities.

### **INTELLECTUAL PROPERTY PROTECTION**

Recognizing the many challenges faced by the Government of Ukraine, we would urge that as part of its effort to promote the stable rule of law, it take significant steps to change the conditions that allowed Ukraine to become a haven for Internet piracy under the previous regime.

Optical Disc Piracy – Pirate films continue to appear in Ukrainian kiosks and video retail stores within weeks of their US theatrical release. Recent seizures and market monitoring reveal a disturbing increase in the number of multiple title DVDs. Markets are regularly raided, but corruption complicates any long-term closure.

Camcord Piracy – Source piracy from Ukraine remains a serious concern for MPAA member companies. During 2015 (Q1 to Q3), 9 acts of camcording were registered, including 3 audio. Legislative proposals to strengthen anti-camcording statutes have not been adopted.

Internet Piracy – Both P2P services and illegal hosting-sites targeting Western European and US audiences are very serious problems in Ukraine. Ukraine is one of the very few countries with pay-for-download piracy of film. Ukraine also hosts some of the world's more notorious Bittorrent systems. Locally, the most infringing sites are: 44 % Torrent sites, 53% Streaming sites and 3 % Linking sites.

Broadcast Television Piracy – A large number of cable operators continue to transmit pirated product without authorization.

Illegal films demonstration – Small Ukrainian theaters will screen pirate digital copies of films without a State Certificate which is a punishable offense under Administrative Code, Art. 164-6, and Criminal Code, Art. 176. In 2015 (Q1 to Q3), 26 acts were registered, from which 15 are

criminal cases. Investigation resulted in 11 theaters ordered to close. In one case, the person found guilty was sentenced to two years of imprisonment with suspended term of one year. In one other case, the penalty was a fine with confiscation of property. The other cases are currently still under investigation.

## **Enforcement**

The three 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; and 3) illicit camcording in theaters.

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 May 2012, a special police Cybercrime unit was created for the purpose of combating Internet crimes. The Cybercrime unit has been formed with officers from intellectual property rights units from within the Economic Crime Department. Currently IPR crimes are investigated by units within both agencies; the Cybercrime Department and the Economic Crime Department. While this is a positive development, the investigation units are not supported with adequate criminal legal authority under Ukrainian law. As seen earlier in 2012 with the case against ex.ua, the units are subject to being overruled by the Government.

According to the Criminal Procedure Code, acts targeted in Article 203-1 of the Criminal Code (related to the illegal manufacture, export, import, storage, realization, and transportation of laser-readable discs, matrices, equipment, and raw materials for their manufacture) as well as in Article 176 Part 1 of the same code (related to copyright infringement) are crimes to be prosecuted under “private criminal proceedings” (as outlined in Article 477 of the Criminal Procedure Code). Private prosecutions can only be initiated by prosecutors after a victim (or their representative) has lodged a successful complaint that is accepted by the prosecutor’s office. By preventing enforcement forces from acting in an ex officio manner, this reclassification grants them an affirmative loophole to avoid prosecuting copyright infringement.

## **Legislation**

Criminal Procedure Code – Article 477 of the Criminal Procedure Code, which was amended November 20, 2012, precludes ex-officio actions. The Criminal Procedure Code should be amended to provide Ukraine’s enforcement authorities with this critical enforcement tool.

Internet Piracy Law –The State IPR Service is preparing a law to address Internet piracy.

Anti-Camcording Law – It is imperative that Ukraine criminalizes the unauthorized recording of a film in a theater.

## **UNITED KINGDOM**

### **INTELLECTUAL PROPERTY PROTECTION**

Internet Piracy – Online piracy is 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. There is a tendency for public prosecutors and police to look to Federation Against Counterfeiting and Theft (FACT) to take a private criminal prosecution due to monetary, personnel, and resource restrictions within the police and the CPS. MPAA lauds the formation of the City of London’s Police Intellectual Property Crime Unit (PIPCU) which is critical to ensuring investigative success.

Organised criminal gangs are still heavily involved in the sale and distribution of counterfeit High Quality Pressed Discs and in particular TV box sets via the Internet, which are drop-shipped from the Far East to customers in the UK. There is increasing interest from the Border Agency in dealing with this problem.

Optical Disc Piracy – Hard goods piracy in the form of DVD-R manufacturing and distribution is disappearing from the UK although there are still outposts of activity in Northern Ireland and Scotland. Organised criminal gangs are increasingly turning to the perceived safer benefits of Internet-enabled crime.

### **Legislation**

Effective on October 1, 2014, the UK Copyright Designs and Patents Act (1988) was amended by means of a Statutory Instrument entitled “The Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014” to create a private copy exception and a complaint procedure for consumers who take the view that the use of technological measures (including digital rights management) have unjustly denied them the benefit of the exception.

There is a need for the government to amend the sentencing for online offences under the Copyright, Designs and Patents Act, where the maximum sentence is two years’ imprisonment as opposed to ten years’ for offences committed with hard goods. The Government has completed a consultative process.

## **WESTERN HEMISPHERE**

The Western Hemisphere continues to be a challenging region for the MPAA. While these are generally smaller markets for MPAA member companies, negative government policies in these territories often proliferate from one to another and can have a real impact on the global policy framework.

Several economies in this region have introduced or are considering burdensome legal frameworks for television and pay television. In September 2010, Argentina's Federal Authority on Audiovisual Communication Services passed a bill that limits advertising on pay-TV to six minutes per hour and discriminates against foreign pay-TV networks by disallowing advertisers to write off investments in these networks while permitting advertisers to write off investments in Argentine pay-TV networks. Mexico's recently enacted telecommunications reform law has introduced a complex legal framework that poses potential burdens for both broadcast and pay-TV services.

In September 2011, Brazil's Law 12.485/2011 entered into force, re-writing Brazil's pay-TV regulatory system. This law creates disparate systems for foreign and domestic programmers on taxation matters, imposes burdensome quotas and performance requirements, and inserts heavy government intervention into commercial matters. 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.

Screen quotas, one of the most traditional trade barriers, 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. Brazil in 2014 raised its screen quota, increasing the total number of national films that must be exhibited per year and the number of days they must be exhibited. Brazil's screen quota is facing a constitutional challenge at the Supreme Court. Argentina has promulgated a screen quota that obliges Argentine exhibitors to show national films so long as a certain number of spectators come to see them; a similar measure was introduced in the Chilean Congress.

Localization is also rearing its head in the region. Argentina is entertaining both regulatory and legislative proposals that support localization, including mandating that storage, copying and transmission occur at domestic facilities. Moreover, there is an effort to require the disclosure of contract terms to third parties. While MPAA support the development of local industry, such policies impede market growth and undermines intellectual property protections.

As is the case in some other markets, Argentina assesses customs duties for all audiovisual works, excluding software, based on the potential royalty value of the work rather than on the value of the carrier medium. This runs counter to standard international practice and is a form of double taxation as royalties are subject to withholding, income, value-added, and remittance taxes.

Camcording as “source piracy” has grown exponentially over the last few years in Latin America, particularly in Brazil, tracking the development of camcorder technology which makes detection difficult and copies nearly perfect. Brazilian-sourced camcords continue unabated with 23 illicit camcords sourced to Brazilian theaters in 2014. Since 2008, MPAA has identified 26 of its members’ films stolen from Peruvian theaters. As a result, eight professional cammers were arrested in Peru in 2012. Unfortunately, none of these individuals has been convicted. Illicit camcording also spiked in Mexico in 2014 with 23 illicit camcords sourced to Mexican theaters. While camcording of MPAA member titles in Chile has fallen since the arrest of a professional camcorder in 2009, that individual has also not yet been prosecuted. The persistence of local release group members, brokers, and illegal movie websites in Chile highlight the risk that camcord activity could rebound. Illicit camcording also impacts local films. For example, the Chilean Oscar-nominated film *No* was stolen from a Chilean theater and uploaded to the illegal movie site, CineVIP.org, even before the film was released in any other country. One of two films camcorded in Mexico in 2014 was *Casese quien Pueda*.

Anti-camcording legislation is critical to addressing the rapid increase in camcording. 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 criminalizing illicit camcording in theaters. The lack of anti-camcord laws to criminalize unauthorized movie recording makes it difficult to obtain cooperation from law enforcement and prosecutors. It is clear that an effective legislative framework that allows for enforcement against illicit camcording without requiring proof of profit motive is integral to effectively combating illicit camcording. The TPP includes a provision that if properly implemented will result in effective camcording legislation in Chile, Peru and Mexico.

The importation of blank media into the region, especially Mexico and Paraguay, continues to be a challenge. Much of the blank media enters Mexico via the United States to benefit from the NAFTA and to avoid taxes. Moreover, blank media from Asia Pacific is transshipped through Panama into Mexico. Brazil’s market suffers from blank media transshipped from Paraguay.

MPAA has seen better organized online piracy in the region and the formation of Internet release groups. Internet release groups have been identified in Argentina, Chile, Ecuador, Guatemala and Mexico. These groups are distinguished from European and American counterparts because they are overtly profit driven and utilize different distribution channels to release content. Rather than 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. 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.

In Honduras, Guyana, and Guatemala, rogue cable operators are unlawfully receiving and retransmitting channels and content of international programmers. These rogue operators are negatively affecting investment and competition in local markets, impacting international programmers, as well as local distribution platforms.



In St. Kitts and Nevis, a compulsory licensing regime allows for the reception and retransmission of US programming without the consent of the US copyright owner. There is real concern that, left unaddressed, could spread to other territories in the Caribbean.

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 Brazil, the Government is again working to advance copyright reform. As Governments consider reforms to address copyright in the digital age, it is critical for the US 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. At the same time, FTA partners should also act expeditiously to ensure that they are in compliance with these commitments; unfortunately Chile has failed to meet many of its copyright obligations under its FTA with the US, all of which are now past due.

MPAA's interests in the Trans Pacific Partnership cut across several FTA chapters including intellectual property, services and investment, electronic commerce, customs, and goods. Eliminating tariffs on filmed entertainment product, including digital products; removing foreign direct investment limitations; eliminating discriminatory quotas; and, strengthening intellectual property protections will foster the development of the entertainment industries in these important trading partners.

## **BRAZIL**

### **MARKET ACCESS BARRIERS**

National Content Quota for Pay TV Bill – Law 12.485/2011 imposes local content quotas for pay television to be enforced by ANCINE (the national film agency) and delegates to ANCINE unprecedented powers to limit advertising and direct business activities. The bill entered into force in September 2011. MPAA was concerned that local content quotas would limit the consumer experience and push consumers towards illegitimate sources of content. Further, MPAA believes that the implementing regulations limit eligibility for these quotas to works in which local producers are the majority intellectual property rights owners, even where such works are co-productions and regardless of the amount invested by non-Brazilian parties. Unfortunately, none of MPAA's recommendations to limit the bill's harm on the Brazilian pay television market were accepted. Lawsuits challenging the constitutionality of the quotas and the powers granted to ANCINE are still pending before Brazil's Supreme Court. Four Direct Unconstitutionality Actions (ADI) against Law 12.485 of 2011, were presented, The trial began on June 2015, but was suspended; a new date to proceed has not yet been set.

Screen Quotas – During 2014 Brazil increased its theatrical screen quota through Decree 8176/2013, increasing the total number of national films that must be exhibited per year and the number of days that they must be exhibited. As of January 2014, depending on the number of screens, the screen quota is 28-63 days per screen with a minimum of 3 and a maximum of 24 national films. The presidential annual decree for 2015 (8386/2014), preserved the amounts above, but also required that wide releases must be displayed on a certain number of screens per complex, imposing thus an additional restriction. A Bill presented in May 2015, which has the support of local exhibitors, as well as the MPAA, would increase the maximum number of screens available for wide release pictures to 60% and expand the quota to domestic releases. With regard to the supplemental screen quota, three exhibitors issued successful injunctions against Ancine, The lawsuit has not reached a final decision though it has been successful in every local court, with the judges favoring the exhibitors.

Video on Demand (VOD) Tax – In 2012, ANCINE published IN 105, which interprets Law 12.485/2011 to require that the CONDECINE tax on audiovisual works must be paid for works released on-demand. This burdensome tax, which is assessed per title in several different release windows every five years, poses a unique and serious threat to the growth of the VOD market in Brazil. For large collections, the sum can pass US\$25 million. The CONDECINE costs BRL 3000 for feature film and BRL 750 per episode within a series, for example. Assessing CONDECINE for VOD works in this way could severely limit the content choices available to Brazilian consumers in the nascent online content market and other VOD channels. We understand that ANCINE has acknowledged the threat this tax poses to the VOD market and is engaging in discussions with industry stakeholders on possible changes to its approach and that a proposal will soon be presented.

CONDECINE Monetary Readjustment – On August 17<sup>th</sup> 2015, the Brazilian Presidency enacted Provisional Measure 687, which has the following objectives: (i) Allows the Federal

Administration to increase the current value of CONDECINE tax provided in Section 33 of PM 2.228; (ii) Introduced a new 80% reduction over the CONDECINE tax levied on audiovisual works transmitted through broadcasting and cable TV organizations whenever these works have been theatrically released in Brazil with up to 6 copies or released in film festivals previously authorized by ANCINE and also theatrically released with up to 6 copies. A joint board was recently formed at the National Congress, which will have until mid-December to consider the provisional measure and related amendments. A final decision is expected to be reached by the end of 2015.

Digital Cinema Regulation – In April 2014, ANCINE issued a regulatory notice about its intention to regulate the digital distribution of audiovisual works for exhibition in theaters. ANCINE sought to collect information from film industry participants (content production companies, distributors, exhibitors and other stakeholders), compelling stakeholders to disclose information regarding their commercial contracts – especially their virtual print fee (“VPF”) agreements. The Regulatory Notice expresses ANCINE’s intention to restrict transferring, delivering and encoding digital content and monitoring digital projectors and film complexes to companies not affiliated with exhibitors or distributors. It further proposes that these companies must to be Brazilian. Such action would be inconsistent with ANCINE’s legal authority. It is also an unworkable and inefficient restriction that would impose additional and undue costs on exhibitors, distributors, and ultimately, Brazilian consumers. In early March, ANCINE proposed a new regulation establishing a box office control system and calling for the disclosure, by exhibitors, of detailed financial information from their deals with distributors. While ANCINE’s legal basis for the box office system is strong, its basis for compelling the disclosure of this financial information is weaker and less direct. MPA, in alignment with local exhibitor associations, filed comments opposing this element of the proposed regulation and will further consider potential litigation if the regulation moves ahead.

Bills Banning Advertising to Children – Several bills have been introduced in both legislative houses that would restrict advertising directed at children (PLs 5921/2001, 360/2011, and 6777/2013). Such measures could be unconstitutional, unworkable, and unnecessary in light of the National Council of Publicity’s Self-Regulation (CONAR) guidelines. Another bill (PDL 1460/2014) intends to revoke the CONADA (National Council on Children and Adolescents Rights) ruling which regulates children’s publicity and advertising, intending that such authority should rest with the Congress. On October 7<sup>th</sup> the rapporteur of the Committee on Economic Development, Industry and Commerce (CDEIC), rejected the Bill, which foresees a limitation of broadcasting advertisements of children products between 7 am and 10 pm.

## **INTELLECTUAL PROPERTY PROTECTION**

Camcord Piracy – Unauthorized camcording, including audio recording, in Brazilian theaters, is an important source of piracy in Brazil and a serious concern to the MPAA. From 2011 to October 2015, more than 180 illegal recordings (image, sound or both) have taken place inside Brazilian theaters.

Internet Piracy – The prevalence of online piracy in Brazil has stunted the legitimate online marketplace, underscoring the importance of ensuring that the Internet Bill and the Copyright Bill (both discussed below) foster protection of intellectual property rights, thereby creating a space for legitimate online commerce. The 50 largest websites dedicated to infringing audiovisual content and targeting the Brazilian market received 1 billion visits from February to July, 2015.

## **Enforcement**

The National Council to Combat Piracy and Crimes Against Intellectual Property (CNCP) has been assisting the implementation of public policies to protect and enforce intellectual property rights, as well as encourage the development of antipiracy initiatives by the private sector. This includes the City Free of Piracy program, which has been implemented in eleven cities across Brazil thus far. With regard to the sale of hard goods (DVDs and Blu-ray), street markets – such as Santa Efigência and 25 de Março in São Paulo; Rua Uruguaiana, in Rio de Janeiro; the Tri-border Region between Paraguay, Argentina, and Brazil; and the Feira dos Importados in Brasília – are still focal points within their respective cities, where high volumes of physical piracy activity was seen over the past year. The FNCP (National Forum Against Piracy and Illegality) has assisted authorities in raids in the aforementioned markets, and these joint and coordinated activities have improved enforcement training efforts and results.

Concerning illegal camcording, enforcement measures remain hampered by a lack of specific legislation. In order to be considered a crime, an intent to sell must be established; and even in cases where it is possible to prove such intent, authorities remain reluctant to pursue investigations.

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. Unfortunately, the creation of a dedicated IP Police Department and an IP Court and rules to reduce the timing and costs of inquiries and lawsuits, as well as defining deterrent sentence, remain untouched.

## **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 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/recordation 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 fully. The 2013 version also foresees the implementation of a notice & notice system. 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.

Internet Law – The Internet Law (Marco Civil da Internet, PL 2126/2011), Law 12965/2014 was enacted in April 2014 and excludes copyrighted content from a provision which establishes that illegal content would be removed only with a court order, and provides that takedown of content that infringes copyright would be governed by the copyright law currently in force. Several Public Hearings have been held in the National Congress since mid-2015, in order to further debate the implementing regulation of the Law, which awaits a regulatory decree. The Regulatory Decree was expected to be enacted later this year; however Ministerial Reform delayed the Decree and the Ministry of Justice has already stated that before the enactment, the Decree will go under a new public consultation.

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, including eliminating law enforcement’s authority to bring actions against criminal copyright infringement *ex officio* and eliminating an ‘umbrella’ provision for criminal copyright infringement that gives law enforcement greater flexibility in prosecuting copyright-related crime. The current version of the bill does not include any anti-camcording provision though camcording remains a key source of piracy in Brazil and a serious concern to MPAA and was one of two important amendments included in the Rapporteur’s report. The other important amendment included in the report is *ex-officio* authority. The final report has to pass through the Committee and the Plenary.

Destruction of Seized Goods – The Brazilian Senate is currently considering Bill 2729/03 (now 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, which has been approved by the House of Representatives, would streamline criminal prosecutions for copyright infringement and reduce what are now significant costs involved in storing large amounts of seized materials until the conclusion of a criminal case. The Bill was amended in the Senate and must now go back to the House for consideration

Bills Banning Advertising to Children – Several bills have been introduced in both legislative houses that would restrict advertising directed at children (PLs 5921/2001, 360/2011, and 6777/2013). Such measures could be unconstitutional, unworkable, and unnecessary in light of the National Council of Publicity’s Self-Regulation (CONAR) guidelines. Another bill (PDL 1460/2014) intends to revoke the CONADA (National Council on Children and Adolescents Rights) ruling which regulates children’s publicity and advertising, intending that such authority should rest with the Congress.

Anti-camcording legislation – Brazil’s legislative framework for addressing illicit camcording in theaters remains inadequate. It is critical that Brazil adopt legislation to impose criminal penalties for the unauthorized camcording of films in theaters. The Criminal Code Reform bill is an appropriate vehicle for addressing this priority issue.

## CANADA

### MARKET ACCESS BARRIERS

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

Large English Groups – Since 2011, large English private broadcaster groups have a CPE obligation equal to 30% of the group's gross revenues from their conventional signals, specialty and pay services. Up to 100% of the CPE obligation of any specialty service can be transferred to any combination of other specialty services and conventional signals in the same group, but only up to 25% of the CPE obligation for any conventional signal can be shifted to specialty services.

All Conventional – In 2011, the Exhibition Quota for all conventional broadcasters was fixed at 55% Canadian programming overall, with a 50% requirement from 6PM to midnight. Starting in August 2017, as broadcasters' licences are renewed by the CRTC, the overall 55% quota will be removed.

Independent Specialty & Pay-TV Services - Specialty services and pay-TV services that are not part of a large English private broadcasting group are subject to individual Canadian programming quotas (time or expenditure or both), which vary depending upon their respective license conditions. Such quotas are discriminatory and artificially inflate the total spend on Canadian programming. Starting in August 2017, as licences are renewed by the CRTC, evening exhibition quotas will be removed and the overall daily exhibition quota will be standardized at 35%.

Non-Canadian Signal and Service Restrictions – Canadian Broadcasting Act regulations and CRTC policies discriminate against US signals and services by, for instance, restricting their distribution in Canada and prohibiting the sale and display of Canadian advertisements. Under CRTC policy, non-Canadian programming services that do not abide by the intent and spirit of Canadian program negotiation regulations, known as the Wholesale Code, may be removed from the List of non-Canadian programming services authorized for distribution, or subject to discriminatory conditions of authorization or orders addressing distribution, including a prohibition on distribution, directed at broadcasting distribution undertakings (BDU).

Historically, the Commission has required that each subscriber **receive** a preponderance of Canadian programming services. Beginning March 2016, Canadian broadcasting distribution undertakings (BDUs), such as cable and direct-to-home satellite, will be required to **offer** more Canadian than non-Canadian services: subscribers may choose whatever combination of Canadian and non-Canadian discretionary channels they wish.

BDUs may include one set of “U.S. 4+1” (ABC, CBS, FOX, NBC and PBS) signals on the basic tier. All other U.S. signals and services must be offered on a discretionary basis. A second set of US 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 US signals, but by December 2016 all discretionary signals and services must also be offered on a stand-alone basis.

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 Lists if it changes formats and thus becomes competitive with a Canadian pay or specialty service 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”.

Broadcasting Investment Limitations – The Broadcasting Act provides that “the Canadian broadcasting system shall be effectively owned and controlled by Canadians.” Broadcasting licensees, which are both programming undertakings (conventional, pay and specialty television), as well as distribution undertakings (cable operators and satellite television distributors) must meet certain tests of Canadian ownership: 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.

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 on November 7, 2012, created an “enablement” clause whereby providing “a service primarily for the purpose of enabling acts of copyright infringement” constitutes infringement. Online services that enable others to make illegal copies (such as a BitTorrent site) can now be found civilly liable. By taking steps to create rules to make sites that enable massive online content theft illegal, Canada has moved in the right direction. However, there are aspects of the legal framework that do not provide appropriate legal incentives for service providers to cooperate with rights holders in deterring piracy, and provide broad exceptions that remain untested.

Criminal Enforcement – General intellectual property crimes are not a strategic or operational priority for the Royal Canadian Mounted Police (RCMP), although recently the RCMP has moved to deal with counterfeit products that cause health and safety concerns. 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 unable to adequately address intellectual property crimes.

Border Enforcement – On December 9, 2014, the Combating Counterfeit Products Act (CCPA) passed all stages in the House of Commons and the Senate and received Royal Assent. The CCPA amends the Copyright Act and the Trade-marks Act to add new civil and criminal remedies and new border measures in order to strengthen the enforcement of copyright and trade-mark rights and to curtail commercial activity involving infringing copies and counterfeit trade-marked goods. The main goals of the CCPA are creating new prohibitions against the manufacture, possession, importation or export of unauthorized goods for the purpose of sale or distribution, and introducing new criminal offenses for the commercial-scale sale or distribution of counterfeit goods, labels and packaging. Sections of the CCPA related to border enforcement and amendments to the Trade-mark Act came into force on January 1, 2015.

While the CCPA is an important step toward addressing the long-neglected shortfalls in Canada's enforcement regime against piracy and counterfeiting, 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.



## MEXICO

### **MARKET ACCESS BARRIERS**

Advertising on Broadcast and Pay-TV Services – In Mexico, pay television is the primary outlet for foreign programmers, and free-to-air broadcast television is the primary outlet for domestic operators (recognizing that Mexico has opened investment in broadcasting to 49%). The Federal Telecommunications and Broadcasting Act has introduced a complex legal framework that poses potential burdens for both broadcast and pay-TV services. Foreign programmers continue to follow their self-regulated practice of 6 minutes an hour (averaging up to 12 minutes an hour), but not exceeding 144 ad minutes per day. Free-to-air broadcasters had been permitted 259 minutes per day with no hourly limits. Concessionaries who provide the broadcasting service for commercial use and that cover at least 20% of its programming with independent national production, may increase the percentage of advertising time referred in this Law up to 5% points. The telecommunications reform was approved over a year ago and there remain important issues pending including; must carry/must offer, ratings, and promotion of national talent.

### **INTELLECTUAL PROPERTY PROTECTION**

Hard goods Piracy: The widespread availability of pirated discs remains a serious concern in Mexico, with many of the illicit hard goods markets linked to organized criminal networks. Coordination among the state, local, and federal enforcement authorities and rights holders has improved and resulted in successful prosecutions, especially in the Tepito neighborhood of Mexico City.

Internet Piracy: Online piracy is a serious widespread problem in Mexico. While partially due to increased broadband penetration, this is also due to ineffective enforcement. The Government should also promote cooperation between rights holders and Internet service providers to combat online copyright infringement.

Camcord Piracy: There were 26 camcord incidents in 2014. From January to October 2015, there were 22 incidents with at least 19 MPAA member company titles were illegally recorded. Rights holders have worked diligently with exhibitors to combat and deter camcording, including with educational campaigns and training programs for theater employees.

Blank Media Imports - Materials such as blank DVDs, Blu-Ray discs and burners, are commonly shipped through Mexican ports in route to other countries. Prior to 2011, PGR and Customs worked effectively together to seize illegal in transit merchandise. In 2011, PGR ceased actions against such in-transit cargo claiming lack of authority. It is hoped that PGR and Customs will restart cooperation.

## **Legislation**

Anti-Camcording Legislation: Mexico's legislative framework for addressing illicit camcording in theaters remains inadequate, requiring that rightsholders prove an intent for profit. It is critical that Mexico adopt legislation to impose criminal penalties for the unauthorized camcording of films in theaters without predicating the crime on a proof of profit motive.

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. Government agencies and the courts must correctly implement and interpret the recent reform in telecommunications in order to effectively combat Internet piracy.

To secure both the legal and practical tools necessary to protect intellectual property rights in the digital age, it is critical that Mexico adopt legal norms that create incentives for Internet Service Providers (ISPs) to cooperate with right holders in fighting infringement taking place over their networks or platforms, including: 1) the elimination of any proof for profit motive or commercial intent requirements in cases of illegal downloading or streaming; 2) legal incentives for ISPs to cooperate with rights holders to effectively deal with Internet piracy, including an effective and timely notice-and-takedown regime; 3) rules that clarify the illegality of providing services that are intended to promote the infringement of copyright and related rights; and 4) injunctive relief and a duty on ISPs to provide information to law enforcement agencies and rights holders.