

TAIWAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2012 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA files this Special Mention report on Taiwan to highlight copyright piracy and enforcement issues, and recent developments calling into question the Taiwanese Government's continued strong commitment to address them.¹

Executive Summary: Internet piracy is the most urgent problem in Taiwan, and while physical piracy is generally under control, a major exception is the commercial photocopying of textbooks on or around university campuses. Unfortunately, several developments in the past couple of years raise newfound concerns over the Taiwanese Government's continued commitment to fight piracy in all its forms, and warrant this Special Mention report on Taiwan in the Special 301 process. We are deeply concerned by reports that the Taiwanese Government is considering diluting the role of the Intellectual Property Rights Police unit – the establishment of which was a contributing factor in Taiwan being removed from the Special 301 list. IP criminal cases apparently receive less attention because IPR crimes earn less credit for officers than other crimes, thus diminishing a police officer's chances for promotion. Evidentiary burdens on right holders in Internet and other piracy cases stifle their efforts at bringing complaints, and emphasize the need to establish copyright infringements, whether online or otherwise, as "public crimes." Campus enforcement against piratical activities remains difficult. The Taiwan Intellectual Property Office (TIPO) under its new leadership has not followed through with the needed push to address Internet and campus piracy, and appears to be moving in the wrong direction on copyright law reform.

There were great hopes that Taiwan would be a regional leader in addressing Internet piracy, through passage of the ISP liability law in April 2009, and through TIPO regulations adopted in November 2009, which clarified liability standards for ISPs. However, administrative guidelines still have not been issued with respect to key aspects of that law that were to deal with P2P and other online infringements, leaving a critical part of the law essentially inoperative. The ability for right holders to leverage much-needed cooperation from ISPs in combating such online infringements has therefore been stifled.

PRIORITY ACTIONS REQUESTED IN 2012

Enforcement Issues

- Confirm that the IPR Police (IPRP) will not be merged into general criminal task force or its responsibilities diluted, and ensure that both IPRP and the Joint Internet Infringement Inspection Special Taskforce (JIST) have increased manpower, equipment, and training.
- Increase the award budget for IPR cases including those involving Internet-based piracy, and ensure that no inappropriate criteria are applied for determination of such awards (e.g., physical seizures of pirated goods, equipment, and/or devices may be inappropriate criteria to judge the effectiveness of enforcement in Internet piracy cases).
- Improve enforcement against illegal photocopying on and near university campuses, especially during peak academic periods when unauthorized copyright is rife.
- Improve enforcement efforts against Internet piracy.
- Rationalize process of obtaining search warrants by making evidence-collection requirements and burden of proof hurdles more consistent.
- Extend coverage of new IP Courts to criminal copyright cases in Taiwan's courts of first instance, increase IP Courts' budgets to obtain latest tools, create Special IP Prosecutors functioning within the IP Courts, and provide informational seminars on Internet copyright issues for specialized judges and prosecutors.

¹For more details on Taiwan's Special 301 history, see Additional Appendix available at <http://www.iipa.com/pdf/2012SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years' reports at <http://www.iipa.com/countryreports.html>.



Legislative Issues

- Pass amendment deeming crimes involving copyright infringements, including Internet infringements, public crimes to facilitate *ex officio* enforcement.
- Adopt administrative guidelines clearly detailing and implementing the ISP liability provisions of the copyright law to provide an effective and fair mechanism to address Internet infringement, including clarifying that ISPs lose all “safe harbors” under the new ISP Law if they do not have and implement a termination policy for repeat infringers.
- Amend the Copyright Collective Management Organization Act to remove unacceptable provisions empowering TIPO to set a “joint royalty rate” and appoint a “single window” for collection.
- Adopt legislation making it an offense to use (or attempt to use) an audiovisual recording device in a movie theater to make or transmit a copy of an audiovisual work, in whole or in part.
- Ensure draft copyright reform being considered by TIPO does not weaken protection for related rights, dismantle protections, or create other incompatibilities with Taiwan’s international obligations.
- Pass copyright term extension.

PIRACY AND ENFORCEMENT UPDATES IN TAIWAN

Internet Piracy Becoming More Severe: Over the past two years, the industry notes an increase in the severity of Internet piracy,² particularly in the use of P2P and BitTorrent services, blog sites, and “one-click hosting” sites,³ to infringe copyright in movies, music, software, games, and books and journals.⁴ Some of the most notorious piracy websites in the world are servicing the Taiwanese market.⁵ Due to stringent law enforcement in Taiwan, people in Taiwan often obtain unauthorized music and music videos from websites located overseas, particularly websites located in mainland China (due generally to their preference for Chinese language interfaces), such as *youmaker.com*, *verycd.com*, Xunlei’s Thunder (*xunlei.799.com.tw*), *koowo.com*, *streamdrag.com*, and *1g1g.com*. The music industry roughly estimates Internet piracy in 2011 at 88% with US\$135 million in estimated losses.⁶ The Taiwan Federation Against Copyright Theft initiated more than 150 criminal complaints against individuals responsible for unauthorized distribution of major motion picture titles by means of P2P networks, BitTorrent forums, and “one-click hosting” sites (cyberlockers). Although individuals have been arrested for their activities, the vast majority of convictions result in probationary sentences or non-deterrent fines. One exception is the welcome news in August 2011 of the conviction of the owner of EZPeer,⁷ but unfortunately, there appears to be a decreased commitment on the part of the Taiwanese Government to effectively address the Internet piracy problem. The Copyright Act should be reformed so that Internet-based piracy is deemed a public crime. It is critical that the Taiwanese Government take serious steps to address the problem, including through *ex officio* enforcement actions.

²Aaron Hsu, *Internet users hit record high in Taiwan*, Taiwan Today, January 31, 2012, at <http://taiwantoday.tw/ct.asp?xItem=185344&CtNode=413> (reporting that the number of Taiwanese Internet users over the age of 12 reached an all-time high of 14.78 million in 2011, up 320,000 from the year before, according to the Research, Development and Evaluation Commission. The report also indicated that the percentage of online citizens using mobile devices jumped from 53 percent in 2010 to 70.4 percent last year.

³In IIPA’s filing in response to USTR’s Notorious Markets Special 301 Out-of-Cycle Review, IIPA noted *Gogobox.com.tw* (Taiwan) as an example of a “one-click hosting site,” colloquially referred to as a cyberlocker, which provides access to infringing files. International Intellectual Property Alliance, *IIPA Written Submission Re: 2011 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Public Comments*, 76 Fed. Reg. 58854 (September 22, 2011), Docket No. USTR-2011-0012, October 26, 2011, at http://www.iipa.com/pdf/2011_Oct26_IIPA_Notorious_Markets_Submission.PDF.

⁴Over 16.1 million Taiwanese use the Internet, or 70% of the population. An astonishing 95% of Internet users in Taiwan (roughly 15 million) have broadband connections, whether wired or wireless. See Budde.com, *Taiwan - Broadband Market - Overview, Statistics and Forecasts*, at <http://www.budde.com.au/Research/Taiwan-Broadband-Market-Overview-Statistics-and-Forecasts.html>.

⁵For example, *Sohu.com*, ranked 9th in China and 44th globally in terms of Internet traffic, and *Sogou.com*, ranked 25th in China and 123th globally, provide search functionality for infringing music files to the Chinese-speaking community in various countries in Asia, including Hong Kong, Taiwan, Singapore, Malaysia, Macau, Thailand and Indonesia, causing substantial damage to the music markets there.

⁶The physical piracy rate for sound recordings in 2011 was an estimated 12% with US\$8.5 million in estimated losses.

⁷On August 30, 2011, Taiwan’s Supreme Court ruled P2P file exchange service www.ezpeer.com was criminally liable for copyright infringement. The ruling marked the end of a long legal battle, and overturned decisions made in Taiwan’s lower courts and a previous Supreme Court ruling. Mr. Wu Yi-Dar, CEO of the company operating the website, Global Digital Technology Co. Ltd., was sentenced to 14 months imprisonment, suspended for three years. See Motion Picture Association, *Taiwan Court Holds Ezpeer Criminally Liable For Copyright Infringement*, August 30, 2011 (press release, on file with IIPA). In a previous development, on November 22, 2010, Taiwan’s specialized Intellectual Property Court upheld a lower court’s finding of copyright infringement against the notorious local file-sharing website Foxy (gofoxy.net). The Intellectual Property Court sentenced Ming-Hsien Lee, the owner of Foxy, to 18 months jail, suspended for five years. The Court also imposed a fine against the defendant company of NT750,000 (US\$24,500).

Improve Enforcement Against Illegal Photocopying On and Near University Campuses: Physical piracy phenomena, including illegal photocopying of books and journals on or near university campuses, continue to cause great harm to the publishing industry. In 2011, publishers continued to find numerous instances of unauthorized photocopying by campus photocopy centers and the majority of students using illegally photocopied texts in the classroom. Unauthorized photocopying (particularly of higher education and English language textbooks (ELT)) remains the most damaging problem for U.S. and Taiwanese publishers in 2011. There have been instances where the photocopy shop delivers cases of illegal copied textbooks to the campus mail room, and being unable to locate the intended recipients, the mail room actually delivered the pirated copies to the publishers (apparently relying on the publisher logos on the covers).

Law enforcement authorities remain reluctant to pursue actions against the copy shops that operate on campuses, and the Ministry of Education (MOE) has failed to date to take strong actions against campus infringement. In 2009, MOE prepared an action plan which covered illegal photocopying of academic books and journals. The plan involved a “self-assessment” by each university as to its compliance with copyright laws. However, there is no independent monitoring or audit mechanism through which the MOE conducts its own evaluation of whether the university is in fact complying with the action plan. This is a critical element to making an objective assessment of whether a university is undertaking the necessary steps to ensure that its various departments are addressing infringing activity occurring on its campuses. The plan must be fully and effectively implemented to prohibit illegal photocopying and use of unauthorized materials on campus, backed with sanctions for violations. Universities should also be required to build provisions into outsourcing agreements with on-campus photocopy facilities imposing penalties for those caught engaging in infringing conduct, including lease termination.

Confirm that IPR Police (IPRP) Will Not Be Merged Into Another Unit or Diluted, and Ensure that Both IPRP and Joint Internet Infringement Inspection Special Taskforce (JIST) Have Increased Manpower, Equipment and Training: IIPA finds it inconceivable that the Taiwanese Government is considering merging or diluting the Intellectual Property Rights Police unit – the establishment of which was a contributing factor in Taiwan being removed from the Special 301 list. Reports indicate the government intends to merge the IPRP into a more general criminal task force, to be made effective early 2012, and as such, the scope of IPRP responsibility will no longer be focused only on IPR infringement cases.⁸ The name and structure of IPRP will remain the same, reportedly, but the unit will be responsible for other crimes (possibly including homicide). This shifting of priorities should be seen in the larger context of IPR apparently becoming less of a priority to the Taiwanese Government than in the past – a troubling trend. IPR cases apparently earn less credit for police officers than other criminal cases, thus IPRP officers who run anti-piracy actions reportedly feel at a disadvantage with regard to promotions and career advancement opportunities.

Furthermore, TIPO has decided not to give any award with respect to an Internet piracy case which does not involve confiscation of physical equipment/devices used for such infringing activities. Yet, as is well understood, Internet-based cases in many cases will not involve seizure of physical goods, equipment, or devices, since the nature of Internet anti-piracy operations is to disrupt the flow of infringing activities, which in many cases are decentralized to begin with and do not revolve around a single piece of equipment or device. IIPA also understands that TIPO plans to cut the budget of the anti-piracy monetary awards payable to IPRP given the declining number of physical piracy cases in recent years. The budget was cut to NT\$3.5 million (US\$115,000) in 2012, compared to NT\$5 million (US\$164,000) in 2011 and NT\$20 million (US\$650,000) several years ago. This has severely affected IPRP police officers’ morale and their willingness to combat copyright piracy.

Given the serious damage being caused by Internet piracy in Taiwan, IIPA recommends that TIPO should raise the award budget for Internet piracy cases, and devote more resources, including manpower, equipment and trainings, to the IPRP. The Taiwanese Government should ensure that IPR cases are afforded proper weight within the IPRP force to make them more desirable among IPRP officers. In addition, the Joint Internet Infringement

⁸One report indicates that IPR police is going to be “upgraded” by the National Policy Agency as part of “Criminal Investigation Bureau.” Despite IPO’s insistence that the IPR police will continue to focus solely on IPR enforcement after the upgrade, it remains uncertain if this will be so. This organizational change is reportedly to take effect after 2013.

Inspection Special Taskforce (JIST), comprised of selected personnel with expert knowledge in computers, IT, and technology from the IPRP, should be enhanced with greater devotion of manpower, more and better equipment (including better broadband connections and computers) to investigate Internet infringements, and more training opportunities on investigation techniques in detecting and enforcing against growing online forms of infringement. In TIPO/MOEA's "Implementation Plan for Strengthening Internet Infringement Preventive Measures," JIST was given the exclusive responsibility for tackling Internet piracy. The IPRP is authorized to have 220 officers available for these enforcement duties. Presently it has only 184 personnel, while the proposed number has never been realized. The additional 36 officers are urgently needed.

Enterprise End-User Piracy of Business Software – Relatively Low Piracy Level But Increasing Value of Unlicensed U.S. Software: End-user piracy of business software remains an issue, and while the piracy rate has decreased over the years, the value of unlicensed U.S. software in Taiwan has increased along with the overall size of the software market.⁹

Ease Process of Obtaining Search Warrants by Relaxing Evidence-Collection and Burden of Proof Hurdles: Certain industries report difficulties in obtaining criminal search warrants due to burdens imposed upon right holders by courts regarding evidence collection and onerous burdens of proof. For example, the recording industry reports that certain prosecutors are requesting that they provide contracts between the artists and composers and the record companies to prove copyright ownership (and subsistence) in the sound recordings at issue. TRIPS requires a presumption of ownership. Requiring the production of contracts that are attenuated to the recordings themselves, and are unrelated to the rights contained in the sound recording (i.e., the rights of the producers), is unduly burdensome. Publishers also note a lack of consistency with respect to the evidence prosecutors consider sufficient to proceed with a criminal case. In addition to the actual pirated copy, copyright holders are often asked to produce, for instance, detailed receipts with book titles and ISBNs, audiovisual recordings of the crime in progress, names of witnesses, etc. Where the pirated copy is only a portion of a book rather than the entire book, it is also often dismissed as inconsequential and the prosecutor will refuse to use the information to apply for a search warrant. The business software industry has encountered courts that will not grant a search warrant based on the testimony of an informant, requiring instead evidence such as screen captures that generally could not be obtained without a warrant.

Extend Coverage of IP Courts to First Instance Criminal Copyright Cases, Increase IP Court Budgets, Create Special IP Prosecutors, and Provide Learning Seminars with Judges and Prosecutors on Internet Copyright Issues: The specialized IP Courts in Taiwan, which began hearing cases in July 2008, and as noted, have handed down some important decisions in the past couple of years, should also cover first instance criminal copyright cases to create a more effective and deterrent remedy in the court system. In addition, a division of specialized IP prosecutors should be created. The IP Courts and Prosecutors' offices are not properly funded to get up to speed with the latest technologies (such as Internet issues, TPMs and circumvention devices, etc.), and should be properly funded. Given the developments in the area of Internet infringements and other technological developments, it would further be timely to provide learning seminars for the specialized IP judges and, once created, the specialized IP prosecutors. Industry is willing to participate in such seminars in 2012, but apparently has not been invited to such seminars in the past couple of years, whereas they have participated in seminars held by Customs and the IPR Police from time to time, and, during those seminars, copyright owners have had an opportunity to speak on Internet copyright issues.

⁹BSA's 2011 software piracy statistics will not be available until after the filing deadline for this submission, but will be released in May 2012, at which time piracy rates and U.S. software publishers' share of commercial value of pirated software will be available at www.iipa.com. In 2010, the software piracy rate in Taiwan was 37%, representing a commercial value of unlicensed software attributable to U.S. vendors of US\$139 million. These statistics follow the methodology compiled in the Eighth Annual BSA and IDC Global Software Piracy Study (May 2011), <http://portal.bsa.org/globalpiracy2010/index.html>. These figures cover packaged PC software, including operating systems, business applications, and consumer applications such as PC gaming, personal finance, and reference software – including freeware and open source software. They do not cover software that runs on servers or mainframes, or routine device drivers and free downloadable utilities such as screen savers. The methodology used to calculate this and other piracy numbers are described in IIPA's 2012 Special 301 submission at <http://www.iipa.com/pdf/2012spec301methodology.pdf>.

COPYRIGHT LAW AND RELATED ISSUES

Despite a sound legal framework for the protection of copyright in Taiwan, some significant regulatory gaps and concerning legislative developments have emerged in the past couple of years. TIPO is working on amendments of the Copyright Act. Public information on TIPO's website indicates that TIPO held 15 internal meetings from February to November 2011 to discuss revisions to the Copyright Act. Although TIPO has not publicly released any draft amendments, suggested changes made in these meetings would further weaken copyright protection for sound recording copyright holders. The following are reportedly some of the suggested changes made to TIPO which would further weaken the copyright protection for sound recording copyright holders: 1) sound recordings would reportedly not enjoy any new rights giving due consideration to technology developments or other policy considerations; 2) a new type of right, translated as the "right of re-communication to the public" would be introduced as to all works, but not sound recordings and performances; if this right is akin to a retransmission right over the Internet, this would be a positive step, but must be extended to sound recordings and performances in order to ensure that sound recordings broadcast (or otherwise communicated) or performances cannot be made freely available on the Internet without authorization or payment; 3) works synchronized in an audio-visual work (music video or film), such as musical works but excluding sound recordings and performances, would reportedly be entitled to claim a public performance right; 4) the issue of parallel importation has apparently reappeared, and while the last time this issue was considered (in 2004), the act of renting, publicly displaying, or distributing a parallel import without consent of the right holder remained a crime, once again, the Taiwanese Government is considering decriminalizing these acts; and 5) there has been a proposal reportedly of introducing as an exception the communication to the public of content being publicly broadcasted through household loudspeakers or other equipment.

IIPA looks forward to having the opportunity to weigh in with TIPO on any proposed measures in public comments. In the meantime, and in consideration of the piracy problems discussed above and other policy decisions taken which could weaken the hand of creators in the country, the Taiwanese Government should ensure that any amendments do not result in weakened protection for copyright or related rights holders, or create new hurdles to adequate protection that might implicate Taiwan's international obligations.

Amend the Criminal Code to Deem Piracy a "Public Crime" Thereby Providing Police with *Ex Officio* Authority for Criminal Copyright Infringement Cases, Including Internet Cases: In 2003, Taiwan designated as "public crimes" all offenses related to OD piracy, obviating the need for a right holder complaint and giving a push to the police undertaking raids directly when piracy was discovered or where it turned up in an investigation. This had an immediate and favorable impact on OD piracy in Taiwan, and bolstered the legitimate markets for copyright materials. Given the vast increase in Internet piracy and its damaging impact on the legitimate market in Taiwan, plus the difficulties right holders have had in the Taiwanese market investigating Internet infringements and the help law enforcement involvement can provide in Internet piracy investigations, Taiwan's criminal provisions should now be further amended to include copyright piracy, especially Internet piracy, as a "public crime."

Adopt Administrative Guidelines Detailing and Implementing the ISP Liability Provisions of the Copyright Law to Provide Effective and Fair Mechanism to Address Internet Infringement: Taiwan's passage of Partial Amendments to the Copyright Law in April 2009 would, it was hoped, usher in a new era of leadership in Taiwan with respect to addressing copyright protection on the Internet. IIPA held out great hope that Taiwan would become a regional leader in addressing Internet piracy, through passage of these amendments and through the TIPO regulations that were to follow. The amendments set forth liability standards for ISPs, specifically clarifying that ISPs lose "safe harbors" under the new ISP Law if they do not have and implement a termination policy for repeat infringers. There was hope in particular that this law, by addressing non-hosted infringements (such as P2P, BitTorrent, blog sites providing links or otherwise indirectly leading people to infringe, etc.)¹⁰ would foster a new era of

¹⁰ As IIPA has reported in the past, IIPA commends the adoption of the P2P bill amending Articles 87 and 93 and adding a new Article 97-1 to the Copyright Law. The amendments would make illegal, and subject to civil and criminal liability, the provision of file sharing services with the intent to facilitate infringement. TIPO also now has the authority to close an infringing P2P service once there is a conviction. This would prevent what occurred with *Kuro*, when it continued to operate illegally after the service was convicted and while on appeal. Subsequent to this important amendment, services like *Kupeer.com* and *Hip2p.com* closed immediately, demonstrating the deterrent impact the new law appears to have had.

cooperation between right holders and ISPs to combat infringement in the online space. However, the November 2009 regulations to implement the new law, while spelling out the notice and counter-notice obligations, did not set out the basic parameters of how ISPs should implement the new obligation set forth in the amended Article 90*quinquies* requiring ISPs to notify its users of its copyright protection policy and to implement it. As a result, this critical part of the law has remained essentially inoperative.

Industry attempted to forge a code of conduct with ISPs in Taiwan, as TIPO requested be done, but lacking sufficient support and leadership from TIPO (which asserts they lack sufficient authority to impose any type of code of conduct upon the ISPs), issuance administrative guidance to the ISP liability provisions of the copyright law is urgently needed, to provide an effective and fair mechanism to address Internet infringement including in the non-hosted environment, providing greater certitude with respect to liability standards for ISPs, and foster needed cooperation with right holders. IIPA continues to believe that TIPO involvement remains, and will continue to remain for some time, critical both to ensure the law as amended is fully implemented, and, to the extent possible, that right holders and ISPs can forge meaningful and workable voluntary arrangements to deal with the online infringement threat.

Amend The Copyright Collective Management Organization Act to Remove Unacceptable Provisions Empowering TIPO to Set a “Joint Royalty Rate” and Appoint a “Single Window” For Collection: On January 12, 2010, the Legislative Yuan adopted amendments to the Copyright Collective Management Organization Act. That legislation unfortunately leaves in place overbroad authority in TIPO to fix royalty rates for the broadcast of music and sound recordings and allows for delays in fixing the rate, thus interfering with the ability of right holders to collect royalties. The amendments as passed establish a four month time limit on TIPO approval of these rates and requires TIPO to reconstitute a special rate setting committee to include right holders as well as users and experts. The Act should be modified to favor a freer market approach, remove delays, allow for the use by right holders of agents to collect royalties, and do away with the possibility of a single licensing window.

The amendments also did not make changes to allow right holders to use agents to collect royalties. One of the major objectives of right holders is to ensure that their collecting societies minimize overhead and other administrative costs while ensuring that commercial uses are licensed appropriately. In the area of public performance, these cost savings are achieved in part through the use of commissioned agents. Collecting societies around the world depend upon the use of agents to reach commercial users who publicly perform recorded music; to educate them on the need to obtain a license; and to issue relevant licenses. In Taiwan, the producers' collecting society used to retain commissioned agents to assist in covering different geographical locations more effectively. However, a 2008 TIPO ruling denied agents the ability to continue this practice. The inability to use agents for licensing purposes has a direct negative impact on right holders' licensing activities. It reduces the amount of remuneration collected and results in a large number of businesses operating without a license, denying right holders remuneration to which they are entitled, and undermining the rule of law. There is no justified reason to prevent right holders from using agents for licensing and royalties collection, and the policy underlying the decision against using commissioned agents is unclear. Any concerns relating to licensing practices can be addressed more effectively by, e.g., establishing an industry code of conduct on public performance licensing. Such agreed sets of rules would ensure that the system is not abused and that users' interests are maintained.

Unfortunately, in addition, the tariff rate approved by TIPO is set far too low. For example, the collecting society for the sound recording industry, ARCO, proposed a tariff rate for public performances of recorded music on the subway and by rail/high-speed rail of NT\$600 (US\$20) per carriage per year, which TIPO cut to NT\$200 (US\$6.50). Similarly, the tariff rate for public performances on highway and tour buses was proposed at NT\$2,000 per bus per year, which TIPO cut to NT\$550 (US\$18). Though the new law (CCMO Act) does not require a collection society to apply for tariff review in advance, it allows users to challenge the tariff proposed by collection. The CCMO Act also entitles users to apply for a tariff review with TIPO. A more reasonable tariff review process is very important to collection societies.

A significant concern of the amendments is that they provide for a single society to collect royalties for right holders of different categories. Article 30 of the Act which grants TIPO the authority to designate a “single licensing window” and set the joint royalty rate, cannot be justified. Experience has shown that licensing markets function effectively where rights holders remain free to find the most efficient way to administer their rights. Freeing the market from any restrictions means that competition between different players in the market is maintained, and market powers can determine the best solutions for both right holders and users. To ensure that these conditions exist in Taiwan, right holders should be allowed to determine for themselves which collecting society to join and entrust their rights, and whether or not to collect jointly with other right holders. Restrictions on the ability of right owners to collectively manage their rights through different collection societies are ineffective and threaten the development of the licensing market. In particular, an obligation on all right holders to collect their performance rights jointly will result in conflicts on both collection and distribution of royalties. Such conflicts would impede the proper functioning of the market and negatively impact on users’ ability to obtain licenses. The majority of countries in the world leave it for rights holders to decide how to license their rights. Experience has shown that in most countries, right holders of the same type prefer to administer their rights under one collective management organization, but again, this freedom to decide whether to join a particular organization, or establish a new one, should be maintained.

Taiwan Should Adopt an Anti-Camcording Provision: A vast number of movies are stolen right off the screen by professional camcorder pirates, who use video cameras to illicitly copy a movie during exhibition in a movie theatre – usually very early in its theatrical release or even prior to the film’s release (e.g., at a promotional screening). These copies are then distributed to pirate “dealers” throughout the world and over the Internet. Illegal camcording destroys entire windows for distribution of audiovisual works, and camcording pirates do not discriminate between domestic or foreign films, and do not care that they are harming the local cinema businesses. Several countries in the region, as well as other previous hotspots of camcording piracy, have enacted statutes outlawing the use (or the attempt to use) an audiovisual recording device in a movie theater to make or transmit an audiovisual work (in whole or part). Taiwan should swiftly amend its law to address this problem which is causing increasing harm throughout the region and locally in Taiwan.

Pass Copyright Term Extension: The Government of Taiwan should follow the international trend in place in over 80 countries to extend the term of copyright protection. The term should be extended to life plus 70 years, and to 95 years from publication for sound recordings and other works of juridical entities. Countries in the OECD region who have extended terms also have increased production in audiovisual materials. Extending term in Taiwan will also ensure that its older works are not discriminated against in countries which have extended term but do not follow the “Rule of the Shorter Term.”