

# COLOMBIA

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2016 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that Colombia remain on the Watch List in 2016.

**Executive Summary:**<sup>1</sup> As of May 2015, all of Colombia's intellectual property rights (IPR) obligations are now overdue for implementation under the U.S.-Colombia Trade Promotion Agreement (TPA), signed into force in 2012. This agreement contains a comprehensive chapter on IPR that will raise the level of copyright law and enforcement obligations in Colombia to the benefit of both Colombian and U.S. creators. But while Colombia's commitments go ignored, the levels of piracy there continue to grow, both in the streets and online. There is no serious effort on the part of Colombian law enforcement to prosecute administrators and owners of websites, blogs, and "hubs" involved in the distribution of illegal files. Nor has Colombia's Congress taken any steps to put forward new legislation since the failure of the "Lleras bills," which would have implemented key copyright protection and enforcement obligations under the TPA, such as procedures for Internet Service Providers (ISPs) to assist in removal of infringing material online. Now that all of the transitional deadlines for Colombia's TPA obligations have passed, IIPA urges the U.S. Government to prioritize its dialogue with Colombia, and encourage this vital trading partner to honor its TPA commitments and demonstrate the will to protect creative sectors by combating the high levels of piracy that persist throughout the country.

#### **PRIORITY ACTIONS REQUESTED IN 2016**

- Implement Colombia's TPA obligations, including:
  - Addressing the scope of liability for ISPs in cases of copyright infringement;
  - Ensuring appropriate liability for circumvention of technological protection measures (TPMs);
  - Establishing exclusive rights for works and for performances and phonograms to bring Colombia's Copyright Law up to date in the digital environment; and
  - Extending the term of protection for works and neighboring rights to bring Colombia into compliance with its TPA obligations.
- Increase the focus of law enforcement officials on needed anti-piracy actions on the streets of Colombia and online.

#### **COPYRIGHT PIRACY IN COLOMBIA**

The overall level of piracy in Colombia has gotten worse in recent years. Physical piracy plagues the "San Andresitos" flea markets, where vendors sell burned CD-Rs and DVD-Rs on the streets, and distribution hubs supply pirate products for the rest of the country. Internet piracy of recorded music occupies the vast majority of the total market, typically taking the form of illegal links to cyberlockers via social networks, forums, blogs and hosted sites. Stream ripping from YouTube and other streaming sites is very common and growing in popularity. The linking/streaming site *pelis24.com* is one notorious infringing site that has set up operations in Colombia. Individuals are utilizing social media to promote and sell infringing copies of movies in Colombia. In addition, two full motion picture camcords were sourced from Colombian theaters in 2015.

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<sup>1</sup>For more details on Colombia's Special 301 history, see previous years' reports at <http://www.iipa.com/countryreports.html>. For the history of Colombia's Special 301 placement, see <http://www.iipa.com/pdf/2016SPEC301HISTORICALCHART.pdf>.



In 2015, Colombia ranked among the top 15 countries in the world in the number of peers discovered in peer-to-peer (P2P) swarms in which illegal copies of console games were being distributed. Colombia is also listed as one of the top 25 countries in the world when it comes to mobile piracy of games.

The recording industry reports that there are several legitimate online music services competing in the Colombian market, and the Colombian music market has grown slightly in recent years. While this is positive news, it is hardly cause for celebration or complacency as the Colombian music market is nowhere near its potential, and licensed services face unfair competition from unlicensed sources of music in an environment where online music piracy is on the rise.

## **COPYRIGHT LAW IN COLOMBIA**

It has been nearly three years since the Government of Colombia made any attempt to pass legislation for implementation of its TPA copyright obligations along two tracks. First, in 2011, Colombia's then-Minister of Interior and Justice Lleras (now Vice President) introduced Bill 241, which specified procedures and conditions under which rights holders could request ISPs to remove or block infringing content. The bill never made it out of the Senate that year, and TPA-compliant ISP provisions have not since been reintroduced. The TPA requires Colombia to establish ISP liability procedures of this kind under TPA Article 16.11.29(b)(ix) and the "ISP side letter." This requirement was due to be adopted in May of 2013. However, since the failure of the first "Lleras Law," no new efforts to implement ISP liability have materialized.

Second, the government prepared a package of remaining provisions addressing the digital environment and bringing Colombia in line with international norms for copyright protection. Those remaining TPA obligations include:

- Civil remedies for protections of TPMs. (While criminal remedies are available under Colombia's penal code, civil remedies are also required, under TPA Articles 16.7.4 and 16.11.15.)
- Exclusive rights for the protection of works and for performances and phonograms in the digital environment, such as temporary copies, and communication to the public including the making available right (required under TPA Articles 16.5.2, 16.5.4, 16.6.2, and 16.6.6(a)).
- Extension of the term of copyright for works for hire to 70 years (required under TPA Articles 16.5.5(b) (with respect to works) and 16.6.7(b) (with respect to performances or phonograms)).

The Congress attempted to adopt these in Law 1520 of 2012. However, the Constitutional Court struck down that law in 2013 for procedural failures during the congressional approval process. In May 2013, the Colombian Government presented Bill 306 of 2013 to the House of Representatives, largely incorporating the substantive provisions of Law 1520 of 2012. Subsequently, Senate Bill 306 of 2013 was archived due to time constraints during the legislative term.

As of May 15, 2015, all of the obligations cited above were overdue.<sup>2</sup> Colombia should take prompt action to revisit proposed amendments to its Copyright Law and bring its laws in line with its TPA obligations and international norms.

## **COPYRIGHT ENFORCEMENT IN COLOMBIA**

The prosecution of piracy is generally a weak point in Colombia's enforcement regime. It is considered a minor offense by Colombian criminal judges and appellate courts. Despite the good efforts of the National Police (DJIN) in recent years conducting investigations and raids, there have been no significant efforts to take *ex officio*

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<sup>2</sup>The U.S.-Colombia TPA went into force on May 15, 2012. ISP liability provisions under Article 16.11.29 were due one year after that date. Civil remedies for TPMs, as provided under Articles 16.7.4 and 16.11.15, were due to be adopted three years after that date. The remaining obligations cited herein were due upon the date of entry into force.

action against widespread piracy. Within the Attorney General's office, there is a National Unit Specialized in Prosecuting Crimes against Intellectual Property Rights and Telecommunications, responsible for investigating and prosecuting Internet piracy and crimes against intellectual property rights. Greater resources should be dedicated to permit proactive investigations by the National Police, and the Attorney General's specialized unit for IP crimes should increase its focus on a broader range of antipiracy cases.

In 2015, a national group of right holders (APDIF Colombia) went before a civil judge in Bogota to seek injunctive relief against the *Pirate Bay*. The outcome is still pending, and as such it is unclear whether backlogs in the court or other legal obstacles will prevent an ultimate decision.