

INDONESIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2016 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Indonesia be moved to the Watch List in 2016, in recognition of positive efforts on the part of the Indonesian Government in 2015. IIPA further recommends that the U.S. Government develop steps for engagement with the Indonesian Government that would result in the termination of the current Generalized System of Preferences (GSP) investigation into Indonesia's intellectual property system and related market access concerns.¹

Executive Summary: Indonesia is an important emerging market for the creative industries, and thus developments there will have reverberations within the creative community for years. IIPA welcomed the adoption of the Copyright Law in October 2014, and the subsequent passage of Regulations No. 14 and 26 of 2015 in July 2015. Following on important new protections in the Copyright Law regarding online infringement and the circumvention of technological protection measures (TPMs), the implementing regulations specify new administrative remedies in response to websites that facilitate infringement in Indonesia, and have already produced positive results. This and other announcements in 2015 indicate a new dedication to anti-piracy efforts within more than just one of Indonesia's Ministries. Yet, despite these many positive developments, the levels of Internet piracy in Indonesia are damagingly high for the creative industries. IIPA is concerned about the possible resuscitation of deleterious aspects of the 2009 Film Law, such as a proposed 60% local screen quota, as well as pre-production content review requirements, a prohibition on dubbing imported films, and other restrictions on the film industry. We ask the U.S. Government to engage the Indonesian Government to maintain focus in the coming year on: effective actions under the law to address primarily infringing websites; the setting of enforcement benchmarks (including judicial reform); expanded cooperation to address the concerns of all of the copyright sectors; and legislative challenges including permanent removal of the requirement to replicate locally all theatrical prints and home video titles released in Indonesia.

PRIORITY ACTIONS REQUESTED IN 2016

Enforcement:

- Ensure continued enforcement of the Copyright Law under Regulations Nos. 14 and 26 of 2015, such that there are effective actions against primarily infringing websites.
- Address with urgency the problem of advertising by high-risk industries on primarily infringing websites.
- Combat the unauthorized trafficking, dissemination, decryption, or receipt of pay-TV (or related technologies).
- Institute comprehensive enforcement reforms establishing resources, benchmarks, and specialized forces, where necessary, for the National Police, the Penyidik Pegawai Negeri Sipil team, the Directorate of Special Crimes (Ditreskrimsus) and "Type A" Police Commands, prosecutors' offices, and National IP Task Force.
- Commit to judicial reforms in Jakarta and other commercial centers, and establish special IP criminal courts.
- Combat illegal photocopying, print piracy, and unauthorized translations, and legitimize use of published materials at schools and universities.

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



Legislation:

- Seek immediate repeal of the broad copyright exception related to Internet uses (Copyright Law Article 43(d)).
- Ensure that copyright infringement is considered a predicate offense under anti-organized crime laws.
- Complete the relaxation of the Negative Investment List (NIL) to allow greater foreign direct investment in all aspects of the motion picture industry and other media sectors.
- Repeal the requirement to replicate locally all theatrical prints and home video titles released in Indonesia.
- Eliminate provisions from the Film Law including local screen quotas, pre-production content review requirements, a prohibition on dubbing imported films, and other restrictions on the film industry.
- Repeal the Broadcasting Law requiring any advertising aimed at the local market to be locally produced.
- Reduce the import tariff rate on films to pre-2010 levels.

THE NATURE OF PIRACY IN INDONESIA

Indonesian creators are suffering losses from high levels of piracy in the country, in a market that is just as difficult for U.S. book, film, music and video game creators. The Indonesian Association of Artists, Singers, Composers and Recording Businessmen (PAPPRI) estimates that, as of 2013, pirated music causes the industry losses of Rp 4 trillion (US\$291 million) annually. The Association of Indonesian Film Producers estimates that losses approach Rp 4.3 billion (US\$317,092) per film.² Local industries report that in a given month, 18 million copies of pirated films, music, and software are circulating in the Indonesian market — mostly online but also appearing in shopping malls and markets.³

Internet Piracy and Mobile Network Piracy Require Continuing Implementation of New Law: The Indonesian Government should be commended for its actions to address Internet piracy in 2015. Nonetheless, cyberlocker and direct download sites with pirated content harm the market in Indonesia, inhibiting the growth of legitimate distribution in creative output of foreign and local rights holders. Money from high-risk advertising from gambling services, malware providers, transactional sex offers, and pornography sites, makes offering pirated content a lucrative and low-risk enterprise. Broadband Internet access in Indonesia is still nascent compared to other emerging markets, but is sharply rising, while mobile penetration has exceeded 100% for several years.⁴

In August 2015, the Indonesian Government commenced administrative enforcement against primarily infringing websites. Several significant infringing sites continue to operate in Indonesia, including the streaming/downloading site *Stafaband* (*stafaband.info*), identified by RIAA in the fall of 2015 as a notorious market for infringing sound recording files. Other significant online markets for infringing content that have been linked to Indonesia (either because they are located there or are extremely popular in the country) include *4shared.com* (86th most accessed site in Indonesia),⁵ which is hosted by Webzilla, and *subscene.com* (54th).⁶ The music industry reports that in 2015, cease and desist notices involving 34,705 infringing links were sent in Indonesia, with a takedown rate of 86.73%.

Book Piracy: Indonesia's market for publications shows great promise for growth, but piracy of published materials makes it one of the worst markets in Asia for publishers. Piracy comes in the form of unauthorized copies of

²See "Indonesian music sales now 95.7 percent piracy," Jakarta Post (Sept 18, 2015), <http://www.thejakartapost.com/news/2015/09/18/indonesian-music-sales-now-957-percent-piracy.html>. See also "Piracy is now a massive issue in Indonesia," Daily Seni, Astro AWANI (Oct. 4, 2015), <http://english.astroawani.com/entertainment-news/piracy-now-massive-issue-indonesia-75356>.

³See "Filmmakers, musicians join forces with police," Jakarta Post (September 19, 2015), <http://www.thejakartapost.com/news/2015/09/19/filmmakers-musicians-join-forces-with-police.html>.

⁴ International Telecommunications Union, *Measuring the Information Society Report* (2015), available at <http://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2015/MISR2015-w5.pdf>.

⁵*4shared.com* is a cyberlocker often used to host downloadable infringing content (including major U.S. motion picture titles) for other dedicated piracy sites. It also has an unfiltered search function.

⁶*Subscene.com* is a subtitle file download site. It hosts subtitle files of major motion pictures, but does not host the video files themselves.

academic textbooks. Industry continued its efforts to disrupt unauthorized photocopying at dozens of retail shops situated near universities. Enforcement activities have expanded beyond Jakarta to target shops in the Yogyakarta area. While many of the shops have stopped accepting requests to photocopy text books, a number of shops have refused to cooperate and continue to engage in unauthorized photocopying activities. University campuses remain central in the fight against unauthorized use of books, textbooks, journals, or other publications. Industry has engaged with directors and deans of campuses to ask them to join the fight against piracy, and these self-help initiatives have led to some improvements in policies for high-level universities, some of which now have policies in place not to allow photocopied books to be brought into the classroom. The Ministries of Education and Culture should be encouraged to do more to help right holders groups better address the problem of unauthorized photocopying. Universities should be encouraged to adopt appropriate use and copyright policies, and to better promote the use of legitimate published materials in schools and universities. Online piracy of dictionaries and journal articles is also becoming a problem in Indonesia.

Signal Theft Remains a Serious Problem in Indonesia: Signal theft/pay-TV piracy remains a problem throughout the Indonesian archipelago. Local industry reports that illegal television channels host up to 100 pirated films at a time.⁷ It is critically important, with oncoming convergence of online networks and advances in digital technology, that the government take an active role in supporting legitimate pay-TV services and take actions against those engaged in the unauthorized trafficking, dissemination, decryption, or receipt of pay-TV (or related devices/technologies).

Retail, Mall, Physical, and Mobile Device Loading Piracy Remain Rampant: Retail piracy in markets, kiosks, and malls remains a problem in the major cities across Indonesia.⁸ USTR named Harco Glodok a Notorious Market in its 2015 out-of-cycle report, for its role as “the retail distribution point for a complex piracy and counterfeiting network.”⁹ While the physical market becomes less significant with digital distribution (and, e.g., theatrical distribution and pay-TV), unauthorized CDs and DVDs pervade the physical market for music, movies (including those pirate movies in or claiming to be in Blu-ray format), and video games. Print piracy in Indonesia threatens the market for legitimate book publishers, and unauthorized photocopying of published materials continues to be a significant problem, particularly around university campuses. Retail pirates also offer to load illegal copyrighted files on to various mobile devices or carriers. In 2013, the Governor of Jakarta issued a decree that malls prohibit the sale of counterfeit and pirated materials on their premises (which was sent to the mayors of five municipalities of Jakarta), but the decree is not being enforced strictly and there are no consequences for non-compliance.

ENFORCEMENT UPDATES

The enforcement environment in Indonesia has improved in 2015 with implementation of the new copyright law and implementing regulations, leading to the shutdown of 25 major piracy sites, and the blocking of 22 pirate music sites in November of 2015. To ensure that there is a significant positive impact on online infringement, and to give legitimate online distributors the opportunity to increase their market share, the government should successfully conclude additional enforcement rounds in 2016. Some industries report a greater need for the government to maintain or establish regular channels of communications with all of the affected industries.

Joint Regulation of the Ministry of Law and Human Rights and the Ministry of Communications and Information Technology (Kominfo): On July 2, 2015, these two ministries passed a Joint Regulations No. 14 and 26 of 2015, implementing provisions of the 2014 Copyright Law that address infringing websites. Under the new

⁷See Daily Seni, “Piracy is now a massive issue in Indonesia,” Astro Awani, (Oct. 4, 2015), <http://english.astroawani.com/entertainment-news/piracy-now-massive-issue-indonesia-75356>.

⁸Major cities including Jakarta, Padang, Java Island, Semarang, Medan, Makassar, Bandung, and Surabaya have hot spots replete with pirate materials.

⁹See USTR, *2015 Out-of-Cycle Review of Notorious Markets* (December 2015), available at <https://ustr.gov/sites/default/files/USTR-2015-Out-of-Cycle-Review-Notorious-Markets-Final.pdf>.

regulation, copyright holders may report complaints electronically and/or by writing to Kominfo, for review by a verification team formed by the Director General of Intellectual Property. The verification team then makes recommendations to the Director General of Informatics Applications for the partial or full shutdown of infringing content. Kominfo maintains a public database of the targeted websites, and in August, took actions to shut down 25 illegal websites offering free movie-download services. Further, in November, based on evidence collected by the music industry and submitted to the government by the local music industry association, the Indonesian authorities blocked 22 infringing sites including *laguhit.com*, *mp3days.com*, *weblagu.com*, *wapkalagu.com* and *iozmusik.com* in Indonesia.

Public-private anti-piracy taskforce, collaboration with the National Police: In September, the National IP Task Force of the Creative Economy Agency, a group of officials from within the agency and several film and music associations, including the Film Producer Association (APROFI), Indonesia's Sound Recording Industry Association (ASIRI) and PAPPRI, announced plans to collaborate with the National Police's detective division on anti-piracy actions. The Task Force will assist with reports filed with the police, monitor actions, and conduct a public awareness campaign on the importance of copyright for the creation of original works. IIPA encourages the Task Force to include other affected industries, such as book publishers, which are damaged by piracy but to date have not received as much attention as other industries.

The Creative Economy Agency had announced plans to launch an online piracy alert system in January 2016. The system is designed to notify users engaged in the download of illegal content with information on the relevant laws and potential sanctions for violations, as well as links to sources for legal downloadable material.¹⁰ However, the system has yet to launch and its prospects are uncertain. The IIPA encourages the government to proceed with its announcement.

Comprehensive Enforcement Reform: The National IP Task Force has taken the first steps toward the kind of multi-faceted enforcement reform process needed to make significant progress against piracy in Indonesia. Under the direction of the Task Force, and with the oversight of the Anti-Corruption Commission, the following steps should be undertaken:

- First, a separate police team for IPR crimes should be established, perhaps as a pilot program in Jakarta, with proper funding and salary levels.
- Second, the IP Office's civil service investigators (PPNS) team budget should be expanded in order to increase the number of copyright piracy raids each year.
- Third, Ditreskrim and "Type A" Police Commands should announce in early 2016 a plan for sustained IPR police investigations with deterrent results.
- Fourth, a select group of IP prosecutors should be established, with a mandate to handle piracy cases.
- Fifth, the National IP Task Force should create a website to track prosecutions, including identifying parties to the cases; legal bases for prosecutions; penalties assessed; and evidence found during raids.¹¹

Judicial Reform: IIPA encourages judicial reform in Indonesia, including:

- The Anti-Corruption Commission should work with the Supreme Court Ethics Committee to appropriately draft guidelines for the court.
- Court decisions should be published to improve transparency.

¹⁰See "Indonesian music sales now 95.7 percent piracy," Jakarta Post (Sept. 18, 2015), <http://www.thejakartapost.com/news/2015/09/18/indonesian-music-sales-now-957-percent-piracy.html>.

¹¹At present, case records are manually written into a log book in each District Court, making it difficult to identify outcomes in particular cases, obtain copies of court decisions, contact public prosecutors requesting updates, and ultimately, leverage publicity and create deterrence in copyright infringement cases.

- Training should ensue on IPR cases, including damages calculations; issuing provisional orders; implementing injunctions; or conducting IPR border seizures. Training should not be limited to Jakarta, but extended to Commercial Courts outside Jakarta, especially in Medan, Semarang, Surabaya, and Makassar.

Despite the 2009 Attorney General letter categorizing IP cases as “Important Cases ... to accelerate case prosecutions,”¹² in the few cases that proceed to a conviction, most result in extremely low and non-deterrent criminal fines. In one case, a Public Prosecutor in Lubuk Sikaping, Padang eventually (after a complaint to the National Public Prosecutor) brought a case against a suspect selling unlicensed music, seeking three years imprisonment. It was only due to the persistence of the industry that this case was brought, and only after significant delay.

COPYRIGHT LAW AND RELATED ISSUES

IIPA congratulates the Indonesian Government for passage of the Law Concerning Copyright (2014), which replaced the prior 2002 law and went into force in October 2014, and for Regulations Nos. 14 and 26 of 2015, which implemented key provisions of the law regarding online and digital forms of infringement, including provisions in line with Indonesia’s international obligations under the WTO TRIPS Agreement, the Berne Convention, and the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).¹³ However, some provisions raise serious concerns, while other provisions require further clarification in implementing regulations. In several cases, critical changes were omitted.

Unauthorized Camcording of Movies. While no express provision was added, the Explanatory Memorandum to the 2014 Copyright Law indicates the unauthorized use of an audiovisual recording device in a movie theater (camcording) can be addressed under the reproduction right. This important recognition by the Indonesian Government of the serious nature of the problem of unauthorized camcording should be followed on with enforcement, including fostering greater cooperation with cinema owners to fully uphold and enforce the Law, targeted enforcement actions, and where warranted, prosecutions against those engaged in this highly damaging activity.¹⁴ MPAA reports that an audio camcord for a major film was traced to a local cinema in Jakarta, demonstrating the important role that this type of enforcement could play to stem online piracy.

Provisions in the New Law Raising Concerns. IIPA raises the following concerns with respect to the Law as enacted:

Internet Exception: The Law provides a broad exception under Article 43(d) for “making and disseminating copyright content through information and communication technology media that is non-commercial and/or non-profit in its effect on the author or related parties, or in which the author has expressed no objection to such making or disseminating.” Both parts of this provision set a terrible precedent and would act to discourage and severely undermine legitimate business models built on the rights of authors, right holders, and related right owners to control the manner and means in which they authorize the making and disseminating of content through information and

¹²Attorney General Letter No. SE-003/A/JA/02/2009, 26 February 2009. The Attorney General has stipulated the following, as examples: 1) for IP infringement where the evidence of pirated CDs is less than 5,000, the cases are directly handled by the District Attorney; 2) for IP infringement where the evidence of pirated CDs is in the range of 5,000 to 10,000, the cases are directly handled by the High Attorney; and 3) for IP infringement where the evidence of pirated CDs is more than 10,000 (bulk production), the cases are directly handled by the Attorney General. Reports are to be submitted directly to the Attorney General. See Ministry of Trade of the Republic of Indonesia (Dr. Mari Pangestu), *Intellectual Property Rights System of Indonesia: Progress and Achievements in 2010*, February 2011, available at <http://www.regulations.gov>, under document ID# USTR-2010-0037-0059.

¹³Indonesia joined the WIPO Copyright Treaty (WCT) on June 5, 1997 (in force March 6, 2002) and the WPPT on February 15, 2005.

¹⁴Preferably, an express provision should have been added, defining the act of using (or attempting to use) an audiovisual recording device in cinemas to camcord, record, or transmit a film, in whole or in part, as a strict liability criminal offense. The Asia Pacific Economic Cooperation (APEC) Ministers and Leaders, including from Indonesia, agreed in 2011 on “Effective Practices for Addressing Unauthorized Camcording,” and the steps recommended therein should also be taken. These include: (1) educating the public about the problems posed to businesses and the consumer by unauthorized camcording; (2) working with the private sector to identify and prevent unauthorized camcording in cinemas; and (3) developing and implementing legal measures to effectively deter unauthorized camcording. *Effective Practices for Addressing Unauthorized Camcording*, 2011/AMM/014app05, 23rd APEC Ministerial Meeting, Hawaii, United States, 11 November 2011.

communication technologies. This provision would collide with Indonesia's international obligations under TRIPS, the Berne Convention, the WCT, and the WPPT. For these reasons, it should be deleted in its entirety.

Criminal Case Structure and Penalties Weakened: Under the new Law, criminal cases are now complaint-based. Right holders view this as an additional hurdle to effective enforcement; criminal cases should be prosecuted on an *ex officio* basis. In addition, the criminal provisions take steps backward from the previous law, in that they no longer provide minimum mandatory statutory criminal penalties. Without a minimum fine, right holders are concerned deterrent sentences will not be forthcoming. Specifically, some of the criminal penalties may be too weak to deter. For example, the maximum fine for TPM circumvention violations is US\$25,000, lower than that for many other offenses (and there is no multiplier if the violation is "done in the form of piracy" as for other offenses). Also, the landlord criminal liability provision is weak, with a maximum fine of only US\$8,260. Finally, Article 95 of the new Law creates a highly unusual provision which appears to mandate "mediation" (*mediasi*) before a piracy case (*pembajakan*) can be prosecuted. The purpose and operation of this provision in practice is highly unclear.

Exceptions and Limitations/Compulsory License: Article 44 of the new Law contains a broad exception exempting a number of different uses for a wide array of purposes, ranging from education to criticism to "security and maintenance of government." On its face, the broad scope of the uses and purposes contained in this exception appears to go well beyond what is permissible under TRIPS, the Berne Convention, WCT, and WPPT, despite a well-intentioned, but ineffective, attempt to narrow the provision through inclusion of part of the Berne three-step test:

"The use, consumption, reproduction, and/or alteration of a work and/or object of related rights, in whole or in part, shall not be deemed a copyright infringement if the source is indicated or listed in detail for the purposes of ... (a) education, research, scientific writing, report preparation, written criticism, or review on an issue without prejudicing the interests of the author or copyright owner..."

Subsection (a)'s reference to the three-step test omits the limitation to "certain special cases" and uses that do "not conflict with a normal exploitation of the work by the copyright owner." The three additional subsections included in this exception do not contain any safeguards required under the three-step test. IIPA thus recommends that the Indonesian Government clarify the application of the full three-step test to each use and purpose contained in this exception through implementing regulations. Furthermore, implementing regulations should provide guidance to help prospective users determine whether their use falls within the appropriate bounds of the three-step test.

In addition, Article 84 of the Law includes a compulsory license provision that has been narrowed from previous drafts IIPA reviewed. Nonetheless, the provision applies to "works" and is not expressly limited to any subject matter. It should be further clarified and narrowed to ensure it is consistent with obligations under TRIPS, the Berne Convention, WCT, and WPPT.

Termination of Transfers: Articles 18, 30 and 122 of the Law provide for a possible "termination" of transfers with respect to literary works (books), performances, and musical works, but only in undefined cases of "true sale agreements." Under these provisions the termination occurs at "25 years," with a two-year transition period for works already past the 25 year mark as of the date of entry into force of the Law; and two-year transition past the 25 years if not yet reached (i.e., 27 years from the agreement). It is highly unclear how these provisions operate; for example, it is assumed that an author needs to invoke the termination in order for it to be effective. This should be made clear. It is also unclear when there is (or is not) a "true sale" agreement (an undefined phrase). In any event, the implementing regulations should ideally ensure that these termination provisions do not apply to foreign works. In the very least, it should be confirmed that the system requires an opt-in by the author.

RMI Violations: In a somewhat perplexing development, the Law provides that rights management information (RMI) violations only occur when affecting moral rights. WCT and WPPT clearly require "adequate and effective legal remedies against ... acts knowing, or with respect to civil remedies having reasonable grounds to

know, that it will induce, enable, facilitate or conceal an infringement of *any right covered by this Treaty [for the Berne Convention]*” (bracketed text in WCT only; emphasis added).

Censorship Provision: Article 50 of the Law contains a censorship provision which, while not necessarily denying copyright protection (as was the case in China and which was found to be in violation of China’s WTO obligations), is extremely open-ended and could be problematic.

Registration, Invalidity, and Recordal Requirement: While registration of copyright remains voluntary in the Law, the substantive examination for voluntary registration will apparently address whether a work is “substantially similar” to another work previously registered as a grounds for refusal. There remains considerable concern about abuse of the voluntary copyright registration process in Indonesia, since apparently, many invalid copyrights get registered, including by IP infringers. It is hoped that through this new provision, the authorities will be able to review and invalidate false applications or registrations. We suggest that in implementing regulations, a more forceful deterrent be introduced, including fines and penalties, against anyone who knowingly files a false application. Also, nothing with respect to the registration or recordal system may create prohibited formalities. Article 83 appears to impose a requirement to record licenses, with lack of recordation meaning a license “shall have no legal effect on third parties.” This would seem to suggest a Berne-prohibited formality, if, for example, lack of recordation was used to deny the exercise of copyright from a particular licensor or licensee. It should be clarified in implementing regulations that in no way will a failure to record transfers and other changes deny copyright protection to the registrant.

Provisional Measures: Under Article 108 of the Law, it appears that preliminary (provisional) injunctions will take too long to obtain. It also appears the Article does not expressly provide for any *ex parte* procedure, which would make it in practice unworkable and would call into question Indonesia’s TRIPS obligations. The application for provisional relief is, according to the Article, not acted upon for “up to five days,” is “informed to both parties,” (i.e., not *ex parte*), with defendants appearing seven days thereafter and a 30-day review process. This would clearly not provide for “expeditious” remedies as required by TRIPS.

Other Needed Legal Reforms:

Strengthening the Organized Crime Statute: While not included in the latest amendments, since it has been established that criminal syndicates behind pirate enterprises which manufacture and distribute Optical Discs are also involved in many other forms of crime such as trafficking in persons, illegal logging, and illegal gambling, copyright infringement should be included as a predicate crime for remedies under its organized crime law, e.g., as grounds for broader criminal investigations, seizure, freezing of assets, etc.

Strengthening the Optical Disc Regulations and Making Them GATT/WTO-Consistent: The Optical Disc Regulation (2005), a Ministry of Trade Regulation on the importation of machines and raw materials, and a Regulation on reporting by registered producers, address Optical Disc piracy. The Regulations need to be updated to: 1) prohibit the unlawful use of or manipulation of SID code, including gouging off SID Codes and/or total non-use of SID codes; 2) provide for centralized licensing of production of pre-recorded or blank Optical Discs; 3) remove the requirement that imported, pre-recorded discs be marked with identification codes, which violates GATT/WTO rules and could have other negative ramifications; 4) adequately ensure stampers and masters are subject to seizure; 5) expressly cover imports and exports of discs, equipment and raw materials; 6) expressly authorize entry for an inspection in case a suspect target refuses entry (and penalties for such refusal); 7) require the government to keep records of “permits” and raids run; 8) permit only those industries directly related to the Optical Disc industry to import optical grade polycarbonate; 9) expressly impose corporate liability on individuals; and 10) provide clear enforcement authority or grounds for routine inspections on manufacturers’ or importers’ premises.

MARKET ACCESS AND RELATED ISSUES

Further Lift Prohibitions and Restrictions on Foreign Company Participation or Investment in Importation, Direct Distribution, Exhibition, or Retailing in Copyright Products in Indonesia: Most media sectors remain on the Negative Investment List (NIL) in Indonesia, preventing direct foreign investment in the Indonesian media industries.¹⁵ For example, sound recording production, film production and distribution remain at a 100% local capital investment level. In 2015, however, the Creative Economy Agency announced that foreign investment restrictions for all sectors of the film industry including film distribution, exhibition and production will be removed and are expected to be introduced in 2016. These are helpful changes that also should be afforded to the radio and television broadcasting service sectors.

IIPA notes the longstanding promise made by the Indonesian Government that it would open investment in media companies to foreigners as soon as the Indonesian market was opened to the direct distribution of any other foreign goods (which occurred many years ago). Broader investment in the distribution structure would benefit local and foreign-based producers alike in creating more legitimate channels over which to distribute films, music, and other copyright materials.

Permanently Remove the Requirement to Locally Replicate All Theatrical Prints and Home Video Titles Released in Indonesia: A 2008 decree requires the local replication of all theatrical prints and home video titles (e.g., DVDs).¹⁶ While the decree has been suspended several times, it is still pending official confirmation of suspension. It is past time to formally and permanently eliminate this requirement, which is opposed by local Indonesian filmmakers as well as by international producers and distributors. The specter of the decree threatens to have serious negative consequences on the long-term viability of Indonesia's film industry, threatens the continued development of local cinemas, and jeopardizes arrangements for local filmmakers to carry out post-production work overseas. If the decree is ever implemented, it would negatively affect foreign motion picture companies' release and distribution schedule for the country, and would raise concerns over existing local facilities' ability to handle the volume and quality output requirements, as well as lab and duplication facility security issues.

Eliminate Problematic Provisions from the Film Law: The 2009 Film Law, which has not yet been implemented, contains provisions that would limit foreign participation in various aspects of the film businesses and as such would be inconsistent with the U.S.-Indonesia Letter Agreement on Market Access for Films and Videos. Notably, the local filmmaking industry opposes the Law. The Law includes a 60% local content (screen) quota for local exhibitors, and a ban on the dubbing of imported films. Other restrictions include: 1) limits on the number of imported films; 2) Articles 10 and 20, which require the maximization of Indonesian resources (potentially including a local print replication requirement); 3) Article 17, which establishes a pre-production content review requirement that obliges filmmakers to notify the government of the title, story content, and production plan (this would be especially burdensome for co-productions); 4) Articles 26-28, under which distributors are required to provide "fair and right" treatment to exhibitors and could be interpreted to mandate provision of prints to theaters on demand (a potential "must supply" obligation); 5) Article 40, restricting foreign entities from engaging in film distribution, exhibition, export, and import businesses; and 6) Article 44, which bans dubbing of imported films.¹⁷ 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. 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, lost revenues to local theaters, and a huge opening to the purveyors of pirated content.

¹⁵The Broadcast Law allows foreign ownership up to a 20% cap, and IIPA understands that the Broadcast Law overrides the Presidential Decree.

¹⁶Ministry of Culture and Tourism (MOCT) *Ministerial Decree No. 55, PM No. 55/PW.204/MKP/2008 on Utilisation of Domestic Film Technical Services in Making and Duplicating Activities of Local Film and Duplication of Imported Film* (2008).

¹⁷Dubbing of imported films into a local language is a commercial decision that should be based on business considerations.

Advertising Restrictions: Indonesia's Broadcasting Law (2002) includes a requirement that any advertising aimed at the local market must be locally produced. IIPA has received reports that this requirements is now being enforced, and although regulations issued in 2007 provided a series of exemptions, recent public hearings organized by Indonesian regulators calling for its implementation have raised concerns about the possible deleterious effects of such a requirement.

Customs Valuation: In 2010, the Indonesian 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 film content as opposed to the physical medium. Not only was this formulation inconsistent with the WTO Customs Valuation Agreement, but U.S. industry believes that the regime which replaced this proposal may also be inconsistent. 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. The Indonesian Government should properly apply the computed methodology, in which the valuation of film imports is made on a per-meter basis against the physical carrier medium, as is the norm in most markets around the world.

GENERALIZED SYSTEM OF PREFERENCES (GSP)

In July 2012, USTR initiated an investigation into the country practices in Indonesia regarding intellectual property rights and market access, and whether Indonesia still qualifies for beneficiary status under the Generalized System of Preferences (GSP). Under the statute, the President of the United States must consider, in making GSP beneficiary determinations, "the extent to which such country is providing adequate and effective protection of intellectual property rights," and "the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets ... of such country." 19 U.S.C. §§ 2462(c)(4) and (5). IIPA recommends that the U.S. Government develop steps for engagement with the Indonesian Government that would result in the termination of the GSP investigation.