

ANNEX – SHORT COUNTRY SUMMARIES

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2017 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

The following countries were identified in the U.S. Trade Representative's 2016 Special 301 Report. In prior years, the IIPA filed separate country reports for some of the countries listed in this Annex. This year, because IIPA members did not have sufficient new information on these countries to justify preparation of a full country report, we instead provide these short country summaries.

For each of these countries, IIPA does not recommend any change in 2017 from the current (2016) Special 301 status. The countries in this Annex are either currently on the U.S. Government's Watch List or Priority Watch List.

Argentina

In its April 2016 Special 301 Report, the U.S. Government noted long-standing deficiencies in IPR protection, and especially the lack of effective enforcement by the national government. The report noted that Argentine police do not take *ex officio* actions, prosecutions can stall, and cases may languish. In addition, it observed that “even when a criminal investigation reaches final judgment, infringers do not receive deterrent sentences.” The U.S. Government cited several open-air markets in Buenos Aires, which persist because city officials “received little assistance from the national government” and hard copy (optical disc) piracy lingers (witnessed by several successful warehouse raids). The U.S. Government said that Internet piracy rates approach 100% in several content areas, citing the example of the Argentine-run notorious market Cuevana, which offers pirated movies and TV shows and has expanded to include a mobile streaming application. In sum, the U.S. Government said that “[c]riminal enforcement is nearly nonexistent.” The U.S. Government cited weak laws, leaving rights holders dependent on trying to persuade cooperative Argentine online providers to agree to take down specific infringing works as well as seeking injunctions in civil cases.

The copyright industries concur that the Government of Argentina has not made copyright protection and enforcement a priority. In fact, the government has in the recent past, publicly lauded as “innovators” individuals who have stolen the content of creators, in violation of the language and spirit of the many international treaties to which Argentina is a member (Berne Convention, the WIPO Internet Treaties, etc.).

Digital piracy—via the Internet and mobile phones—exists in many forms including BitTorrent, downloading, cyberlockers and linking sites; but, the most prevalent for the music industry is stream ripping (including by services such as YouTubeMP3.org). The motion picture industry reports peer-to-peer (P2P) piracy as the most prevalent for motion picture and television piracy. This activity is certainly harming the legitimate vendors, which despite the rampant piracy, are trying to get a toe-hold in the marketplace. For example, there are 14 legal digital music services offering their services, including Spotify, Apple Music, Tidal, Personal Música, Claro Musica and Deezer. In addition, hard copy piracy is still rampant in major public markets and by street vendors (by some estimates hard copy piracy accounts for 60% of the illegal market). The copyright industries report that Internet Service Providers (ISPs) typically ignore takedown notices submitted by rights holders.

Legislation to address digital piracy is currently under consideration. Two bills were submitted to Congress in late 2016 (and subsequently merged into one bill) intended to deal with notice and takedown procedures and ISP liability. In fact, the legislation would make matters significantly worse, not better. The main concerns with the new legislation are: (i) it provides an overly broad safe harbor for a non-exhaustive list of service providers; (ii) the safe harbor provisions do not include any important threshold requirements (i.e., as are included in the U.S. law—the DMCA); (iii) definitions are unclear; and (iv) most troubling, it requires a court order for a service provider to “obtain



knowledge” of infringement and to be required to remove infringing content. The bill, if adopted, would make copyright enforcement unworkable in Argentina, and would leave rights holders without any protection against online piracy.

There are two collective rights issues causing concern for the motion picture industry. First, an Argentine collective management organization (SAGAI) has collected approximately \$40 million in royalties, including royalties for retransmitted U.S. motion picture and television programs, but has refused to pay U.S. performers any cable retransmission royalties collected for U.S. audiovisual works. This is contrary to Argentine law (Section 1 of Decree 1914/2006) mandating payments for audiovisual performers. In 2014, the Screen Actors Guild–American Federation of Television and Radio Artists (SAG-AFTRA), on behalf of its members (performers) filed a claim with SAGAI, but these claims have to date been denied. SAGAI claims, incorrectly, a lack of U.S. reciprocity with regard to Argentine works and performers. Second, another Argentine collective management organization (DAC), representing film and television directors, has rejected U.S. claims by the Directors Guild of America (DGA). They also cite, incorrectly, the lack of U.S. reciprocity. Their denial of payment is contrary to Berne and WIPO Copyright Treaty obligations. In both instances, U.S. retransmission royalties could be paid (via reciprocity) to Argentine performers and directors in accordance with the cable and satellite compulsory licenses under U.S. Copyright Law (sections 111 and 119).

Some of the weakness in Argentina’s copyright enforcement regime is attributable to a lack of resources, but much rests on failings in procedures and laws, and the will of the government to address these problems. There were no reported improvements in enforcement in 2016. The industries report that *ex officio* action by enforcement agencies is non-existent; the police fail to comply with search warrants in a timely manner; and prosecutors fail to take criminal cases forward. All of this makes enforcement very difficult.

There are simple measures that the Government of Argentina can take, for example, against hard copy piracy: market organizers should restrict licenses to vendors selling legitimate products. There are many procedural hurdles in the criminal and civil courts that need to be addressed to help cases move through the system. For example, criminal cases can take up to six years to reach a final verdict. Civil actions, at least for preliminary injunctions, is often the only available recourse, but procedural hurdles persist even for civil actions. Thus, the Criminal Code and Civil Code need reforms, including legislation to clearly criminalize camcording activities.

To address digital piracy, the government should: (i) encourage the development of processes that enhance cooperation between rights holders and online intermediaries; (ii) establish voluntary best practices or codes of conduct to deal with copyright piracy over Internet services; and (i) ensure that the law establishes sufficient liability for known infringements and permits courts’ access to incriminating data regarding online piracy. Overall, the government should, at the highest levels, commit to develop and implement a coordinated antipiracy campaign that addresses hard goods and online infringements as a matter of national priority. The federal, provincial, and city governments should also take appropriate measures to prioritize well-known markets selling pirate and counterfeit merchandise.

Finally, we welcome and encourage the continuation of dialog between the U.S. Government and the Government of Argentina under the Creativity and Innovation Working Group, including on how best to address digital piracy issues in Argentina.

Argentina is currently on the [Priority Watch List](#).

Barbados

In its April 2016 Special 301 Report, the U.S. Government noted that while the legal framework in Barbados largely addresses IPR, the United States continues to have concerns about the illicit interception and retransmission of U.S. cable programming by local cable operators, without adequate compensation for U.S. rights holders. Also the U.S. Government urged the Government of Barbados to adopt modern copyright legislation that protects works in

both physical and online environments and to take steps to prevent signal piracy. A priority for Barbados' legal regime should be the ratification and implementation of the WIPO Internet Treaties (the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)). This is a necessary step to protect copyright and neighboring rights and to create a favorable environment for the digital marketplace in Barbados.

The motion picture industry reported in 2016 that there is ongoing widespread broadcast piracy of both free-to-air and premium services in Barbados. This includes the use of unauthorized decoding equipment and the unauthorized retransmission of signals. These activities are violations of both Barbados Copyright Law and of international norms.

Barbados is currently on the Watch List.

Costa Rica

As detailed in the IIPA submission cover letter, Costa Rica has fallen far short of meeting its obligations under the Dominican Republic–Central America Free Trade Agreement (DR-CAFTA). Further, online piracy continues to harm the legitimate digital media market, with piracy rates of over 50% for music. USTR's April 2016 Special 301 Report urged Costa Rica to "take effective action against any notorious online markets within its jurisdiction that specialize in unlicensed works." The hospitality of Costa Rica's ccTLD registry to domain names for sites dedicated to copyright piracy remains a serious concern.

Costa Rica is currently on the Watch List.

Ecuador

In its April 2016 Special 301 Report, USTR moved Ecuador from the Priority Watch List to the Watch List. The U.S. Government commended the Government of Ecuador for its willingness to engage with the United States. The U.S. Government noted at that time, however, strong outstanding concerns with respect to Ecuador's draft Code of the Social Economy of Knowledge, Creativity, and Innovation ("COESCI"). After undergoing further revisions, a final version of the bill was approved on November 29, 2016. It is unfortunate that, despite clear messages from governments and rights holders, the National Assembly adopted a final text that contains extensive and expansive exceptions and limitations in the Intellectual Property Law, which will significantly weaken copyright protection in Ecuador. Many of these exceptions exceed the Berne and TRIPS compatible three-step test. With the passage of the new Intellectual Property Law (COESCI), there are now 30 exceptions and limitations on rights (up from 11 in the prior law), including a "fair use" clause. The Ecuadorian judicial system is, unlike the United States, without precedential case law (and judges have no experience or training) on the doctrine of fair use, and this will likely further undermine protection.

In addition, COESCI includes several other provisions that will weaken copyright protection. For example, the recording industry is particularly concerned by exceptions on the scope of the public performance right for certain "micro-businesses" (i.e., medium to small businesses which account for 90% of the businesses in the country), and "community radios" (that account for 30% of the total number of stations nationwide). These two changes alone could significantly damage the market for music licensing royalties. The Government of Ecuador should move to correct the COESCI deficiencies and shortcomings, in accordance with its international obligations.

In December 2016, the Ecuadorian National Assembly approved a report that ratified the country's accession to a trade agreement with the European Union (EU), Peru, and Colombia, which came into force January 1, 2017.¹ The trade agreement's copyright provision requires compliance with the Berne Convention, the Rome

¹<http://www.andes.info.ec/en/news/ecuadorian-national-assembly-gives-green-light-trade-agreement-european-union.html>.

Convention, the WCT, and the WPPT. It also provides for a notice and takedown system and potential ISP liability for infringing content posted by users.

Despite this legislative attention to copyright, enforcement of IPR in Ecuador remains very weak. A lack of deterrent sentencing continues to hamper effective enforcement against copyright piracy. Camcording is also a problem in Ecuadorian movie theaters. The motion picture industry reports that 27 illegal camcords of films were sourced from Ecuador in 2016 (through November); this is a doubling of the number from 2015, when 13 illegal camcords were reportedly sourced from Ecuador. Further, the recording industry reports that it is very often impossible to collect public performance royalties for music and sound recordings (including by state-owned broadcasters). The Government of Ecuador should set a good example and promote the fair payment of required license fees, which would support the development of Ecuador's creative industries.

Egypt

Some IIPA members report a sharp increase in piracy over the past year, in part because of the spread of more sophisticated piracy organizations as well as the growth of mobile devices and other technological advances. There are a number of unlicensed satellite channels that broadcast copyrighted works without a license, including U.S. works. In addition, unlawful decryption of encrypted signals remains an endemic problem. Copyright piracy in Egypt is widespread, including unauthorized websites, BitTorrent files and sites, and, indexing websites. Most ISPs do not respond to takedown notices. Camcording is also a problem in Egyptian movie theaters. The motion picture industry reports that from 2011 to 2016, there were 20 illegal camcords of films sourced from Egypt.

Cases drag on for years without resolution, and court procedures require experts to identify infringing material even though there are few qualified experts. Antiquated laws need to be reformed, including the Intellectual Property (Copyright) Law, the Civil and Procedural Code of 1968, and the Evidentiary Code of 1968. The industries report some cooperation with enforcement officials in 2016, including the Public Prosecutors Office, and with Customs authorities.

In its April 2016 Special 301 Report, the U.S. Government had two specific recommendations for improvement: (1) the need to "provide customs officials *ex officio* authority to identify and seize counterfeit and pirated goods at the border" and (2) to "establish and empower the specialized body that is responsible for IPR protection under the Egyptian Constitution of 2014."

One positive step, taken in 2008, was the establishment of an Economic Court to allow IPR cases to be heard by experienced judges (more expert than the general commercial courts). But the noted procedural hurdles and delays have hindered the effectiveness of this court. Another bright spot has been the management of the Copyrights and Artistic Works Investigation Unit of the Ministry of Interior, which undertakes *ex officio* actions against piracy.

IIPA members recommend three priorities in 2016: (i) to allow the establishment and operation of collecting societies in Egypt under the Intellectual Property Law (No. 82 of 2002, as amended); (ii) to create an expeditious content review procedure for clearing book titles for sale in the market, including properly resourcing the Copyright Office in the Ministry of Culture to create a central database of cleared titles to avoid repetition; and (iii) to augment enforcement against signal theft.

Egypt is currently on the [Watch List](#).

Guatemala

The digital music market in Guatemala is comprised of 11 services competing for consumers. From January to October 2016, the digital music market grew steadily compared to the same period in 2015 (approximately 37%).

In contrast, sales of physical products declined by 24% in the same period. The local collective management organization of record producers and artists (AGINPRO) continued its efforts to collect monies, and filed several legal actions (mostly criminal actions) to try to obtain compensation for public performances from businesses performing sound recordings as well as from cable operators. Support for these efforts from some of the enforcement authorities has generally been good.

In its April 2016 Special 301 Report, the U.S. Government noted that, overall, enforcement activities in Guatemala remain limited due to resource constraints and lack of coordination among law enforcement agencies. Additionally, the United States urged the Government of Guatemala to strengthen enforcement, "including criminal prosecution, and administrative and customs border measures." The report highlighted cable signal piracy as a serious problem that "remained largely unaddressed." IIPA members agree with this assessment.

Guatemala is currently on the Watch List.

Jamaica

In its April 2016 Special 301 Report, the U.S. Government noted that, in June 2015, Jamaica had made significant progress by passing amendments to the Copyright Act to fulfill its obligations under the WIPO Internet Treaties and to extend the term of copyright protection. Further it noted Jamaica as one of several Caribbean countries facing the ongoing problem of unlicensed and uncompensated cablecasting and broadcasting of copyrighted music. Jamaica maintains a statutory licensing regime for the retransmission of copyrighted television programming, but has not consistently enforced the payment of statutory royalties to rights holders. One positive step, taken in April 2015, was the public identification by the Broadcasting Commission of Jamaica of nearly 100 illegally transmitted channels, and the issuance of a directive to cable licensees to cease the illegal transmission of 19 of these channels by August 2015. While this 2015 phase of enforcement appears to have been widely complied with, subsequent removals have not been mandated and dozens of additional channels continue to be broadcast illegally by local operators.

In sum, for two years, the Government of Jamaica has discussed legitimizing its broadcast television ecosystem which is plagued by rampant signal theft. That it is willing to undertake reform is a positive step; unfortunately, no further action was taken in 2016. The Government needs to enforce the current law and fully implement its promised reforms.

Jamaica is currently on the Watch List.

Kuwait

In its April 2016 Special 301 Report, the U.S. Government retained Kuwait on the Priority Watch List. It noted that Kuwait had been elevated from the Watch List in November 2014 at the conclusion of an out-of-cycle review (OCR), because Kuwait had failed to introduce a copyright law consistent with international standards and had not resumed effective IP enforcement. It further noted that while some enforcement actions were resumed after the late 2014 OCR announcement, these activities significantly decreased in 2015 and have not resumed. Thus, Kuwait was retained on the Priority Watch List until the government undertakes improvements in copyright and trademark enforcement, and moves forward with long overdue copyright legislation that is consistent with Kuwait's international commitments.

IIPA is aware of no recent criminal cases for copyright infringement, nor any developments leading to the establishment of (long promised) specialized IP courts. The law revision process to bring the law into full compliance with the WTO TRIPS Agreement and enable Kuwait to ratify and implement the WCT and WPPT is no closer to resolution today than it has been for years. Kuwait did join the Berne Convention in 2014 (effective December 2, 2014), but this step alone is not sufficient for TRIPS compliance, let alone meeting international norms. Thus, the

Government of Kuwait's inaction is impeding the development of a legitimate online entertainment market, leaving a gap to be filled by unlicensed services.

Kuwait is currently on the Priority Watch List.

Turkey

Piracy issues continue to plague the Turkish marketplace, undermining economic opportunities for Turkish and American creators alike. Digital piracy—via the Internet, mobile phones, peer-to-peer (P2P), BitTorrent and linking and topsites—permeates the marketplace.

In its April 2016 Special 301 Report, the U.S. Government noted that Turkey was making “little to no progress” on IPR issues and enforcement of existing IPR laws, “particularly by the judiciary, remains extremely weak.” The U.S. Government was concerned further about the lack of progress on promised IPR legislative reforms and recommended several such reforms, including: (1) amending the copyright law “to provide an effective mechanism to address piracy in the digital environment;” (2) full implementation of the WIPO Internet Treaties; (3) that royalty collecting societies be required to have fair and transparent procedures (and, these societies should have fair membership criteria for foreign rights holders as well as good governance structures); and (4) giving the Turkish National Police (TNP) *ex officio* authority (which they do not have and which “impedes police from acting on obvious infringement cases”; and (5) to “ease the process for TNP to obtain search and seizure warrants for suspected IP infringement.”

There are two very specific issues of concern for IIPA members. First, are the discriminatory Turkish policies that prevent the full participation in the management and decision-making of collective management organizations (CMOs) in the music industry. Second, there are judicial decisions that have incorrectly interpreted the right of communication to the public, in violation of the Berne Convention, the WCT, and the WPPT, as well as national law. These interpretations have meant that so-called “indirect” performances (the playing of a radio, a television or other communications in a bar, hotel, train station, or other public place), have been exempted from collections. IIPA urges the Government of Turkey to: (i) remove the membership discrimination within CMOs, and to enable full and fair distribution to all members in collecting societies; and (ii) to correct the misinterpretation of public performances to capture “indirect” performances, as is required by international treaties, the Copyright Law of Turkey, and consistent with international norms. New legislative proposals for copyright reforms, including ISP liability (and the obligations of neutral intermediaries), have been anticipated for the past several years; there was no action taken in 2016. While it is unclear when the legislation will be considered, we look forward to reviewing that legislation to ensure that it is properly tailored to adequately incentivize online platforms and services to cooperate with copyright owners to meaningfully address copyright infringement.

There have, in the past, been prosecutorial delays (or indifference) especially to takedown notices with ISPs or actions to remove links to pirate sites. However, there have been recent signs of improvement with notices now going to the Access Providers' Association instead of to individual ISPs; this has helped to funnel and streamline notices and responses (including takedowns). By one estimate, approximately 70% of takedown notices now are responded to with a removal of material. In addition, prosecutors have had some successes disabling access to some websites.

Book piracy is also rampant in Turkey. Entities involved in the production of pirated books operate on a large scale. After relevant titles are identified prior to the school terms (for private high schools and universities), a legitimate copy is obtained. Then, typically, the operations rent or buy photocopying machines and scanners, and install them in warehouses or on vehicles—ready to produce unauthorized copies to be sold through shops or apartments located near universities and these high schools. Unfortunately, tackling photocopying and digital reproductions are not an enforcement priority. The entire enforcement process is marred by endemic delays—from obtaining a search warrant to conducting a raid, to the assigning of a subject matter expert (and, there are not

enough), to assisting a court in determining whether piracy has occurred, to an actual judgment, which can take anywhere from five to seven years. The lack of personnel and expertise in prosecuting IP infringements thus contributes to the proliferation of photocopying and digital book piracy in the market.

Turkey is currently on the Watch List.

Venezuela

The Venezuelan music market has been barely able to survive for the last decade, due to very difficult market conditions and rampant piracy that has overwhelmed the legal marketplace. The retail sector for music has almost completely disappeared, and only one international record label (Sony Music) remains in the country with a small presence. There are seven digital music platforms operating in a small and fragile digital market. Performance rights collections made by a local producers' and artists' collecting society (AVINPRO) continued to grow in 2016—approximately, 60% in local currency. However, this growth is deceiving since the rate of inflation has exceeded 300%.

In addition, for several years, Venezuela has been a source of many infringing camcords. In 2016, three video camcords and nine audio camcords were sourced from Venezuelan theaters. These copies then migrate online fueling international piracy. The problem of camcording, and enforcement weaknesses in general, were both noted by the U.S. Government in its April 2016 Special 301 report retaining Venezuela on the Priority Watch List.

Venezuela is currently on the Priority Watch List.