



Country: Russia

- The legal reforms adopted by Russian Government in 2013, 2014 and 2017 improved civil procedures and streamlined processes for websites to comply with rightsholders' takedown notices, and allowed Russian courts to disable access to infringing sites. These court orders can now be extended to clone, proxy and mirror websites containing infringing content. Additionally, online search services are required to exclude infringing websites (identified in the court orders) from search results.
- Despite changes to the law in recent years to make it less challenging for rights owners to address online piracy by Russian sites, it remains challenging to get action taken against a site based in Russia that is being accessed by visitors from outside Russia.
- Also, the Russian system of collective management organisations' regulation and accreditation remains unreformed with entities unaccountable to rights holders retaining state accreditation.

Recommendations:

- Political will and deterrent civil and criminal, prosecutions directed at commercial site operators and owners, and reform of the accredited CMOs are needed.
- Law enforcement bodies should invest more resources in education, training and partnering with industry associations which are well placed to share best practices on fighting online infringements and conducting investigations.
- Increase the number and effectiveness of criminal IPR cases focused against digital piracy, including a focus on deterrent criminal actions against organized criminal syndicates.

Country: Switzerland

- Switzerland lacks meaningful remedies and effective enforcement against online copyright infringement, which makes the country an attractive base of operations for some ISPs dedicated to piracy on a global scale.
- Switzerland has not only failed to reform its copyright law and enforcement system to keep in line with that of its EU neighbours (e.g. to match the 70-years term of protection; to limit the private copying exception to copying from a legal source only; to enable third-party injunctions such as e.g. website blocking orders to tackle online infringement) but has also actively resisted the much needed reform of the enforcement system (such as enabling the processing of ISP addresses and personal data for the purpose of civil and criminal copyright litigation and law enforcement). Moreover, Swiss law maintains far reaching limitations on the ability of record companies and performers to monetise their broadcasting and public performance rights and the legislature is considering further roll-back of public performance rights protection which would be incompatible with Switzerland's obligations under the WIPO WPPT treaty.
- There is a serious problem with host and data centres based in Switzerland that provide hosting services to other ISPs, often without checking into the identities or businesses of their customers.

Recommendations:



- Improve the draft Copyright Act amendments to provide efficient tools against all types of piracy, regardless of technical details and including cross-border piracy. This should include a mechanism to block access to copyright infringing websites, the ability of rightsholders to use information such as IP addresses in connection with civil claims, a limitation on the private use of copyrighted works obtained from illegal sources, and effective remedies with regard to intermediaries or ISPs.
- Confirm the positive developments in the draft Copyright Act amendments, for example, the extension of term of protection for producers and performers to 70 years and the additional duties imposed on hosting providers domiciled in Switzerland that pursue business based on, benefiting from or incentivising infringements.
- Require datacentres and ISPs to implement better “know-your-customer” policies and enforce that requirement.
- Affirm that Switzerland’s exceptions to copyright permit single copies for private use only if they derive from a legal (authorized) source.
- Endorse the standing opinion of the Federal Data Protection and Information Commissioner clarifying permissible evidence collection practices under the Data Protection law in criminal online copyright enforcement actions, and extend this to civil enforcement actions.

Country: Ukraine

- Weak digital enforcement in Ukraine has resulted in a huge increase in the number of illegal P2P hosting and website-based Internet piracy sites. Some Internet pirates have purposefully moved their servers and operations to Ukraine in the past few years to take advantage of the weaknesses in the law.
- However, there have also been some positive enforcement actions in recent years. Most notably the closure of major infringing websites and services. For example, in 2016, a transnational enforcement operation, including Ukrainian authorities, arrested the Ukrainian operator of kickasstorrents (kat.cr) in Poland, which was one of the largest torrent sites in the world.
- The Ukrainian government has also successfully completed the process of CMO re-accreditation which represents progress on this long-running issue
- Another positive step (in 2017) was the creation of a specialized IP High Court and, earlier, of the Cyber Police Department within the National Police of Ukraine.
- Ukraine’s law enforcement practice requires rightsholders to provide damage statements in every case filed. Making copyright protected works available online, without authorization, causes rightsholders substantial, immediate and irreparable harm. This is accepted in most EU countries. Demanding that e.g. license prices be made public seriously inhibits rightsholders possibilities to utilize recent improvements introduced in Ukraine to facilitate proper enforcement.
- Ukraine has passed legislation aimed at reforming its system of collective rights management, but has also reduced the scope of copyright protection in the process. This roll-back of protection should be reversed. Moreover, further hasty copyright law reform attempts without comprehensive analysis by the competent ministries should be avoided.



Recommendations:

- Ensure that rightsholders possibility to successfully enforce their rights does not become illusive due to the practice requiring damage statements.
- Coordinate key agencies, including the National Police and the General Prosecutors Office and their respective enforcement practices and investigations.
- Properly resource enforcement authorities, including the specialized Cyber Police Department within the National Police.
- Establish specialized IPR prosecutors within the General Prosecutors Office.

Country: China

- China's online marketplace continues to expand, providing consumers with access to a vast array of legitimate content through an increasing number of licensed digital services.
- However, legitimate content continues to be hampered by a combination of piracy, discriminatory market access policies, and unfulfilled international obligations.
- Despite new legislation being adopted over the past years, such as the establishment of courts specialised in dealing with IPR cases, there is a general low level of IPR protection and lack of enforcement in the country by the authorities. The continual postponement of the new copyright law has left rights holders and judiciary alike in a state of limbo waiting for the new laws to come into force.
- Enforcement in China is mixed. While latest government statistics indicate a large number of arrests related to piracy of audiovisual materials,¹ criminal enforcement efforts remain hampered by thresholds which are high enough to exclude "copyright piracy on a commercial scale".
- Civil litigation efforts against piracy services often only result in fines.
- Cooperation with the National Copyright Administration of China (NCAC) remains good for some sectors, and NCAC is set to try and tackle some serious piracy issues occurring over significant piracy services.²

Recommendations:

- Pass the 3rd copyright law amendment urgently and introduce broadcasting and public performance rights for recorded music.
- Bring more targeted and higher deterrent enforcement actions, with transparency, against unlicensed user-uploaded platforms, stream ripping services, Piracy Devices, unauthorised

¹ For example, in advance of US-China trade talks in April 2019, the government reported the arrest of 251 suspects, the shutting down of 361 websites, the closure of 57 apps, and the seizure of seven servers related to high definition audiovisual piracy. See Orange Wang, China Arrests 251 for Film Piracy on Eve of New Trade Talks with U.S., South China Morning Post, April 29, 2019, at <https://www.scmp.com/news/china/diplomacy/article/3008195/china-arrests-251-film-piracy-eve-new-trade-talks-us>.

² For example, NCAC reported, at the recent conclusion of its annual campaign for 2018, that copyright law enforcement agencies had successfully deleted 1.85 million copyright-infringing links.



camcording, unauthorised broadcasting of movies, and unauthorized movie broadcasts in mini Video on Demand locations.

- Improve effectiveness of administrative enforcement, including by:
 1. imposing enhanced penalties against repeat infringers and infringers that make available large amounts of infringing content
 2. increasing transparency (e.g. notifying rightsholders of the results of administrative actions)
 3. facilitating more efficient transfer of copyright cases between administrative and criminal authorities, making clear that such transfers are required upon “reasonable suspicion” that the criminal thresholds are met
 4. expanding resources and capability at NCAC, local Copyright Administrations, and Cultural Law Enforcement Agencies, commensurate with the scale and complexity of the piracy problem
 5. improving the performance of local cultural enforcement departments
 6. preventing local protectionism to ensure effective action is taken against infringement reported by rightsholders
- Redefine the criminal threshold that is reasonable and feasible in the cases about internet piracy. Currently, in the cases of internet piracy, the criminal; threshold of “500 copies” are interpreted as “500 titles”, which results in the legal practice that not a TV episode but at least a season can be calculated as a title.
- Encourage the Chinese authorities to improve measures made available to enforcement agencies that deal with the unauthorised recording of films in theaters.
- Ensure the E-Commerce Law, which provides platform operators will be responsible when they “know, or ought to know” about infringing activity taking place on their platforms.

Country: India

- Enforcement has improved due to a combination of initiatives taken by both government and industry, however it remains grossly inadequate given the magnitude of the piracy problem.
- Joining the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty was a major step forward, signalling commitment to properly protect and enforce copyright in the digital age.³ This act builds upon a 2016 commitment to improve India’s IPR policy through a seven-point “National Intellectual Property Rights Policy,” aimed at protecting India’s vibrant creative industries, improve the legal regime for domestic and foreign copyright owners, strengthen enforcement (especially online), and modernize the government’s management and services related to IPR.
- However, piracy problems across all sectors undermine the growth of the Indian marketplace for creative materials.
- Also, copyright protection remains significantly limited for the music sector through the compulsory licensing of certain exclusive rights and through the ministerial memorandum of 2016 attempting to extend compulsory licensing and the statutory license system of

³ The Government of India has indicated its view that current laws are fully compliant with the treaties, but MPA notes that the laws may need further reform in key areas, for example, to the current technological protection measures language.



Section 31D of the Copyright Act to interactive online music services. These measures are not compatible with international norms and copyright treaty standards.

- To take action against infringers is no small commitment, criminal action can take years to reach the courts and rights holders are expected to provide significant evidentiary and legal input all the way through. When a case does manage to reach conclusion the penalties for infringers are very low. The slow pace of the court system is a significant barrier to rights holders in enforcing their rights and deters rights holders from addressing piracy in the market.

Recommendations:

- Ensure that site blocking court orders are being fully and properly implemented by all Internet Service Providers nationwide.
- Encourage cooperation with ISPs to combat infringing activities occurring over their services and make platforms more accountable in the online space.
- Repeal the 2016 DIPP s31D memorandum.
- Strengthen the national IP enforcement regime and establish a uniform, state-level cybercrime law and enforcement procedures and a state level, centralized IP crime unit, similar to the enforcement initiatives started by the TIPCU and MCDCU, across the country to ensure proper investigation of all IP crimes.
- Reform the judicial processes to decrease court filing fees and costs to allow electronic filings and evidence, and encourage courts to expedite the final adjudication of cases.
- Having acceded to WCT and WPPT, India should amend the Copyright Act and Criminal Procedure Codes to fully comply with the Internet Treaties by: (i) defining technological protection measures (TPMs), and including civil and criminal penalties; sanctions should apply to both acts of circumvention and trafficking in devices, components and services that circumvent; and (ii) adopting definitions and sanctions for the unauthorized removal of rights management information (RMI).
- Amend Section 52C of the Copyright Act and the Information Technology Act 2000 and the accompanying Guidelines, to ensure that only neutral service providers are eligible for the safe harbor provisions, and to ensure ISPs engage in measures to remove access of users in India to infringing content.
- Re-accredit the reformed CMO for music producers.

Country: Indonesia

- The Indonesian government has instituted a number of positive changes to its copyright law, enforcement system, and investment framework. However, serious concerns remain in terms of the scope of copyright protection, notably: lack of 70 year term of protection for recorded music, concerning rights reversion provisions 25 years after publication, and overbroad exceptions to copyright as well as overbroad ISP liability safe harbours
- In 2017 the government of Indonesia agreed to an IPR work plan as part of the U.S. Trade and Investment Framework Agreement (TIFA) and have taken a number of steps have been



improve Indonesia's IPR protection and market access policies but has not engaged in similar ways with UK or EU governments or rights holders. The TIFA anti-piracy working group launched an Infringing Website List (IWL) program designed to encourage advertisers and marketers not to support pirate websites with advertising revenue, but it has not addressed the problems with Indonesian ISP safe harbours or the above-mentioned copyright protection issues.

- On the plus side, The Indonesian government has shown commitment to enforcement action and has issued administrative orders to block over 480 copyright-infringing websites and those that primarily facilitate infringement.
- Although these Regulations are a good start, they should be clarified with a provision to address "domain hopping" - a common tactic pirates use to evade government-ordered site-blocking.

Recommendations:

- Amend copyright to address the above-mentioned shortcomings in protection.
- Continue enforcement of the Copyright Law and Regulations Nos. 14 and 26 of 2015, including blocking of additional primarily infringing websites.
- Create a dedicated law enforcement-led IP crime unit, trained and equipped to deal with online copyright infringement in all its forms, to ensure that piracy services remain offline and defendant operators are properly dealt with under the law.
- Ensure the Infringing Website List is operating properly to reduce or choke off advertising revenues to infringing websites.
- Monitor the marketplace to ensure that piracy devices and apps are not used for piracy, and if they are, strictly enforce against such activities.
- Ensure that any new OTT regulations and data localisation requirements comport with Indonesia's treaty commitments and international best practices that protect copyright and related rights, do not interfere with the exercise of these rights and promote competition through light-touch regulation on commercial and content review matters.

Country: Taiwan

- The creative industries make considerable contributions to Taiwan's economy. A 2017 Oxford Economics study shows local film and television sectors directly contribute US\$5.9 billion to Taiwan's GDP, support 104,200 jobs, and generate approximately US\$490 million in tax revenues. However, the level of copyright piracy, especially online remains unaddressed and highly damaging to the content producers.
- The government has indicated opposition to proposals for a narrowly tailored remedy to disable access to infringing websites through no-fault orders directed at ISPs to block piracy services. At present, there is no effective remedy against online copyright piracy in Taiwan. Amendments under consideration intended to meet the standards of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) do not effectively address



Taiwan's piracy and copyright protection problems, and would weaken its enforcement framework regarding pirated optical discs and other rights.

Recommendations:

- Ensure that the Criminal Investigation Bureau (CIB), Telecommunication Police Brigade (TPB), and Criminal Investigation Brigade (CIBr) accept and prosecute cases involving Piracy Devices now that the government and the courts have clearly indicated they are illegal in Taiwan under the Copyright Act.
- Increase trainings for judges and prosecutors on specific issues related to online copyright infringement.
- Ensure amendments to the Copyright Act do not reduce criminal liability standards, and do not extend exceptions beyond what is permissible under Taiwan's TRIPS and Berne obligations. Also, it is understood that Taiwan seems to offer the level of protection at least as high as that under the WIPO Internet Treaties, as would be required of it if it were to join the CPTPP, and thus the CPTPP implementation bill should be substantially amended.
- Revise the Communication Security and Surveillance Act to eliminate overly restrictive requirements for investigators to obtain a court order to solicit information, such as IP addresses, from ISPs.

Country: Thailand

- In the past few years, the IPR situation has improved in Thailand, with positive steps including amendments to the Computer Crime Act (CCA) to establish an administrative, no-fault remedy to disable access to infringing content. It is understood that Thailand is currently considering accession to the WIPO Internet Treaties, which is essential and much encouraged.
- Thailand continues to struggle with online piracy. Mostly Thai-language sites continue to dominate the piracy landscape, and the growth of piracy devices and apps continues to harm the legitimate landscape.
- Unauthorized camcording of motion pictures (especially audio feeds) continues to damage the market for audiovisual works.
- Unauthorised and rogue entities continue to operate on the music public performance market.

Recommendations:

- Ensure proper implementation and application of the CCA regarding actions to combat pirate websites.
- Bring back the bill aimed at reform and rationalization of the system of collective rights management.
- Extend the term of protection for recorded music to at least 70 years.
- Successfully address large-scale pirate operators in Thailand; ensure that these services stay offline and the operators are properly dealt with under the law.



- Bring effective enforcement actions against illegal distribution of copyright materials over online social media platforms, including live streaming, against piracy devices and apps which make it impossible for legitimate services to compete.

Country: Vietnam

- Vietnam is host to many of the world's most popular piracy websites, and, while rightsholders have implored Vietnam's government to take action, the government has done very little to address the growing problem.
- Vietnam has not yet joined the WIPO Internet Treaties
- The Government has supported national broadcasters to protect their investment in the World Cup broadcast by disabling access to hundreds of infringing websites, however has not been as amenable to working with foreign rightsholders to take action against similarly harmful websites.
- Foreigners are restricted from investigating, meaning it is incumbent upon the Vietnamese government to fill any gaps, which they are often reluctant to do.

Recommendations:

- Accede to the WIPO Internet Treaties.
- Vietnam must properly implement its revised Criminal Code consistent with its international obligations to ensure that criminal procedures are applicable to piracy sites.
- The government should also address concerns with the Copyright Office of Vietnam (COV), which is grossly understaffed and under resourced.
- Ensure enforcement officials increase the number and the effectiveness of operations focused on online infringement; issue administrative penalties for infringement sufficient; and bring criminal prosecutions against commercial scale piracy.
- Make necessary changes to laws and implementing Resolutions, Decrees and Circulars, including the IP Law and the new Criminal Code, to ensure Vietnam is in full compliance with its, TRIPS, CPTPP, and other international obligations.
- Extend the term of copyright protection for all copyrighted works and sound recordings, in line with the international trend of 70 years after the death of the author or, when term is calculated based on publication, at least 75 years (or 100 years from fixation).
- Reform the system of collective management and accreditation of entities entitled to operate.

Country: Brazil



- Brazil is not a member of either the WIPO Internet Treaties, though it should be encouraged both to join these treaties and to bring its law into full compliance with them.
- While progress has been observed in the enforcement of copyright online in recent years, Brazil maintains an attitude unfavourable to copyright in international for a, and its enforcement effort against online copyright crime remains far short of what is needed to combat this serious problem.
- Most of the successful prosecutions in recent years have taken place in federal courts, where police and prosecutors are more likely to have the training and resources to handle these cases effectively. However, coordinating anti-piracy efforts of state law enforcement institutions would be a force multiplier.
- Artist Resale Right (ARR): Brazil's provision for a resale right contains little instruction on the administration of the right. The seller or auctioneer may be responsible for payment of the royalty but the artist or its representative has no right to information from the seller or auctioneer, and so enforcing payment of ARR is virtually impossible.
- Article 38 of Brazil's copyright law states that royalty for ARR can be 'at least five per cent' of the sale price, indicating that the specific royalty for each transaction should be clarified on implementation, however no clear guidance has yet been given.

Recommendations

- Ratify the WIPO Internet Treaties as soon as possible.
- Provide the necessary training and resources to police, prosecutors and judges, along with an overall national strategy to combat this form of cybercrime.
- Implement better border controls against the import of ISDs, such as the HTV box, and video game counterfeit hardware.
- Encourage law enforcement agencies to discuss and clarify jurisdictional issues regarding digital and online piracy for law enforcement.

Country: Mexico

- The current IPR protection and enforcement regime in Mexico is at least two decades behind international norms, and the problems are further exacerbated by a lack of resources, expertise, and government will power.
- Also, recent Supreme Court judgment provided for a very restrictive interpretation of website blocking orders, which risks making this essential remedy too difficult to obtain.
- This combination of legal and enforcement shortcomings has stifled the growth of the digital marketplace, to the detriment of rightsholders.
- There are inconsistencies in the content and application of the Federal Copyright Law (LFDA). For example, the list of rates established by the law has not been published, which makes it very difficult to collect remuneration for reprography. The scope of application of the exception for the visually impaired is too loosely defined.
- Civil cases are expensive and difficult for rightsholders to undertake, even against clear infringers, because there are no explicit provisions providing compensatory remuneration, making damages hard to prove and collect.
- Proving copyright ownership is also an obstacle in Mexican civil and criminal cases. Even when prosecutors are willing to commence criminal cases, success depends on proving a



“direct economic benefit” by the infringers, instead of showing the harm caused by the infringement.

Recommendations:

- Develop a high-level national anti-piracy plan to adopt a broad strategy against major targets, and to coordinate federal, state and municipal enforcement activities.
- Align the availability of website blocking orders to the global best practice.
- Ensure timely destruction of illegal goods seized in criminal and administrative actions to prevent their reentry into the market.
- Support the Coalition for the Legal Access to Culture (CLAC) initiative to spur active cooperation between Internet services and rightsholders as a starting point to develop clear third party liability rules, proper injunctive relief, and incentives for an efficient notice and takedown system with ISPs.
- Increase prosecutorial training in IPR cases, with a focus on digital enforcement matters.
- Fully implement the WIPO Internet Treaties—in the Copyright Law, and the Industrial Property, Criminal and Criminal Procedure Codes.
- Enact legislation to impose criminal penalties for the unauthorized camcording of films in theaters, and eliminate any required proof of commercial intent.
- Enact legislation to provide clear rules establishing third party liability, including for parties contributing, inducing or promoting infringement of copyright and related rights.

Country: Australia

- The Resale Royalty Right for Visual Artists Act 2009 (Article 14) states that ARR is payable to Australian citizens or residents, or a national of a country ‘prescribed as a reciprocating country’. The Australian government decides the reciprocating countries, and so there is a procedural hurdle before the ARR right can be truly reciprocal.
- For example, UK artists whose works sell in Australia receive no royalty as Australia has not listed the UK as a ‘reciprocating country’, despite the UK having the second largest art market in the world.
- Australia maintains statutory caps on the broadcast fees payable by broadcasters for recorded music and also caps the fees payable by public broadcasters; both measures are restrictive and unjustifiably favour the Australian broadcasting industry over the music sector. These measures should be repealed.

Country: Canada, USA and New Zealand

In all three countries there has been political support for an Artist Resale Rights law however no national laws have yet been adopted:

- Canadian Indigenous artists are a particular demographic that would benefit from ARR where they live in more isolated communities and tend to sell their works through middlemen at low prices. CARFAC, a CMO for visual artists in Canada give the example of Inuit artist, Kenojuak Ashevak, who sold her piece Enchanted Owl in 1960 for \$24. It was later resold for \$58,650. Ashevak got nothing from the resale.



- The USA has the largest art market in the world which means that both American artists and those who would be eligible for ARR royalties elsewhere are deprived of ARR payment when their works resell in the USA.
- In 2007 the New Zealand Government proposed the creation of a resale right law to reflect the growth of the secondary art market. Following an open consultation process, a majority of interested parties favoured a New Zealand ARR, however the law stalled in Parliament and was never adopted. In 2019 the New Zealand government undertook a consultation to review their Copyright Act during which many artist representatives supported the implementation of ARR.

Canada also maintains unjustified restrictions on the fees payable for broadcasting of recorded music, and some uses of music e.g by TV broadcasters do not even qualify for legal protection; these measures should be repealed; in addition, the Canadian ISP liability privileged should be reformed and limited to align with emergent global best practice , e.g. in Europe

The USA continues to deny protection for broadcasting and public performance of recorded music; also, the reform of the DMCA system of ISP liability privileges is much needed to close the value gap present on the US music market.

Finally, New Zealand should ratify the WIPO Internet Treaties, extend the term of protection for recorded music, improve its TPM provisions to meet the WPPT/WCT standards of protection and global norms and should also enable the effective use of website blocking orders.

Country: South Africa

- South Africa has not yet ratified the WIPO Internet Treaties. Furthermore, the country's proposed new IP law makes references to concepts, such as "fair use", which are not clearly defined, and which can be severely detrimental to rightsholders.
- European publishers report a lack of enforcement of IPR protection, too. This results in high online piracy rates.

Country: Pakistan

- Addressing piracy in Pakistan remains challenging. Local cartel involvement in the printing and selling of books has increased as the market is visited less frequently by global rights holders' representatives. This means that local piracy is rippling outwards into other markets across South Asia, South East Asia and the Middle East.
- Instigating criminal action is challenging due to a lack of police resources and expert training, as well as information on planned enforcement activity often being leaked.
- In general there is a lack of recognition of the meaning behind IP, and the value that it could bring to both consumers and to the government through a more widely literate population.