

COLOMBIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2015 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Colombia remain on the Watch List in 2015.

Executive Summary:¹ Colombia is overdue to implement crucial intellectual property rights (IPR) obligations under the U.S.-Colombia Trade Promotion Agreement (TPA). This agreement contains a comprehensive chapter on IPR that will raise the level of copyright law and enforcement obligations in Colombia to the benefit of both Colombian and U.S. creators. But while those commitments go ignored, the levels of piracy in Colombia continue to grow, both in the streets and online. There is no serious effort on the part of Colombian law enforcement to prosecute administrators and owners of websites, blogs and “hubs” involved in the distribution of illegal files. Nor has Colombia’s Congress taken necessary steps to put forward new legislation since the failure of the “Lleras bills,” which would have implemented key copyright protection and enforcement obligations under the TPA, such as procedures for Internet Service Providers (ISPs) to assist in removal of infringing material online. As a vital trading partner of the United States in South America, Colombia should honor its TPA commitments and demonstrate the will to protect creative sectors by combatting the high levels of piracy that persist in throughout the country.

PRIORITY ACTIONS REQUESTED IN 2015

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

COPYRIGHT PIRACY IN COLOMBIA

The overall level of piracy in Colombia has worsened in recent years. Physical piracy plagues the “San Andresitos” flea markets, where vendors sell burned CD-Rs and DVD-Rs on the streets and distribution hubs supply pirate products for the rest of the country. Internet piracy of recorded music is now at 95% of the total market, typically taking the form of illegal links to cyberlockers via social networks, forums, blogs and hosted sites. Stream ripping from YouTube and other streaming sites is very common and growing in popularity.

The recording industry reports that there are fifteen legitimate online music services competing in the Colombian market, and the Colombian music market grew by 13% in 2013. While this is positive news, it is hardly cause for celebration or complacency as the Colombian music market is nowhere near its potential, and licensed

¹For more details on Colombia’s Special 301 history, see previous years’ reports at <http://www.iipa.com/countryreports.html>. For the history of Colombia’s Special 301 placement, see <http://www.iipa.com/pdf/2015SPEC301HISTORICALCHART.pdf>.



services face unfair competition from unlicensed sources of music in an environment where online music piracy is on the rise. The physical market for recorded music decreased by 23% in 2013, a figure that is attributable both to the migration of customers to the Internet as well as the widespread piracy of physical CDs throughout the country, affecting legitimate sales.

COPYRIGHT LAW IN COLOMBIA

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

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

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

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

By May 15, 2015, all of the obligations cited above will be overdue.² Colombia should take prompt action to revisit proposed amendments to its Copyright Law and bring its laws in line with its TPA obligations and international norms.

COPYRIGHT ENFORCEMENT IN COLOMBIA

The prosecution of piracy continues to be a weak point in Colombia's enforcement regime. Piracy is considered a minor offense by Colombian criminal judges and appellate courts. Despite the good efforts of the National Police (DIJIN) in conducting investigations and raids, there have been no significant efforts to take *ex officio* action against widespread piracy. Within the Attorney General's office, there is a National Unit Specialized in Prosecuting Crimes against Intellectual Property Rights and Telecommunications, responsible for investigating and prosecuting Internet piracy and crimes against intellectual property rights. They are currently investigating a significant number of cases involving copyrights violations, mostly related to TV piracy.

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

In a troubling development of 2011 that has yet to be corrected and indicates the low priority that the Colombian Government places on antipiracy efforts, the President failed to ratify the national anti-piracy agreement (“*convenio nacional antipirateria*”) that had been in place for some time, in stark contrast to his predecessors. The agreement is largely symbolic but reflects the priority given by the government to the issue of protection of intellectual property rights.

Greater resources should be dedicated to permit proactive investigations by the National Police, and the Attorney General’s specialized unit for IP crimes should increase its focus on a broader range of antipiracy cases.