

ANNEX: COSTA RICA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2018 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

The Government of Costa Rica has not properly enacted legal reforms or undertaken enforcement actions to respond to the extremely high levels of online piracy in Costa Rica, and has instead moved to weaken the protections available to rights holders. In addition, Costa Rica has fallen far short of meeting its obligations under the Dominican Republic–Central America Free Trade Agreement (DR-CAFTA). Costa Rica was the last DR-CAFTA country to ratify the agreement, which came into force for Costa Rica on January 1, 2009. The agreement granted Costa Rica a 30-month transition period to upgrade its legislation needed to improve online copyright enforcement; however, that transition period expired in July 2011.

One of the key DR-CAFTA obligations that has not been implemented is introducing clear rules on copyright liability, as well as providing meaningful legal incentives for inter-industry cooperation to deal with online infringements. Instead, Costa Rica’s law offers largely unconditional liability exceptions to Internet Service Providers (ISPs) and others, even allowing identified infringing activity to remain on their systems for as long as 45 days (which is the timetable for forwarding infringement notices to ISP subscribers). There are still many instances where the Costa Rican Top Level Domain (ccTLD) registry has provided a safe haven to notorious online enterprises dedicated to copyright infringement. For example, *thepiratebay.cr* domain is still online despite actions against it from ICANN and the U.S. Embassy in Costa Rica. Costa Rica’s failure to deal effectively with its obligations regarding online infringement, more than six years after these came into force under DR-CAFTA, is a serious concern.

In 2009, Costa Rica filed a reservation to the WIPO Performances and Phonograms Treaty (WPPT) (and to the Rome Convention). Reservations to Article 15 of the WPPT are permissible, subject to the limitations set out in the WPPT (e.g., pertaining to the scope of the reservation). But, in this instance, Costa Rica violated its bilateral obligation to the United States (and in the DR-CAFTA) to consult before taking this action. Since 2009, consecutive governments in Costa Rica have been advocates, in international fora, to roll back existing protections for sound recordings used in broadcasting, which include, in particular, the obligation on broadcasters to pay license fees for the use of music in broadcastings. As a result, broadcasters in Costa Rica have stopped making payments for the use of music. In addition, online piracy continues to harm the legitimate digital media market, with very high piracy rates for music. USTR’s April 2017 Special 301 Report urged Costa Rica to “take effective action against any notorious online markets within its jurisdiction that specialize in unlicensed works.”

IIPA last filed a country report on Costa Rica in 2014. At that time, IIPA recommended that Costa Rica be placed on the Priority Watch List. Costa Rica is currently on the Watch List.

