

TAIWAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2018 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Taiwan be placed on the Special 301 Priority Watch List.¹

Executive Summary: The market for creative works in Taiwan continued to worsen in 2017 due to the unremitting growth of digital piracy, which has become so pervasive that legitimate content producers are finding it difficult to compete in the marketplace. This is particularly unfortunate because Taiwan was once a regional leader in establishing policies that fostered and rewarded creativity. Over the last several years, however, Taiwan's government has languished in the face of a growing online piracy threat that is eroding creative investment, whether foreign or homegrown. Notwithstanding some nominally positive steps, the Government of Taiwan has been unwilling to take the measures required to confront Taiwan's critical Internet piracy problem.

It is clear that Taiwan's online piracy situation requires urgent action. The motion picture industry estimates that during October 2017, there were over eleven more page views to top piracy websites as there were visits to the top legitimate platforms in Taiwan, outpacing most of Asia. More and more, Taiwan is becoming an outlier in the region regarding its high levels of online piracy and the government's obvious lack of will to address the problem. Taiwan remains without an effective mechanism to address foreign piracy websites that target consumers in Taiwan. Illicit Streaming Device (ISD) piracy is rapidly increasing. Websites and software applications (apps) that facilitate copyright piracy, including stream ripping, are proliferating. Online piracy of reading materials is booming. In addition to e-book piracy, copyrighted teaching materials are increasingly made widely available without authorization on university digital platforms, and are often printed out to students without permission. This new type of infringement is overtaking the longstanding problem of unauthorized photocopying of textbooks.

Taiwan has thus far failed to take advantage of opportunities to address this increasingly dire situation. The draft amendments to the Copyright Act recently passed by the Executive Yuan and sent to the Legislative Yuan for final consideration fail to provide the statutory tools necessary to effectively address Internet piracy, particularly the problem posed by piracy websites hosted outside of Taiwan. The current draft amendments would also move Taiwan further away from international norms and best practices in key areas and raise questions regarding Taiwan's commitment to its existing international obligations, particularly regarding the draft's many overbroad exceptions and limitations. Taiwan has also been unwilling to include in the amendments many needed reforms, including adding a remedy, similar to those employed in many parts of the world, to combat foreign-hosted websites that facilitate infringement; bringing its term of protection in line with evolving global norms; and correcting unfair practices regarding collective management.

It is also unfortunate that Taiwan's enforcement regime has not met the challenge of its Internet piracy problem. Although industry cooperates well with enforcement authorities, recent legal changes have inhibited investigations into online piracy cases. Furthermore, the judiciary in Taiwan tends to view copyright piracy as a minor offense, resulting in suspended sentences in criminal cases. The lack of adequate and effective protection and enforcement is at odds with the industry's contribution to the economy, as demonstrated by a 2017 Oxford Economics study showing 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. Moreover, Taiwan is a hub of music production for the Chinese speaking world and a major exporter of "C-pop." IIPA urges the Government of Taiwan to reinvestigate its commitment to protect and nurture this important contributor to Taiwan's economy.

¹For more details on Taiwan's Special 301 history, see previous years' reports at <https://iipa.org/reports/reports-by-country/>. For the history of Taiwan's Special 301 placement, see <https://iipa.org/files/uploads/2018/02/2018SPEC301HISTORICALCHART.pdf>.



PRIORITY ACTIONS REQUESTED IN 2018

Enforcement:

- Ensure that the Criminal Investigation Bureau (CIB) focuses on piracy cases and that the Criminal Investigation Brigade (CIBr) is provided with sufficient training, funding, manpower, and equipment to investigate online piracy cases.
- Increase trainings for judges and prosecutors on specific issues related to online copyright infringement.
- Take action against infringement of reading materials at educational institutions, including against providers of on-demand printouts of pirated e-books or teacher resource materials, and against digital infringement occurring on online education platforms.
- Bring and conclude a greater number of ISD piracy cases under Articles 87(7) or 91 of the Copyright Act, as “aiding or abetting” cases under the criminal law, or through other measures and enact legislation to specifically address this growing problem.
- Issue a regulation (or equivalent administrative measure) pursuant to Article 87(7) of the Copyright Act confirming that the provision applies to websites and apps that facilitate infringement of copyright, including stream ripping, and bring cases under that provision.

Legislative:

- Ensure that the proposed Copyright Act amendments:
 - Permit judicial authorities to grant injunctive relieve, including no-fault injunctions, to order Internet Service Providers (ISPs) to disable access to foreign-hosted infringing websites (including amending the Civil Procedure Code and the Intellectual Property Adjudication Act to overcome potential civil procedure restrictions).
 - make Internet piracy a “public crime” to permit *ex officio* action against infringement;
 - clarify ISP liability provisions to ensure: (1) only neutral and passive ISPs that do not encourage infringement are eligible for safe harbors from liability; (2) ISPs adopt and implement meaningful repeat infringer policies; and (3) upon notice of infringement, ISPs are required to take measures that have been demonstrated effective in preventing or restraining infringement, including, among other things, disabling access to the specific location of identified (by the rights holder) infringing content.
 - remove the condition “and to receive benefit therefrom” under Article 87(7) of the Copyright Act to ensure this provision may be more effectively used in copyright infringement cases.
 - extend term of protection in line with the international trend (to 70 years after the death of the author, or in cases in which term is calculated based on publication, to the U.S. term of 95 years, but in any case, no less than 70 years);
 - make unauthorized camcording of motion pictures in theaters a criminal offense;
 - make unauthorized camcording of live musical performances a criminal offense;
 - correct Taiwan Intellectual Property Office (TIPO) collective management practices to allow a fair-market based royalty rate and eliminate delays in fixing the rate;
 - do not reduce criminal liability standards;
 - do not extend exceptions beyond what is permissible under Taiwan’s TRIPS and Berne obligations (i.e., ensure exceptions are narrowly tailored to avoid overbroad interpretations), including by explicitly referencing the three-step test in all applicable exceptions; and
 - provide exclusive rights for public performance and retransmissions of sound recordings.
- 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.

PIRACY AND ENFORCEMENT UPDATES IN TAIWAN

Prior IIPA reports on Taiwan contain detailed discussions of piracy and enforcement issues. This report serves only as an update to those and is not to be considered an exhaustive review of all issues.²

Mounting Piracy, Especially Online: Piracy remained a significant problem in Taiwan in 2017, particularly piracy over the Internet and on mobile devices, which continue to mushroom. Foreign websites, such as *eyny.com*, (the 15th most accessed site in Taiwan according to Alexa), *youtmaker.com* (ranked 118th in Taiwan), and *123kubo.com* (ranked 38th in Taiwan), that provide illegal content remain a significant problem, putting enormous pressure on the ability of legitimate rights holders to survive commercially in Taiwan. Particularly popular are streaming, forum,³ blog, deeplinking, peer-to-peer (P2P), BitTorrent, and cyberlocker sites, which are used to infringe copyright in movies, music, video games, and books and journals. There is still no effective means to combat P2P sites, and sites such as *jivod* and *xfplay*, hosted in China and elsewhere, are popular with local users. “Stream ripping,” where users of legitimate online music platforms use tools, such as an app or a website, to illegally “rip” the streamed content, is a growing problem.⁴ Social media platforms have become a popular way to share pirated content. Apps for ISDs and mobile devices have become a significant platform for disseminating illegal content.

The publishing industry has long reported continued problems with unauthorized photocopying and use of infringing materials at universities. While a “Campus Intellectual Property Protection Action” plan has been incorporated into the Ministry of Education’s (MOE) Campus Inspection program since 2006, the prior inspections merely consisted of self-assessment by universities. In late 2015, MOE included publishing industry representatives in the limited number of campus inspections, which found that while some of the universities inspected had policies in place regarding copyright protection, student and faculty compliance was low. MOE should conduct more campus inspections and continue to allow industry participation to foster greater cooperation among MOE, university administrators, and rights holders.

The problem of unauthorized photocopying of textbooks at universities is diminishing slowly. Unfortunately, this is not due to improved efforts by university administrators to better address the problem, but rather to the rise of an even more pernicious form of piracy consisting of the proliferation of on-demand printouts of pirated digital textbooks and teacher-resource materials. The MOE and university administrators may have also inadvertently contributed to another form of infringement through a “Teaching Excellence Program,” which encourages teachers to make all teaching materials available on a university digital platform freely accessible to students. The publishing industry has reason to believe that in addition to original content generated by the instructors themselves, a significant amount of materials—such as textbook content, PowerPoint slides, exercises, or test banks and the like—on these platforms consist of unauthorized copyrighted content. Unfortunately, without access to these platforms, the full extent of the infringement is unknown. Unauthorized copies of textbooks in digital form proliferate online, through hosted and non-hosted (P2P) platforms,⁵ and there are a number of services that sell unauthorized copies of digital textbooks on optical media.⁶ This growth in piracy has contributed to decreases in textbook sales and revenues

²See, e.g., *IIPA, Taiwan, 2017 Special 301 Report*, (February 9, 2017), available at <https://iipa.org/files/uploads/2017/12/2017SPEC301TAIWAN.pdf>.

³Forums are a serious problem, including *eyny.com* and *ck101.com* (the 14th most accessed site in Taiwan), as just two examples. The flow of infringing music and audiovisual content through these forums is enormous.

⁴The legal framework in Taiwan presents challenges for taking action against persons who facilitate this activity (i.e., the app developer or website operator), but it appears possible that Article 87(7) of the Copyright Act, which provides for aiding and abetting liability, could be used. IIPA urges Taiwan Intellectual Property Office (TIPO) to issue an administrative statement (regulation) clearly specifying that Article 87(7) provides a legal basis for liability against apps or websites that facilitate copyright piracy, including stream-ripping.

⁵For example, *PDFDrive* provides downloads of millions of PDFs, including more than 18 million ebooks; *iss.net* is a web server that hosts pirated content; *taodocs.com* is a file sharing site providing pirated content to read for free and selling downloads; and *taobao* sells pirated textbooks.

⁶For example, *XYZ DBT* sells pirated books, exam materials, as well as videos, music, software, and games.

derived from those sales.⁷ Although a few enforcement actions were taken in 2016 against “cram schools,” much more is needed to meet the growing challenge of book piracy in educational settings.⁸

Illicit Streaming Device (ISD) Piracy: The sale of ISDs (i.e., media boxes, set-top boxes, or other devices and their corresponding apps and services), which facilitate piracy, has increased considerably in Taiwan. ISDs originating mostly from China are available openly throughout Taiwan, including at so-called “3C” shops that sell computers, software, and peripherals, and via online retailers, and facilitate unauthorized streaming of motion pictures and television content through apps that direct users to pirated content. These devices often contain, or can connect to, a hard disk to store the downloaded content, and often have an SD card slot, which helps novices connect to foreign piracy sites. Motion picture industry staff have detected more than 30 different brands of such devices now available in the marketplaces in Taiwan. TIPO has previously indicated that ISD piracy can be addressed through current provisions of the law, but legislation is needed to address this growing problem.⁹ The IP Court issued a decision in 2015 that held an ISD distributor violated Article 87(7) of the Copyright Law by distributing ISDs equipped with specialized software enabling access to unlicensed programs and copying of copyrighted works through P2P networks. In other cases, however, courts have found defendants not guilty for distributing ISDs that did not contain specialized software, even though defendants were providing users with links to the illegal apps that facilitate piracy. In 2017, the motion picture industry initiated a case against an ISD known as “terminator.” That case involved a raid by CIBr and is currently being investigated by the Tainan Prosecutors Office. The local motion picture industry has worked well with enforcement authorities on ISD cases, and IIPA is hopeful enforcement authorities continue to pursue such cases. Taiwan must still do more to eliminate this illegal activity.

Enforcement Hampered by Inadequate Legal Framework and Lack of Will: While the takedown rate remains extremely high for domestically hosted content, Taiwan’s Internet users obtain unauthorized content primarily from websites located overseas. Cooperation with ISPs is ad hoc, and it is generally good for domestically-hosted infringement. One problem, however, is ISPs have been reluctant to effectively enforce against repeat infringers as required by law.

Regarding foreign-hosted infringement, however, Taiwan’s legal framework is inadequate. While injunctive relief is apparently available for domestically-hosted infringement, no remedy is available to address the problem of foreign-based infringing websites, which cause so much harm to the Taiwanese marketplace. Taiwan Government officials and stakeholders have had discussions with major ISPs about the problem and various voluntary approaches have been suggested. Unfortunately, most ISPs believe they cannot take action without an official government communication directing them to deny users access to infringing foreign-based sites. Government involvement and support is, therefore, essential. Taiwan has become an outlier in Asia, as many other countries in the region (and elsewhere in the world) are taking active steps to address the growing online and mobile piracy problem. Though it may be possible that existing remedies under the Copyright Act could be used more effectively to address the significant problem of foreign websites that primarily infringe, courts have failed to adopt a judicial interpretation that allows for disabling access to such sites.

In a positive development, while cooperation with ISPs has not progressed in 2017, rights holders have been working with advertisers on an Infringing Website List (IWL) initiative to eliminate advertising on piracy websites. Although not all have joined, it is hoped that four advertiser groups will participate, including the Taipei Association of Advertising Agencies (TAAA), Digital Marketing Association (DMA), Media Agency Association (MAA), and the Association of Accredited Advertising Agents of Taipei (4A).

⁷Initial estimates for 2017 indicate that textbook sales are down 10% from 2016.

⁸Cram schools are specialized schools that help students meet a specific goal such as passing an English language proficiency test. The publishing industry reports that a criminal case was brought against a cram school in April 2016 and an investigation into another cram school was initiated in the fall. A criminal case against a cram school brought in 2015 was settled in November 2016 for only US\$2,500 even though the market value of the infringing materials was US\$4,000.

⁹Actions could be brought under Articles 87(7) or 91 of the Copyright Act, as aiding or abetting cases under the criminal law, or through other measures. It would also appear that allowing devices to use apps that provide access to infringing content is a violation of the anti-circumvention provisions in Taiwan’s Copyright Act.

Online piracy investigations suffer because the CIB, the specialized unit for online crime investigation, does not focus on intellectual property crimes and the CIBr, the specialized unit on intellectual property crimes, does not have the training, expertise, manpower, equipment, or funding to investigate online piracy. The implementation of the amendments to the Communication Security and Surveillance Act in 2014 has negatively impacted investigations into online infringement because these amendments restrict the information investigators can obtain from an ISP without a court order.¹⁰ Investigators for the local motion picture industry report that the number of enforcement actions continued to decline in 2017 mainly because most of the piracy is due to foreign-hosted web sites, underscoring the need for a remedy to address the problem. The music industry reports that CIBr actions against music piracy have been significantly reduced in part because domestic takedown notice recipients have become more responsive.¹¹ In a positive development, a formal civilian organization, the Association of CIBr Friends, was established in 2016 as a mechanism for stakeholders to support CIBr in its anti-piracy enforcement efforts. IIPA is hopeful that this will enhance coordination between industry and CIBr and lead to improved enforcement against online infringements.

IPR Police Reorganization Into CIBr and Removal of Award Structure Have Resulted in Downgrading of Priority of Copyright Cases: The IPR Police (IPRP), prior to its disbanding on January 1, 2014, was one of the more effective units in Taiwan in combatting copyright piracy. But its reorganization into the CIBr has resulted in decreased human resources, funding, and prioritization of copyright infringement cases. In the transition, a number of good IPRP investigators were “dismissed” because they were not trained as “criminal police,” resulting in a reduction in the number of officers and squadrons from five squadrons down to three.¹² The CIBr also operates under a decreased budget, but is expected to maintain nationwide coverage. At its peak, CIBr was supposed to have 218 officers. IIPA believes the CIBr needs to re-staff to at least 185 officers; keep IPR protection within the division as the most important mission; and assign a commander and supervisors who understand IP and have the know-how to take effective action against physical and Internet/mobile piracy. The budget must be increased to make it sufficient to effectively enforce against copyright infringement, including allocating funds to purchase modern equipment and to provide training for investigators. Benchmarks must be maintained for copyright cases, both in terms of the numbers of cases initiated, as well as reasonable targets for successful convictions. It is important that such goals be subdivided by subject matter, such as: Internet piracy, book piracy,¹³ unauthorized camcording, ISD piracy, signal theft, and limited piratical imports. Finally, TIPO should continue in its advisory role.

Award Budgets Must Be Reinstated: It is critical to reinstate an award budget so that the CIBr officers feel that fighting copyright piracy is an important endeavor and that successful efforts will be rewarded. Unfortunately, the previous budget of NT\$4.5 million (US\$145,005) for awards for physical and Internet cases was entirely removed in 2014 by the Ministry of Economic Affairs (MOEA), responding to pressure from the Legislative Yuan. IIPA recommends the reinstatement of reasonable awards. As we have raised before, it is unfortunate that TIPO’s role will be relegated to a training budget for IPR enforcement officers, and will no longer play an important role in the IPR police force as in the past.

Improvements Needed for Specialized IP Courts: Many reports from copyright and other IP rights holders indicate that civil court procedures in Taiwan remain expensive, inefficient, and time-consuming, and that criminal prosecutions do not result in deterrence. In the criminal context, prosecutors overwhelmingly settle for “suspension of indictment” in digital piracy cases and judges tend to commute prison sentences to a fine or suspend punishment altogether. Regular training schedules should be established for judges and prosecutors on specific issues related to IP infringements, focusing on the technical particularities of Internet and new technology-based copyright infringement cases; aspects of the civil and criminal system that are not operating smoothly for rights holders; and

¹⁰The amended law requires officers to obtain court orders before soliciting further information from Internet Service Providers (ISPs) such as IP address account information. It is estimated that only about 30% of applications for such orders are approved by the courts. In a recent case, the IP Court found a defendant not guilty because the IP address of the defendant was not solicited with a court order in violation of the Act.

¹¹The Criminal Investigation Brigade (CIBr) brought 18 piracy cases in 2016 (2 physical and 16 online), and 10 piracy cases in 2017 (3 physical and 7 online).

¹²Before the reorganization, the IPR Police (IPRP) once had seven squadrons located in seven major cities.

¹³As noted above, on-demand printouts of pirated digital books (particularly higher education and English language teaching materials (ELT)) and journals has become the primary problem faced by the U.S. publishing industry in Taiwan. Publishers have also seen an increase in online piracy, particularly of textbooks and password-protected material, though the unauthorized copies of reading materials are being made available mainly from servers/sites in China.

primers on ways the creative industries have evolved over time and rely on effective and expeditious enforcement in the digital environment.

COPYRIGHT LAW AND RELATED ISSUES

The dominant concern in Taiwan remains the continued lack of an administrative or judicial remedy against foreign piracy services targeting Taiwan users. IIPA strongly urges Taiwan to incorporate such a remedy into its copyright reform process, and to otherwise improve the draft amendments to the Copyright Act in order to address other pressing needs and bring Taiwan's legal framework in line with international norms and best practices.

Concerns Over Continued Lack of Administrative or Judicial Remedies Against Infringements Emanating from Outside Taiwan: It remains the case that many of the online services built on infringing activities of others, and/or fostering or encouraging infringement, are located outside of Taiwan. Nonetheless, a significant amount of infringing activity occurs within Taiwan and should create a nexus for action. Although ISPs in Taiwan have indicated a willingness to address the problem of foreign websites hosting infringing content, the current inadequate legal framework inhibits them from doing so. Around thirty jurisdictions around the world have developed approaches to halt illegal services from being accessed from across their borders. We believe that all organs of the Taiwanese Government (TIPO, the Ministry of Justice/Judicial Yuan, and the Legislative Yuan) should remain steadfast in seeking an appropriate remedy that is narrowly tailored with appropriate processes to halt services that are built on, facilitate, and/or encourage infringement. It is unfortunate that no remedy has been included as part of the copyright review process. Governments in the region, including recently in Indonesia and Singapore, have adopted and/or refined approaches that provide a remedy for ISPs to disable access to sites that are primarily infringing.¹⁴

Draft Digital Communications Act: In October 2017, the Executive Yuan approved the draft Digital Communications Act and forwarded it to the Legislative Yuan where it is pending. This Act is part of a legislative effort to consolidate regulation of telecommunication, Internet, television, and radio platforms; but, unfortunately, the draft does not appear to address the urgent need to authorize disabling access to foreign-hosted infringing sites. Moreover, the draft includes broad ISP safe harbor provisions, which, although the draft indicates that the ISP liability provisions in the Copyright Act supersede those provisions, could have negative implications for copyright enforcement.

Proposed Copyright Amendments Inconsistent with International Norms: In October 2017 the Executive Yuan passed draft amendments to the Copyright Act and forwarded them to the Legislative Yuan for consideration. These draft amendments, unfortunately, do not address many of the criticisms IIPA provided in comments on the previous drafts that TIPO had released for public comment. IIPA understands that the Legislative Yuan is to consider the draft amendments in the first quarter of 2018.

Although the draft retains many of the positive features of Taiwan's modern copyright regime, it remains flawed in fundamental aspects. For example, the draft amendments, if enacted, would not strengthen Taiwan's enforcement framework to address non-hosted infringements, nor would they address the urgent problem of foreign rogue websites directed at Taiwanese users. A new mechanism, such as judicial authority to issue injunctions disabling access to foreign hosted-infringing sites, is needed to deal with rogue websites that are specifically built to induce and encourage infringement and foreign hosted piracy sites that target users in Taiwan.¹⁵ In addition, the draft should clarify Taiwan's ISP liability framework to ensure: (1) only neutral and passive ISPs that do not encourage infringement are eligible for safe harbors from liability; (2) ISPs adopt and implement meaningful repeat infringer policies; and (3) upon notification of infringement, ISPs are required to take measures that have been demonstrated

¹⁴IIPA encourages Taiwan to also look at how Europe has addressed this problem, in particular, through Article 8.3 of the European Information Society Directive, which permits injunctive relief against intermediaries to remove access to infringing content.

¹⁵To the extent necessary, additional legislative changes should be made to overcome potential civil procedure restrictions, such as amending the Civil Procedure Code and Article 22 of the Intellectual Property Case Adjudication Act.

effective in preventing or restraining infringement, including, among other things, disabling access to the specific location of identified (by the rights holder) infringing content.

The draft also fails to address many of Taiwan's other pressing needs, including: 1) deeming Internet piracy a "public crime" (as was so successfully done regarding optical disc piracy); 2) extending the term of protection for copyrighted works, including sound recordings, in line with the international trend (to 70 years after the death of the author, or in cases in which term is calculated based on publication, to the U.S. term of 95 years, but in any case, no less than 70 years); 3) making it a criminal offense to engage in unauthorized camcording of motion pictures in movie theaters;¹⁶ 4) making it a criminal offense to engage in unauthorized camcording of live musical performances;¹⁷ and 5) correcting problematic TIPO practices regarding collective management.¹⁸

In addition to retaining an inadequate term of protection, the draft includes many other provisions that are inconsistent with evolving international norms and may even raise questions regarding Taiwan's compliance with its existing international obligations. For example, the proposed draft includes numerous overbroad exceptions and limitations to protection (including, for example, a broad exception for distance learning, and compulsory licenses for the benefit of educational institutions and compilers of "pedagogical texts"), which would call into question Taiwan's compliance with its TRIPS obligations;¹⁹ reduces criminal liability standards (e.g., requiring participation in collective management organizations as a prerequisite for criminal enforcement and exempting a broad range of uses of copyright works from criminal liability);²⁰ and requires rights holders to file a formal complaint rather than providing *ex officio* authority for law enforcement to take action against criminal acts of infringement. Further, Taiwan should bring its law up to the emerging international standard by providing producers and performers exclusive (rather than remuneration) rights for public performance and retransmissions of sound recordings, as many other countries around the world have done. Exclusive rights are important to enable producers and performers to effectively enforce their rights against infringement, and to negotiate fair market terms for the exploitation of their works.

Taiwan is on the verge of squandering this opportunity to update its copyright laws. Rather than conducting a complicated copyright overhaul that fails to address many of Taiwan's most pressing needs and moves Taiwan further away from international norms and even its current international obligations, Taiwan instead should use this opportunity to improve its copyright regime to meet the challenges of the digital age.²¹

MARKET ACCESS UPDATES AND RELATED ISSUES

In 2017, Taiwan instituted a number of regulations that discriminate against U.S. audiovisual content. On January 8, 2017, NCC issued the Administrative Regulation for the Terrestrial TV Stations Broadcasting Local Productive Programs and the Administrative Regulation for the Satellite TV Channels Broadcasting Local Production

¹⁶It has been reported that actions against camcording as "unauthorized duplication" have been brought and sustained under Article 91 of the current Copyright Law; nevertheless, it is important that Taiwan adopt *sui generis* provisions specifically covering the act of camcording.

¹⁷The music industry reports that infringement through camcording live concerts is increasing.

¹⁸Corrections should include allowing the setting of fair market based rates for collectively managed rights (instead of tariffs determined by TIPO); establishing judicial dispute resolution mechanisms in lieu of the requirement to have Collective Management Organizations (CMOs) tariffs reviewed, revised, and approved by TIPO; and eliminating TIPO's authority for setting a "joint royalty rate" and appointing a "single window" for collection. The 2010 amendments to the Copyright Collective Management Organization Act leave in place overbroad authority with TIPO to fix royalty rates for both the broadcast and performance of music and sound recordings, and allow for delays in fixing the rate, thus interfering with the ability of rights holders to collect royalties. A detailed discussion of the shortcomings of the Act appears in previous IIPA filings.

¹⁹To ensure compliance, the three-step test (i.e., TRIPS Article 13) should be made explicitly applicable to all relevant exceptions and, where it has been removed from existing law, the "reasonable scope" limitation should be retained.

²⁰The draft mandates that rights holders participate in a CMO to benefit from criminal enforcement against some infringing re-broadcasts or public communications, which impinges on the contractual freedom of creators and raises serious questions of TRIPS compliance. Decriminalization of parallel imports should not be overbroad because the government needs appropriate means to address the fact that many piratical imports are labeled as legitimate goods, which undermines Taiwan's legitimate marketplace. And the exemptions from criminal liability set forth in Article 46 are too broad, covering, for example, exploitation of digitized karaoke machines or jukeboxes which contain reproductions of musical works for public performance.

²¹To further its then stated ambition to join the Trans-Pacific Partnership (TPP), in 2016 Taiwan was also considering a second set of amendments to the Copyright Law. Although not released for public comment, IIPA understands the draft included some positive aspects, including criminal penalties for circumvention of Technological Protection Measures (TPMs), making Internet piracy a public crime, and prohibitions against signal theft, which, at minimum, should be incorporated into the current draft.

Programs. These regulations include significant local content requirements that limit the broadcasting of U.S. audiovisual content on terrestrial and satellite television.²² In December 2016, the NCC issued the Television Program Classification Regulations, which require all terrestrial, cable, and satellite channels to display Taiwanese ratings and warning messages regardless of the content being broadcast. This onerous requirement, which entered into force in 2017, is a significant barrier for non-Taiwanese content. In response to objections from international channels, Taiwan has indicated it will consider requests for waivers but such requests are discretionary on a case-by-case basis and are not always granted.

TRAINING AND OUTREACH

Rights holders continue to work with the Taiwan Government, organizing dozens of campus outreach campaigns for students, as well as participating in training seminars organized by TIPO for judges, police, prosecutors, customs officers, and other law enforcement units, and organizing similar seminars themselves. Industry also provides assistance by sharing the results of investigations with law enforcement authorities (this would include rights identification, and investigations into piracy activities sourced from outside Taiwan, e.g., mainland China). Industry also supports raids and anti-piracy operations by providing on-scene examinations of seizures and logistical support to police and prosecutors, including regarding the recent ISD “terminator” case referenced above. The industries provide publicly available data (including the recording industry’s website in Taiwan) with important information about anti-piracy actions and copyright protection campaigns. Industry remains available and interested in providing more of the same in 2018, including through the American Institute in Taiwan (AIT), the European Economic and Trade Office (ECTO), the European Chamber of Commerce Taiwan (ECCT), and the AmCham.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

The deficiencies in the Taiwan’s enforcement framework outlined above—including de-prioritization of copyright piracy cases at CIBr; inadequate civil procedures that do not result in deterrence; and a judicial system that does not take piracy cases seriously resulting in non-deterrent criminal sentences—are inconsistent with Taiwan’s obligations under the TRIPS enforcement provisions, including Articles 41, 42, and 61. Furthermore, as noted above, should Taiwan adopt the proposed draft amendments to the Copyright Act without significant revisions, Taiwan’s copyright laws will run afoul of a number of its TRIPS obligations including, in particular, those under TRIPS Article 13 on exceptions and limitations.

²²The regulations require terrestrial TV stations to broadcast at least 50% of locally produced dramas between 8 pm and 10 pm, local satellite TV channels to broadcast at least 25% of locally produced children’s programs between 5 pm and 7 pm, and at least 25% of locally produced drama, documentaries, and variety programs between 8 pm and 10 pm. Forty percent of these locally produced programs must be new productions.