

# ANNEX: BARBADOS

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2020 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Effective on December 13, 2019, Barbados acceded to the WIPO Internet Treaties—the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). That is a major step forward for Barbados. But, it is just the first of several steps for Barbados to modernize its legal regime because Barbados has not yet incorporated the treaty obligations, or other needed improvements, into the Copyright Law of Barbados (1998), which was last revised in 2006. Significant legal reforms would help to encourage investment, deter piracy, and develop a market for the creative industries. Barbados needs to both modernize its law and undertake fundamental steps to require and enforce the licensing of rights and payment of royalties. The Government of Barbados also needs to demonstrate the political will to address the unauthorized use of music by broadcasting services administered by the state.

Incorporating the Internet Treaty obligations would provide fundamental digital copyright and neighboring rights protections, to create a favorable environment for the digital marketplace in Barbados, and for investment in local authors and creators. However, legal and enforcement shortcomings for the copyright industries in Barbados are not limited to the online environment, but also include the failure of traditional broadcasters (including state-owned broadcasters) to license their uses of copyrighted materials. According to the recording industry, Barbados is one of many Caribbean countries that continues to permit the unlicensed and uncompensated broadcasting, cablecasting, and simulcasting of copyrighted music. Several years ago, the local collective management organization (CMO)—COSCAP—representing composers, producers and performers, commenced litigation against private and state-owned services. However, legal formalities and the lack of government cooperation have made it very difficult to enforce a 2007 Supreme Court ruling in favor of rights holders. In the meantime, radio and TV broadcasters, as well as cable and satellite operators, continue to use large music catalogs without licenses.

In some instances, such as traditional broadcasting and cable transmissions, the current Copyright Law unequivocally provides protection for rights holders. Yet, some broadcasters, including the state-owned Barbados Broadcasting Corporation, refuse to pay broadcast fees (as well as fees for simulcasts). In addition, concert promoters take advantage of an exception for “charities” to the public performance right and do not pay license fees to sound recording producers or performers for the use of recorded music at concerts and other live performances. This is an exception only available by law to registered charities. The Government of Barbados needs to review the operation of the Charities Act to ensure that it is not abused to avoid licenses. If this cannot be corrected by applying current law, then the law should be amended to prohibit the abusive application of what was intended to be a very narrow public performance exception.

In its April 2019 Special 301 Report, the U.S. Government noted the failure of Barbados to accede to the Internet Treaties and to “protect works in both the physical and online environments is a major concern.” The U.S. Government then pointed to three major (longstanding) concerns: (i) the retransmission of U.S. broadcast and cable programming by local cable operators in Barbados (and throughout the Caribbean region) “without the consent of, and without adequately compensating” U.S. rights holders; (ii) the refusal of TV and radio broadcasters and cable and satellite operators to pay for public performances of music—which USTR said should be addressed “without undue delay” by administrative actions; and (iii) unenforced civil litigation judgments by rights holders. The copyright industries concur—these problems have gone unaddressed for years by the Government of Barbados.

The motion picture industry reported in 2019 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. In addition, illegal Internet Protocol TV (IPTV) services and unauthorized streaming services are providing unlicensed access to U.S. broadcast programming services.

IIPA recommends that Barbados remain on the Watch List in 2020.

