

ANNEX: COSTA RICA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2020 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

The Government of Costa Rica needs to take substantial measures to improve its copyright legal and enforcement regime to address the high levels of online piracy in Costa Rica, including piracy that is originating in Costa Rica and is being exported to other countries.

One positive note in 2019 was the withdrawal by Costa Rica of the 2009 reservation to the WIPO Performances and Phonograms Treaty (WPPT). The 2009 reservation to Article 15(1) of the WPPT, while permissible, violated Costa Rica's bilateral obligation to the United States (and the Dominican Republic–Central America Free Trade Agreement (DR-CAFTA)) to consult before taking this action, and had actually lowered the level of copyright protection. The 2019 withdrawal is a welcome step and in line with global norms, and will have a beneficial impact on the music industry and rights holders in Costa Rica. However, a local broadcaster organization (CANARA) has filed a petition with the Ministry of Justice asking the Government of Costa Rica to refile the reservation; the government should show determination to improve the IPR regime in Costa Rica and resist this effort to help the music industry to grow.

One of the keys to improving online enforcement would be to implement rules on secondary copyright liability, as well as providing meaningful legal incentives for inter-industry cooperation to deal with online infringements. Improving enforcement online is an obligation of the DR-CAFTA, which has been in force for Costa Rica since January 1, 2009. Eight years after the expiry of the transition period to put it into force, Costa Rica still has not achieved the aims of the DR-CAFTA to improve copyright protection and enforcement.

Instead, Costa Rica's current law offers largely unconditional liability exceptions to Internet Service Providers (ISPs) and others, even allowing identified infringing activity to remain on their systems for a long time. To address the latter problem, in 2019, the Government of Costa Rica issued a decree to amend the then-existing 45-day period for taking down infringing material (the timetable for forwarding infringement notices to ISP subscribers). The decree replaced the long 45-day period with a requirement to respond to takedown notices and remove infringing content "expeditiously" but without a timetable for doing so. IIPA continues to recommend that the term "expeditiously" be clarified with a defined time period as a best practice, or for example, in an accompanying regulation of the Government of Costa Rica, so that there is a clearer indication of the expected time for removal upon notice. The Government of Costa Rica has placed too much enforcement emphasis on notice and takedown rules. Notice and takedown is not itself an enforcement tool, but rather a small piece of a larger architecture regulating how passive and neutral intermediaries are expected to cooperate and address online piracy. Without secondary liability principles in place, ISPs have few incentives to cooperate other than by responding to notice and takedowns, which places all of the online enforcement burdens on rights holders.

Overall, online piracy of film and television material is rapidly increasing in Costa Rica, through a variety of sources, but mostly by the use of piracy devices and apps or by direct downloading. One type of piracy is via direct-to-home (DTH) boxes from the United States; sales of these boxes are on the rise in Costa Rica. These devices are used to access content, including broadcasts from the United States, as well as basic and premium movie and television channels. A second form of piracy is the rise in sales of illegal Internet Protocol TV (IPTV) boxes—these boxes allow users to access TV via the Internet. A related form of piracy is undertaken by local IPTV services that provide this access for a fee, and are gaining a foothold in Costa Rica. One form of this piracy occurs when a local ISP sells Internet bandwidth legally, but illegally supplements the sale with an IPTV service. A third form of piracy is by local cable operators that access and distribute unauthorized retransmissions of U.S. domestic channels. Alternatively, the cable operators may also be engaged in IPTV piracy when they use their own fiber optic network to establish and distribute an IPTV service that obtains film and television content and transmits it from the cable system headend (i.e., the main distribution point). Several of the American motion picture and television companies report that TV and sports programs



offered by cable or satellite systems have been downlinked and distributed in Costa Rica without any consent or payments.

Thus, while proper Internet Treaty implementation and laws remain at a standstill, broadcasters in Costa Rica have stopped making payments for their use of copyrighted material, and online piracy continues to harm the legitimate digital media market, with very high piracy rates. Additionally, the Costa Rican Top Level Domain (ccTLD) registry continues to provide a safe haven to notorious online enterprises dedicated to copyright infringement. For example, *thepiratebay.cr* domain is still online despite actions against it from the Internet Corporation for Assigned Names and Numbers (ICANN) and the U.S. Embassy in Costa Rica. Other notorious infringing sites are following the trend of using .cr domains as a safe haven (e.g., *kickasstorrents.cr*). Costa Rica's failure to deal effectively with its obligations regarding online infringement, more than eight years after they came into force under DR-CAFTA, is a serious concern.

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. IIPA continues to recommend that Costa Rica be placed on the Priority Watch List in 2020.

