

INDONESIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2023 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Indonesia remain on the Priority Watch List in 2023, due to ongoing serious legislative, market access, and enforcement challenges, including collective management issues. IIPA also requests suspension or withdrawal of Indonesia’s Generalized System of Preferences (GSP) benefits, in whole or in part if, at the conclusion of the GSP investigation, the Government of Indonesia has not made adequate progress remedying the deficiencies identified below.¹

Executive Summary: Indonesia is an important growth market for the creative industries. Several years ago, the Government instituted several positive changes to its copyright law and enforcement system and made progress towards liberalizing Indonesia’s investment framework. More recently, however, the Government shifted, maintaining screen quota and dubbing restrictions for imported films released theatrically, and contemplating changes that would weaken existing copyright protections and upend rights holders’ longstanding commercial arrangements. In addition, rights holders have noticed a slowdown and some uneven results related to disabling access to persistently infringing websites.

Under the revised Copyright Act and Regulation Nos. 14 and 26 of 2015, rights holders have successfully petitioned the Indonesian government to disable access to domains associated with piracy websites. These regulations have led to significant disruptions of piracy in the country, but the Government of Indonesia should improve them by ensuring faster response times to rights holders that apply through the Directorate General of Intellectual Property (DGIP) (as rights holders from the motion picture and television industry and the recording industry report recent significant delays in scheduling “verification meetings”). Those industries also urge the Government of Indonesia to provide a more efficient mechanism to address “domain hopping,” a common tactic pirates use to evade government-ordered site blocking. The Government of Indonesia also should do more to improve the efficiency and capacity of law enforcement in handling digital piracy cases. Highlighting the enforcement shortcomings in Indonesia, criminal groups behind sites like *Indoxxi*, *Ik21*, and *Nonton*, which are notorious for piracy, continue to operate these sites by routinely “hopping” domains or through hundreds of copycat domains.

IIPA recommends that in 2023 the Government of Indonesia build on past progress and increase efforts to combat online piracy by updating aspects of its legal framework to add effective remedies and close existing gaps in protection. The DGIP is considering a partial revision of the Copyright Law focused on exceptions and limitations, film ownership, and collective management issues, and it is unclear whether this revision will enhance or weaken copyright protection. It would be timely to revisit the revision of the Copyright Law given that the Indonesian Parliament ratified the Regional Comprehensive Economic Partnership (RCEP) in August 2022. It is critical that any new exceptions or limitations are confined to the three-step test, consistent with Indonesia’s international obligations, that existing problematic exceptions are narrowed or deleted, and that copyright ownership in films resides with the producer unless there is an agreement to the contrary, in accordance with international norms and best practices. Any revision of the Copyright Law should revisit a number of problematic provisions that create legal and commercial uncertainty for the copyright industries, including by removing the 25-year reversion of rights provision applicable to transfers of rights in musical works and performers’ rights, removing an overbroad exception to the making available right, clarifying rights of making available and communication to the public, setting forth clear principles of secondary copyright liability, and improving protections for technological protection measures (TPMs) and rights management information (RMI). The government should also extend the copyright term of protection for all categories of works to the life of the author plus

¹ For more details on Indonesia’s Special 301 history, see previous years’ reports at <https://iipa.org/reports/reports-by-country/>. For the history of Indonesia’s Special 301 placement, see <https://www.iipa.org/files/uploads/2023/01/2023APPENDIXBSPEC301-1.pdf>.

70 years, and to at least 70 years for sound recordings and all works for which term is calculated from publication, in line with evolving global norms. In addition, Indonesia should provide clear guidelines that camcording and live streaming are illegal and implement measures to reduce instances of these activities.

While the government in 2016 took the very positive step of easing its negative investment list and allowing 100% direct foreign investment in film and sound recording production and film distribution and exhibition, Indonesia has unfortunately regressed to a protectionist path. Moreover, IIPA is concerned that the Government of Indonesia continues to threaten to dismantle the WTO e-commerce moratorium and has already issued regulations requiring importers to file a customs declaration to be made for any import of intangible goods through electronic transmission, a potential pre-cursor to implementing customs duties. Such duties could significantly harm the country's market for creative digital content and related services. Indonesia should reverse course and address the many market access and investment barriers and the discriminatory treatment against U.S. copyright materials that make it difficult for the U.S. copyright industries to do business and compete in the country.

PRIORITY ACTIONS REQUESTED IN 2023

Enforcement:

- Improve enforcement of the Copyright Law and Regulation Nos. 14 and 26 of 2015 to disable access to piracy sites and domains, by speeding processing times from application to verification meetings, and by establishing and implementing an efficient, dynamic, site-specific blocking to cover variants, new primary domains, redirects, mirrors, and proxy domains and sites; and, develop a comprehensive roadmap for addressing online piracy in consultation with both domestic and foreign copyright stakeholders.
- Combat unauthorized camcording piracy by enacting regulations or guidelines confirming that this activity is illegal, followed by implementation of a government program to socialize any amended regulations.
- Monitor the marketplace and take enforcement action to combat the proliferation of piracy devices (PDs) (including illicit streaming devices/set-top boxes) and piracy apps, as well as piracy syndicates operating sites such as *Indoxxi*, *lk21LkK21* (also known as *Dunia21* and *Layarkaca21*), and *Bioskopkeren*.
- Increase the number of enforcement actions against commercial-scale digital piracy services and bring criminal prosecutions through to convictions.

Legislation:

- Amend or clarify Regulation Nos. 14 and 26 of 2015 on site blocking to speed timeframes from application to verification meeting, and to prevent “domain hopping” by providing that variants, new primary domain redirects, mirrors, and proxy sites can be added to the blocking list quickly and easily.
- Any revision of the Copyright Law should include amendments and implementing regulations in line with international commitments and best practices that repeal the articles on reversion of rights as well as broad copyright exceptions; clarify the rights of making available and communication to the public in line with Indonesia's treaty commitments and international best practice; maintain copyright ownership of audiovisual works in the producer who arranged for the work to be made and is best positioned to exploit the work commercially; provide clear guidelines or regulations explaining that live streaming and camcording in cinemas are illegal; extend the copyright protection term of protection; strengthen the protection of RMI and TPMs; and properly define “piracy” to encompass acts of online copyright infringement and to remove the requirement of financial gain.

Market Access:

- Eliminate provisions from the Film Law that serve as barriers to market access and may damage local exhibitors, such as local screen quotas and the prohibition on dubbing imported films.

- Remove barriers created by MR 34/2019, which maintained the 60% local screen quota, dubbing restrictions on imported films released theatrically, and further limited screen time by a single distributor, importer, or producer to 50% and engage international stakeholders in the process.
- Ensure that over-the-top (OTT) regulations comport with Indonesia's international obligations and international best practices that protect copyright and related rights, do not interfere with the exercise of these rights, and promote competition through light-touch regulation on commercial and content review matters, including by not imposing content review or classification requirements on video-on-demand (VOD) providers and avoiding localization requirements.
- Improve regulations related to collective management by ensuring that the management of the LMKN is well represented by music rights holders and eventually eliminate the LMKN, which is an unnecessary extra layer to the collective management organization (CMO) system.
- Join the expanded WTO Information Technology Agreement (ITA) and eliminate the tariff on physical imported films.
- Support an extension of the WTO e-commerce moratorium prohibiting customs duties on electronic transmissions.
- Remove the requirement in the Broadcasting Law that any free-to-air TV and pay-TV advertising aimed at the local market must be locally produced.

THE NATURE OF PIRACY IN INDONESIA

High levels of piracy in Indonesia continue to inflict losses on Indonesian creators, as well as U.S. book, motion picture and television, music, and video game creators. While the Indonesian government has made some efforts to fight online piracy, all actions the government takes are based on applications by or information from the industry. The most significant concern continues to be online piracy, where enforcement action against commercial-scale piracy websites and services has been limited and has failed to noticeably reduce levels of online piracy or provided much needed deterrence. Homegrown piracy sites and “brands” such as *Ik21*, *Nonton*, and *Dunia21* have harmed the creative industry ecosystem for years, and the audiovisual industry is now seeing new phenomena, such as the use of dedicated Internet protocol addresses that evade domain name-based blocks, as well as the rapid growth in popularity of international repertoire such as anime, Korean and Chinese dramas (with Bahasa and English subtitles).² The motion picture and television and recording industries report such sites engage in domain hopping, and even after administrative site-blocking actions initiated by the creative industries and implemented by the government, the sites remain available through alternative domains and copycat sites. These industries assert the government should address this issue of domain hopping by allowing for quick disposition of blocking orders related to the “hopped” domains and copycat sites and domains. Indonesia should also improve its efforts to address other forms of piracy, which continue to negatively impact its marketplace for creative content, including the growing problem of illegal camcording and live-streaming piracy, and piracy devices and apps, which have emerged as a significant means through which pirated motion picture and television content is accessed.

Internet Piracy and Mobile Network Piracy: Increasing access to the Internet in Indonesia, including through mobile devices, means enormous potential exists for the legitimate commercial market for online dissemination of copyright works: services like iTunes, Spotify, JOOX, Netflix, Disney+, Hotstar, iFlix, CatchPlay, Vuie, Genflix, Mola TV, and several other international streaming services now operate in Indonesia. However, infringing cyberlocker, video linking and streaming sites, direct download sites with pirated content, as well as e-commerce marketplaces through which pirated content is sold, continue to harm the market in Indonesia, inhibiting legal distribution channels from reaching their full potential.

Working with the motion picture and music industries (including local associations APROFI (Indonesia Producers Association) and ASIRI (Indonesian Recording Industry Association)), the government has taken effective action by disabling access to thousands of piracy websites and domains since the process began in 2016. At the end

² Sites like these employ gambling advertising and sometimes pornography to lure users.

of 2022, Internet service providers (ISPs) were ordered for the first time to block over 100 stream-ripping sites. Many of the domains that have been the subject of these actions are related to notorious pirate sites like “*Indo Twenty One*” (i.e., *indoxxi*, *indoxx1*), *Nonton*, *Layarkaca* (lk21), or *Dunia21*. In late December 2019, the operators of *Indoxxi* announced plans to cease operations voluntarily, but numerous piracy domains believed to be associated with the same syndicate have continued to proliferate, and copycats abound.³ The rising popularity of anime as well as Korean and Chinese dramas in Indonesia means sites like *anoboy*, *gogoanime*, and *9anime* have proliferated, while global top 25 piracy sites like *Soap2Day* continue to operate. The self-help actions of industry, with cooperation from the Indonesian government, have resulted in reductions in visits to the blocked audiovisual and music piracy sites, although most well-known piracy sites employ domain hopping to circumvent the results of site-blocking efforts. Infringing music apps have also become a problem. For example, two app developers, *xyzmedia* and *9media*, created hundreds of mobile apps available on the Android market that offer infringing music streaming services to mobile users. The government should streamline the process for rights holders to ensure access to infringing sites is disabled and to deal efficiently with the problem of domain hopping. For example, two app developers, *xyzmedia* and *9media*, created hundreds of mobile apps available on the Android market that offer infringing music streaming services to mobile users. The government should streamline the process for rights holders to ensure access to infringing sites is disabled and to deal efficiently with the problem of domain hopping.

Telegram is an instant messaging service based in Dubai, but with particularly significant reach in Indonesia. *Telegram* is available on Windows, iOS, Android, and Linux and allows users to create channels and groups, upload and share content, and run livestreams. *Telegram* has an active userbase of around 550 million accounts. One of its growth drivers is the presence of infringing copyrighted content on the platform, core features that support the sharing and discoverability of unauthorized files, protect anonymity of uploaders, and make consumption easy and convenient, supercharging the circulation of infringing content, whether deliberate or accidental.⁴ *Telegram*'s Terms of Service make no mention of copyrighted content. Enforcement actions have been brought successfully in India to require *Telegram* to disclose information on alleged infringers, and in Israel and Italy to require *Telegram* to block access to infringing content.

The piracy app *LokLok* is popular in Indonesia and a major problem for the audiovisual industry. This website has grown significantly in popularity in Southeast Asia in recent years, in particular in Indonesia, the Philippines, and Malaysia. It appears the app was developed in China by local operators, who evade local detection and enforcement action by implementing a China geoblock. According to SimilarWeb, *loklok.com* and *loklok.tv* together attracted more than 3 million monthly visits by more than 800,000 unique visitors in August 2022. Even though it has been taken down six times in the Google Play Store, listings have quickly reemerged, and three *LokLok* app listings are still available there that have been downloaded more than 2 million times.

Music Piracy: Online copyright piracy in Indonesia, like elsewhere, keeps evolving. Piracy is tenacious and efforts to thwart it must remain powerful and nimble. In recent years, stream ripping emerged as the major piracy threat to the recorded music industry, and both international and domestic language stream-ripping sites have provided Internet users with the bulk of illegal downloads. The International Federation of the Phonographic Industry's (IFPI) Music Consumer Study for 2022 (MCS) found that 80% of those interviewed (a nationally representative sample of 2,000 16- to 44-year-olds in Indonesia) had pirated music in the previous month. This was the second highest piracy rate in the MCS and significantly above the global piracy average of 30%. Three-quarters (74%) in Indonesia said that they regularly used stream ripping to illegally download music.

³ *Indo 21* and related brands remain popular for piracy in Bahasa language throughout Indonesia and Malaysia. Notwithstanding *Indoxxi*'s announcement that it is shutting down, the *Indoxxi* group has continued to operate via a network of websites, which are constantly being redirected, including to nameless Internet protocol addresses, altered, and modified to evade tracking and extensive site-blocking efforts. It is estimated that the “*indo 21*” brand comprises approximately 45-50 domains, and hundreds of other domains use related piracy “brands” to attract traffic, such as *nonton* and *dunia21*. These sites use a U.S.-based reverse proxy service to mask the location of the websites' servers. Currently, the most popular of the *Indo 21* domains is *layarkacaxxi.org*, with 1,029,382 visits in August 2020. At last available update, the site was hosted by India-based Host Palace. Many domains associated with this syndicate have been blocked in Indonesia, Malaysia, and Australia.

⁴ In 2020, the European Commission placed *Telegram* on its Counterfeit and Piracy Watch List.

The most popular stream-ripping site in Indonesia was *Y2mate.com*; according to the MCS, 25.7% of respondents said they had used the site in the previous month to download music. Data from SimilarWeb supports the popularity of this site: there were more than 86.7 million visits to *Y2Mate* from Indonesia alone in the fourth quarter of 2022. The site is the 35th most popular website of any kind in Indonesia. IFPI's survey also found that 19.9% used stream-ripping site *SaveFrom*. Again, SimilarWeb data supports these findings, recording 59.2 million visits to *YTMP3* from Indonesia in the fourth quarter of 2022. Stream-ripping sites aimed at an Indonesian audience and focused on domestic music content were also popular. *Downloadlagu321.net* had 9.4 million visits from Indonesia in the fourth quarter of 2022 and *metrolagu.site* had 13.3 million visits over the same period; 93% of all visits to *downloadlagu321* and 63% of visits to *metrolagu* were from Indonesia. Stream-ripping apps are also popular in Indonesia, as are apps that impermissibly provide access to music content from streaming searches, such as YouTube.

Indonesia also has a major issue with a number of well-known cyberlockers. IFPI's MCS found that 49% of respondents used cyberlockers to download pirated music. Cyberlocker *Zippyshare.com* remained the single most popular cyberlocker in Indonesia, visited by 18.5% of the MCS sample. SimilarWeb recorded 72.7 million visits to the site from Indonesia in the fourth quarter of 2022. More people visited the site from Indonesia than from any other country in the world.

Unauthorized Camcording: Illicit camcording continues to pose a threat in Indonesia. Because of the widespread closure of theaters in 2020, 2021, and into 2022 due to the COVID-19 pandemic, illicit camcord data for the region is anomalous. However, illegal camcording and live-streaming piracy remains a big concern as theaters have re-opened. The government should issue clear guidelines and regulations on illegal camcording and live-streaming piracy, including expressly outlawing these activities and prioritizing a decrease in these illegal acts. Further, the government should seek to strengthen enforcement against illicit camcording by: (i) fostering greater cooperation with cinema owners to fully uphold and enforce the Law; (ii) taking and supporting targeted enforcement actions; and (iii) where warranted, proceeding with prosecutions against those engaged in this damaging activity.⁵

Piracy Devices (PDs) and Apps: Streaming devices that run with proprietary infringing apps that enable access to live channels and VOD content are readily available in Indonesia via online marketplaces, including popular illicit streaming devices (ISDs) *UnblockTech*, *EVPAD*, *SVI Cloud* (all manufactured in China), and *SYBER TV*. This content may be pre-loaded prior to shipment, loaded by vendors upon import and prior to sale as an "after sale" service, or loaded by the users themselves. Sellers of PDs often do not install the infringing apps and thus claim that the manufacture or sale of the devices themselves is not illegal. However, in a 2021 survey conducted under the auspices of the Asia-Pacific Economic Cooperation (APEC) Intellectual Property Enforcement Group, the Indonesian government expressed that Indonesian law may indeed prohibit the boxes.⁶ IIPA encourages the Indonesian government to take steps to crack down on piracy apps and on device manufacturers or resellers who pre-load the devices with apps that facilitate infringement, as well as to take action against key distribution points for devices that are being used illegally. As mentioned above, the *loklok* piracy app remains a significant problem for the audiovisual industry.

⁵ Preferably, an express provision would have been added to the Explanatory Memorandum to the 2014 Copyright Law, defining the act of using (or attempting to use) an audiovisual recording device in cinemas to camcord, record, or transmit a film, in whole or in part, as a strict liability criminal offense. The Asia Pacific Economic Cooperation (APEC) Ministers and Leaders, including from Indonesia, agreed in 2011 on "Effective Practices for Addressing Unauthorized Camcording," and the steps recommended therein should also be taken. These include: (1) educating the public about the problems posed to businesses and the consumer by unauthorized camcording; (2) working with the private sector to identify and prevent unauthorized camcording in cinemas; and (3) developing and implementing legal measures to effectively deter unauthorized camcording. Effective Practices for Addressing Unauthorized Camcording, 2011/AMM/014app05, 23rd APEC Ministerial Meeting, Hawaii, United States, November 11, 2011.

⁶ In an Asia Pacific Economic Cooperation (APEC) initiative in 2021, Indonesia participated in an "Intellectual Property Experts Group" (IPEG) survey of laws and activities designed to obtain information about the domestic treatment of ISDs in APEC economies. The government indicated in that survey that it believes "the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs." See Report on Results of Survey Questionnaire on Domestic Treatment of Illicit Streaming Devices by APEC Economies Intellectual Property Experts Group, March 2021, available at <https://www.apec.org/publications/2021/03/apec-report-on-domestic-treatment-of-isds> (noting that ISDs are a "serious problem" and noting relevant laws, including "Joint Ministerial Regulations Between Minister of Law and Human Rights and Minister of Communication and Informatics Number 14 Year 2015, Number 26 Year 2015 Regarding Implementing Closure of Content and /or Access Rights to Use Violations of Copyright and/or Related Rights in the Electronic System.").

ENFORCEMENT UPDATES

Although the Indonesian government has taken strides to combat online infringement, notably through implementation of regulations for disabling access to piracy websites, more should be done to address this significant problem. The Indonesian video piracy landscape, for instance, is dominated by three syndicates: *Indoxxi*, *Lk21* (also known as *Dunia21* and *Layarkaca21*), and *Bioskopkeren*. The government needs to increase the priority afforded intellectual property (IP) enforcement with specific focus on these three crime groups. Levels of online piracy are unlikely to decrease unless the government takes meaningful enforcement action against the owners/operators behind these syndicates.

Indonesia should increase the capacity of its enforcement officials, who generally lack familiarity in investigating and handling digital forensic evidence and do not understand the ease with which pirates are able to use anonymizing software and infrastructure to evade detection. With rare exceptions, online piracy operators rarely receive deterrent-level penalties.⁷ The government should criminally investigate operators of major online piracy services, such as *Indoxxi*, and issue penalties strong enough to serve as a deterrent to others. In addition, the government should develop a comprehensive roadmap for addressing online piracy in consultation with both domestic and foreign copyright stakeholders with a focus on close collaboration between police cybercrime units and local and international rights holders and a government/industry anti-piracy consumer awareness campaign, with the goal of encouraging consumers to migrate to legitimate offerings.

Regulation Nos. 14 and 26 of 2015: Under the revised Copyright Act, and Regulation Nos. 14 and 26 of 2015, rights holders have successfully petitioned the Indonesian government to disable access to over 5,000 domains resolving to sites that primarily infringe or facilitate infringement of copyright, including sites like *Fmovies.to*, *Soap2Day*, and *Rarbg.to*, as well as those linked to the aforementioned criminal groups running piracy sites like *Indoxxi*, *Lk21*, and *Nonton*. The Regulations have led to disruptions of piracy and can be further improved by ensuring faster response times to rights holders (as required under the Regulations) who apply to the government and seek verifications from the government that the sites are suitable for blocking. Rights holders from the motion picture and television industry and the recording industry urge that these “verification meetings” should occur with due speed (in line with the Regulations) and should be accompanied by changes to allow rights holders to address “domain hopping” – a common tactic pirates use to evade enforcement – by implementing dynamic blocking (through further notification, or similar to that being carried out more efficiently in other markets, such as Korea).

Moreover, other than administrative enforcement, enforcement in relation to online copyright infringement is generally lacking, and even with administrative enforcement, speed of action appears to have slowed and become more difficult during the COVID-19 pandemic. Indonesian authorities should act in accordance with the regulations and with efficiency as the pirates are currently able to adjust quickly meaning any delays in enforcement exacerbate the problem. It is hoped that authorities will take the further step of criminally investigating and holding to account the operators of major online piracy services.

Comprehensive Enforcement and Judicial Reform: The National IP Task Force took the first steps towards the kind of multi-faceted enforcement reform process needed to make significant progress against piracy in Indonesia. Under the direction of the Task Force and with the oversight of the Anti-Corruption Commission, Indonesia should undertake comprehensive enforcement reform and implement judicial reforms. IIPA has outlined recommended steps for such comprehensive enforcement reform and judicial reform in prior filings.⁸

⁷ The operator of *Dunia21* was arrested in September 2020 and convicted of violating several provisions of the Criminal Code. He received a sentence of fourteen months imprisonment by the Jambi District Court in April 2021. See Dedy Nurdin, *TribunJambi.com*, *Perpetrator of Spruce Family Film Hijacking Sentenced to 14 Months in Prison*, April 27, 2021, available at <https://jambi.tribunnews.com/2021/04/27/pelaku-pembajakan-film-keluarga-cemara-dihukum-14-bulan-penjara>.

⁸ See e.g., IIPA 2019 at 151.

COPYRIGHT LAW AND RELATED ISSUES

Copyright law in Indonesia is governed by the Law Concerning Copyright (Number 28 of 2014), which entered into force in 2014, replacing the prior 2002 law, and Regulation Nos. 14 and 26 of 2015, which sought to implement key provisions concerning online and digital forms of infringement, including provisions intended to implement Indonesia's international obligations under the WTO TRIPS Agreement, the Berne Convention, the WIPO Copyright Treaty (WCT), and the WIPO Performances and Phonograms Treaty (WPPT).

Concerning Provisions in the Copyright Law: DGIP has considered a partial revision of the Copyright Law, focusing on copyright ownership and collective management issues, as well as exceptions and limitations. While revision is welcome in principle as it provides an opportunity to address a number of long-standing concerns of rights holders, the direction of planned reform is far from clear. The first phase focuses on (1) exceptions and limitations for education, libraries, and archives, and (2) clarifying copyright ownership in films. In the next phase, DGIP intends to establish a CMO for films in cinemas and on VOD. It remains to be seen whether this revision will result in enhanced or weakened copyright protections. The priority for the Indonesian government should be to remedy the concerns listed by IIPA in its submissions on copyright shortcomings and delineated below. Any new exceptions or limitations (including mandatory collective management of rights or statutory licenses) must be confined to the three-step test, consistent with Indonesia's international obligations (e.g., WTO TRIPS Agreement, Article 13). Imposing collective management or statutory licenses regarding uses of exclusive rights currently individually licensed would clearly not be consistent with the three-step test. On copyright ownership in films, in accordance with best international practices, the copyright should reside with the producer who arranged for the film to be made and is best positioned to exploit the film commercially, unless there is an agreement to the contrary. Finally, consistent with international best practices, any CMO must be voluntary, transparent, and governed by rights holders, without interference by Indonesia's government.

As mentioned, any revision of Indonesia's Copyright Law should address, in the first place, certain provisions that raise serious concerns, including, in some cases, clarifying such provisions through implementing regulations. These provisions include:

Internet Exception: The Law provides a broad exception under Article 43(d) for "making [available] and disseminating copyright content through information and communication technology media that is non-commercial and/or non-profit in its effect on the author or related parties, or in which the author has expressed no objection to such making or disseminating." Both parts of this provision set an undesirable precedent and, if interpreted incorrectly, would severely undermine legitimate business models built on the rights to control the manner and means in which rights holders authorize the making available and disseminating of their content through information and communication technologies. On its face, this provision collides with Indonesia's international obligations under WTO TRIPS Agreement, the Berne Convention, WCT, and WPPT. For these reasons, it should be deleted in its entirety.

Termination of Transfers: Articles 18 and 30 of the Law provide that rights in literary and musical works and performers' rights that are transferred pursuant to a flat fee shall revert automatically to authors and performers after 25 years, while Article 122 extends the effect of this rule retrospectively to all transfers before the entry of Articles 18 and 30. This frustrates the freedom to contract and is an unlawful deprivation of property rights, which are protected by the Indonesian Constitution. It is also unclear how these provisions operate in practice, which has created substantial legal and business uncertainty. One apparent result of this is that large catalogues of recordings are not available on digital music services in Indonesia, to the detriment of producers, performers, authors, publishers, and the Indonesian public. These provisions should be removed.

Clarification of the Making Available/Communication to the Public Right: Article 27 of the Copyright Law provides equitable remuneration rights to producers and performers for broadcasting and communication to the public of sound recordings. However, the Law defines communication to the public to include making available. This definition is inconsistent with Articles 23 and 24, which provide exclusive rights for performers and producers to make available

their sound recordings in accordance with Article 14 of the WPPT. The definitions in the Copyright Law should be amended to remove this inconsistency and to ensure the law does not contravene Indonesia's obligations under the WPPT.

Criminal Case Structure and Penalties Weakened: For criminal cases, the Law took steps backward from the 2002 law by making criminal cases complaint-based, rather than prosecuted on an *ex officio* basis; removing minimum mandatory statutory criminal penalties; and providing for non-deterrent fines, including for landlord criminal liability. In addition, Article 95 of the Law is highly unusual in that it appears to mandate “mediation” before a piracy case can be prosecuted. The purpose and operation of this provision in practice is unclear.

Exceptions and Limitations/Compulsory License: Article 44 of the Law contains a broad exception defining a number of different uses for a wide array of purposes as not copyright infringement, ranging from education to criticism to “security and maintenance of government.” On its face, the broad scope of the uses and purposes contained in this exception appears to go well beyond what is permissible under the WTO TRIPS Agreement, the Berne Convention, WCT, and WPPT, despite a well-intentioned, but ineffective, attempt to narrow the provision through inclusion of part of the Berne three-step test. The references in Subsections (1)(a) and (d) to the three-step test omit the limitations of “certain special cases” and uses that do “not conflict with a normal exploitation of the work by the copyright owner.” The two other subsections included in this exception do not contain any safeguards required under the three-step test. IIPA recommends that the Indonesian government clarify the application of the full three-step test to each use and purpose contained in this exception through amendment of the provision itself or by implementing regulations. Furthermore, implementing regulations should provide guidance to help prospective users determine whether their use falls within the appropriate bounds of the three-step test.

In addition, Article 84 of the Law includes a compulsory license provision that applies to “works” and is not expressly limited to any subject matter. It should be further clarified and narrowed to ensure it is consistent with obligations under the WTO TRIPS Agreement, the Berne Convention, WCT, and WPPT.

Rights Management Information (RMI) Violations and Technological Protection Measures (TPMs) Provisions: The Law provides that RMI violations occur only when moral rights are affected. WCT and WPPT clearly require “adequate and effective legal remedies against . . . acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of *any right covered by this Treaty [or the Berne Convention]*” (bracketed text in WCT only; emphasis added). The scope of the RMI provisions should be expanded accordingly. Protections for TPMs should be strengthened consistent with Indonesia's obligations under the WCT and the WPPT, and with international best practices, including by ensuring the protection of TPMs that control access to copyrighted works (i.e., access controls).

Registration, Invalidation, and Recordation Requirement: While registration of copyright remains voluntary under the Law, the substantive examination for voluntary registration will apparently address whether a work is “substantially similar” to another previously registered work as a ground for refusal. This substantive examination is intended to enable the authorities to review and invalidate false applications or registrations to address a concern about abuse of the voluntary copyright registration process. IIPA suggests introducing a more forceful deterrent, including fines and penalties, against anyone who knowingly files a false application or applies in bad faith. Additionally, the registration and recordation system potentially violates the prohibition of formalities under the Berne Convention. Article 83 appears to impose a requirement to record licenses, with lack of recordation meaning a license “shall have no legal effect on third parties.” This provision appears to be a Berne-prohibited formality if, for example, lack of recordation was used to deny the exercise of copyright from a particular licensor or licensee. Implementing regulations should clarify that a failure to record transfers and other changes will not deny copyright protection to the registrant. Moreover, recordation is not feasible for industries and rights holders that control a large number of works.

Provisional Measures: Under Article 108 of the Law, preliminary (provisional) injunctions take too long to obtain. Under the Indonesian law, no legal remedies, such as preliminary injunctions, are available to the claimant

before submitting the claim. In that respect, Indonesian law does not meet the standards of the WTO TRIPS Agreement (i.e., Articles 41 and 50), which require that countries must make available “fair and equitable” civil remedies and procedures to stop and prevent infringements, including provisional measures granted *inaudita altera parte*.

Statutory Damages: Indonesian copyright law does not provide statutory damages. In the case of copyright infringement, the copyright holder can claim a justifiable amount by way of compensation. Compensatory and punitive damages are available under the Civil Procedure Code. Judges, however, may grant damages based on only what the parties request in their claim, and judges are prohibited from granting damages that exceed what the parties previously requested. The successful party must prove losses with sufficient and actual evidence.

Overly Restrictive Definition of Copyright “Piracy”: Article 1, Subsection 23 of the Law provides an overly restrictive definition of copyright piracy as “distribution” of unlawfully duplicated “goods” to “obtain economic benefits.” This definition is also inconsistent with Article 61 of the WTO TRIPS Agreement because it is limited to goods and requires a showing of financial gain. The definition should be amended to expand the scope to include acts of online copyright infringement and to remove the requirement of financial gain.

Regulation Nos. 14 and 26 of 2015 (Site Blocking): As noted above, there is currently no efficient way to prevent domain hopping other than to file a separate application to block the “hopped” domains, which is time consuming and cumbersome. The regulations should be amended to prevent domain hopping by allowing variants, new primary domains, redirects, mirrors, proxy sites, and alphanumeric variations to be added to the blocking list quickly and easily.⁹ This would bring Indonesia’s regulation in line with other countries’ site-blocking provisions or rulings, which allow for such “dynamic” injunctions (examples include the United Kingdom, Australia, India, and Singapore).

Other Needed Legal Reforms

Unauthorized Camcording and Live-Streaming of Motion Pictures and Television Content: The Explanatory Memorandum to the 2014 Copyright Law indicates that the unauthorized use of an audiovisual recording device in a movie theater (camcording) can be addressed under the reproduction right. Regulations should be introduced that provide a clear legal basis to prohibit camcording (as well as live streaming) in cinemas and strengthen enforcement remedies available.

Term Extension: The Government of Indonesia should extend copyright term of protection to the life of the author plus 70 years for all categories of works, including cinematographic works and video games, and to at least 70 years from publication for sound recordings and all works for which term is calculated based on publication, in line with international norms. This extension will provide greater incentives for production, give producers a stronger incentive to invest in local industry, thus spurring economic growth and tax revenues, and enable producers to continue offering content to local consumers in the latest formats. After the 2014 Copyright Law amendment, the term of protection of certain categories of works, including books, music, dramas, visual art, and architectural works, are protected for the life of the author plus 70 years. However, the protection for other categories of works, such as cinematographic works and video games, remains at life of the author plus 50 years, and the term of protection for sound recordings and all works owned by a legal entity is just 50 years from publication.¹⁰ There is no justification for such varied treatment, and protection should be extended accordingly.

⁹ Specifically, new subsection (3) to Article 6 of the Regulations could be amended to provide: “Additional domains, sub-domains, URLs, or other IP addresses whose sole or predominant purpose is to enable or facilitate access to the same website in the report shall be added to the receipt report register of copyright infringement and/or related rights, when reported to, and verified by, the Director General of Intellectual Property, from time to time, and subject to the same recommendation.”

¹⁰ Note that the term of protection has limited practical effect for certain works in view the 25-year reversion of rights regarding literary works, performances, and musical works, as discussed above.

Strengthening the Organized Crime Statute: Because many operators of piracy websites are engaged in other criminal activities, copyright infringement should be included as a predicate crime for remedies under the Indonesian organized crime law, e.g., as grounds for broader criminal investigations, seizure, freezing of assets, and asset seizure, etc.

Online Intermediary Regulations: The Indonesian government should seek to improve transparency and accountability of online service providers and intermediaries. It should encourage certain intermediaries, including payment providers, domain registrars, and hosting services to implement a “know your business customer” (KYBC) policy and make sure their resellers do the same. Regulations should: (i) require a public registry for domain registrants that includes accurate data held by domain registrars, registries, or the Ministry of Communication and Information Technology; and (ii) create a legal basis for rights holders to obtain details from the Ministry regarding certain online service providers known as “private scope Electronic System Administrators,” which would allow rights holders to take direct action. The regulations should also include a “duty of care” on all intermediaries that requires them to take reasonable steps to limit, stop, and prevent online copyright infringements if they have actual or constructive knowledge of infringing content or links on their services or networks, including expeditious takedown of infringing content and other measures demonstrated effective in preventing or restraining copyright infringement. Non-compliance should result in liability and fines for those intermediaries that have actual or constructive knowledge of infringing content or links on their services or networks.

MARKET ACCESS AND RELATED ISSUES

While the government in 2016 took the very positive step of easing its negative investment list and allowing 100% direct foreign investment in film and sound recording production and film distribution and exhibition, Indonesia has unfortunately regressed to a protectionist path. Indonesia should reverse course and address the many market access and investment barriers and the discriminatory treatment against U.S. copyright materials that make it difficult for the U.S. copyright industries to do business and compete in the country.

Negative Investment List (NIL): In May 2016, the Government of Indonesia issued Decree No. 44, removing film and recording studios from the negative investment list (NIL) and enabling 100% foreign direct investment in film and sound recording production, as well as film distribution and exhibition. The Indonesian government should follow this very positive move by issuing clear guidelines on the implementation process of the decree and removal of market barriers. In addition, many media sectors remain on the NIL, preventing direct foreign investment in other Indonesian media industries.¹¹ While the removal of the film industry sectors from the NIL is a positive step, broader investment in the distribution structure for all media sectors would benefit local and foreign-based producers alike in creating more legitimate channels over which to distribute films, music, and other copyright materials. The same investment access opened to the film industry should be afforded to the radio and television broadcasting service sectors.

Problematic Provisions in the Film Law and Regulations: In September 2019, without official notice, “Ministerial Regulation (MR34/2019) Concerning the Procedure for the Distribution, Exhibition, Export, and Import of Film” was issued. While these regulations have yet to be enforced, they maintain the 60% local screen quota and dubbing restrictions and add further limitations on screen time by a single distributor, importer, or producer to 50%. In recent years, domestic films have accounted for a growing and substantial share of the market and local films are seeing greater investment without the imposition of heavy-handed regulations. Moreover, these restrictions undercut Indonesia’s laudable 2016 decision to remove the film sector from the NIL.

Furthermore, the 2009 Film Law and regulations therein include some ambiguous provisions that purportedly aim to limit unfair trade practices or monopolistic conduct, such as restrictions on vertical integration and arbitrary limits on vertical supply between content distributors and theatrical exhibitors. Indonesian authorities should remove these provisions because they could have unintended consequences, such as restricting foreign participation in the market

¹¹ The Broadcast Law allows foreign ownership up to a 20% cap, and IIPA understands that the Broadcast Law overrides the Presidential Decree.

and curbing business efficiency. Indonesia should amend the Film Law and incorporate international best practices, notably recognizing the exclusive rights of copyright owners to determine whether, how, and where their works are made available. Doing so will avoid creating new barriers that could undermine Indonesia's plan to attract foreign direct investment in the film sector.

Over-the-top (OTT) Regulations: The Ministry of Communication and Information Technology (KOMINFO) issued MR5, which came into effect in late 2020. MR5 requires domestic and foreign OTT service providers to register, comply with content takedown requests from authorities, and grants law enforcement authorities access to electronic systems and data. KOMINFO subsequently set a deadline for all platforms operating in Indonesia to comply with MR5 by the end of July 2022 or be blocked. Such requirements have the potential to stifle business development and add a significant barrier to market entry.

While a constitutional court case brought by two Indonesian broadcasters arguing that VOD services should be regulated under the Broadcasting Law (No. 32 of 2002) was ultimately unsuccessful, a long-anticipated revision of the Broadcasting Law could still be undertaken in 2023. IIPA remains concerned that a future revision of the Broadcasting Law could seek to extend existing problematic content quotas, content censorship (conducted by the Indonesian Broadcasting Commission – KPI), and ownership restrictions on television services (which collectively, have raised costs, created barriers to entry, and reduced consumer choice in the Pay-TV sector) to VOD services.

Collective Management Organizations (CMOs): A December 2018 amendment to the Regulation for Collective Management Institutions (Regulation No. 36/2018) has not improved collective licensing issues faced by the music industry. Certain CMOs for musical works and sound recordings continue to be placed under the single-window LMKN as a “national CMO” that adds an unnecessary extra layer to the collective licensing system. The government-appointed LMKN sets the tariff, collects the remuneration (through agents) and decides how the collections are split among different groups of CMOs. However, the management of LMKN is not adequately represented by the rights holders whose rights it purports to represent. As a result, those rights holders involved have little control over LMKN's governance and operations, including the setting of tariffs, which are fixed and set extremely low. Even though LMKN delegates the collection function to some of the CMOs, the regulation permits LMKN to deduct 10% from the collections as operation costs at the expense of rights holders' interests. Further, the problem of the existence of numerous CMOs to manage the same categories of rights remains, which has caused unnecessary confusion and inefficiencies in collective licensing.

CMO regulations, including Implementing Regulations of Government No. 56 of 2021, “Government Regulation on the Management of Copyright Royalties of Songs and/or Music,” should be amended such that entities falling within the definition are owned or controlled by their member rights holders as well as confirming the non-profit nature of the organization, which are essential characteristics of a CMO. Further, CMO regulations should be introduced in accordance with international good practices and cover issues of transparency, accountability, and good governance. It is also essential that the tariffs set for the use of the collectively managed rights reflect the economic value of their use in trade.

Advertising Restrictions: Indonesia's Broadcasting Law includes a requirement that any free-to-air TV and pay-TV advertising aimed at the local market must be locally produced. Although regulations issued in 2007 provided a series of exemptions, KPI's 2015 statements regarding implementation raised concerns. If implemented, such a burdensome rule would be harmful to consumers, who would likely absorb the additional associated costs. As noted above, the timeline for revising the Broadcasting Law remains unclear.

Customs Valuation: Indonesia imposes a tariff on imported films that is based on the running time of the film, resulting in high duties for many U.S. feature films. Indonesia should join the expanded ITA to address this issue and to stay consistent with international best practices.

Customs Duties on Electronic Transmissions: Indonesia’s Ministry of Finance issued a new regulation (Regulation No. 190/PMK.04/2022) requiring importers to file a Customs declaration to be made for any import of intangible goods through electronic transmission. This burdensome requirement severely disadvantages creative content seeking to enter the Indonesian market. Moreover, in creating new tariff lines for digital products that are transmitted electronically, which includes a threat of imposing customs duties on those products, Indonesia has set a troubling precedent that raises serious concerns with respect to the WTO e-commerce moratorium on customs duties for electronic transmissions. Heightening this concern, the Government of Indonesia has indicated that it may not agree to further extensions of the moratorium. These actions could significantly harm the country’s market for creative digital content and related services, including VOD services.

GENERALIZED SYSTEM OF PREFERENCES (GSP)

In January 2020, USTR, pursuant to the 2012 investigation, held a public hearing to review country practices in Indonesia regarding intellectual property rights (IPR) and market access issues and to determine whether Indonesia still qualifies for beneficiary status under the GSP. Under the statute, the President of the United States must consider, in determining whether a country should continue to be designated as a GSP beneficiary country, “the extent to which such country is providing adequate and effective protection of intellectual property rights,” and “the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets . . . of such country.”¹² While the Indonesian government has made past progress towards meeting the GSP criteria, these efforts have stalled in recent years and regressed in some respects. IIPA urges the Government of Indonesia to make further progress to remedy the deficiencies outlined in this report to avoid suspension or withdrawal of Indonesia’s GSP benefits, in whole or in part.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

While passage of the Copyright Law of 2014 made progress toward fulfilling Indonesia’s obligations under the WTO TRIPS Agreement, the Berne Convention, WCT, and WPPT, several provisions of the Copyright Law raise serious concerns under these agreements. As set forth in more detail above in the “Copyright Law and Related Issues” section, the broad exceptions and compulsory license provision, provisions regarding civil and criminal remedies, limited RMI violations provision, definitions of making available and communication to the public, and recordation requirement appear to be out of compliance with Indonesia’s international obligations. In addition, as set forth in the “Market Access” section, the Government of Indonesia may fail to provide equitable and reasonable market access to foreign rights holders in certain areas, as set forth in the GSP criteria.

¹² 19 U.S.C. §§ 2462(c)(4) and (5).