

TAIWAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2023 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Taiwan be placed on the Watch List in 2023.¹

Executive Summary: The Government of Taiwan has recently taken some positive steps to improve its digital marketplace for legitimate audiovisual content, including outlawing piracy devices (PDs) and apps in 2019 and then taking enforcement actions over the past few years. This includes against certain notorious piracy sites, such as *8maple.ru* (and related domains), as well as advancing legacy cases against *ChuangYi TV box* and *QBox* (or *Chien Hsun TV Box*), although, unfortunately, in both cases prison sentences were commuted to non-deterrent fines. However, continuing online piracy; concerning recent enactments that maintain, and proposed amendments that would further establish, some legal framework deficiencies; and other barriers continue to stifle the potential of the Taiwanese market and limit market access for the U.S. creative industries. To further its stated interest in negotiating a bilateral trade agreement with the United States, Taiwan's government should address the copyright protection, enforcement, and market access concerns discussed in this report. At minimum, Taiwan should ensure its enforcement framework and its copyright legislation comply with its obligations under the WTO TRIPS Agreement, including ensuring its civil procedures effectively result in deterrence, and that the scope of any exceptions and limitations under its Copyright Act are narrowly tailored and specific.

PDs, websites, and apps, especially those operated or based outside of Taiwan, continue to be problematic for rights holders by facilitating unauthorized streaming, including live broadcasts, and stream ripping. Illegal theatrical camcording remains a concern. E-book piracy and the making available of copyrighted teaching materials without authorization on university digital platforms likewise remain problematic.

A positive development was enactment of the 2019 amendments to the Copyright Act that provide a clear legal basis to combat the proliferation of piracy apps and devices, but sentences against pirate operators in legacy cases are too low to deter piracy; it is hoped that ongoing investigations and cases will lead to more deterrent outcomes. Taiwan's government should further improve the legal framework for copyright protection and enforcement to combat remaining and growing online piracy problems. For example, Taiwan should provide an effective remedy, such as no-fault injunctions available through the specialized Intellectual Property (IP) court, against piracy sites, preferably through a Copyright Act amendment. Unfortunately, the amendments to the Copyright Act passed in May 2022 fail to address deficiencies in Taiwan's legal framework and continue to raise questions regarding Taiwan's existing international obligations.

The Government of Taiwan should move swiftly to remove market access barriers negatively impacting the audiovisual sector, and Taiwan should refrain from imposing any new barriers, including those in the proposed regulations of over-the-top (OTT) services and in the proposed intermediary platform regulations. IIPA urges the Government of Taiwan to take the steps necessary to address the persistent threats to the creative industries, which contribute so significantly to Taiwan's economy and culture.

¹ For 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://www.iipa.org/files/uploads/2023/01/2023APPENDIXBSPEC301-1.pdf>.

PRIORITY ACTIONS REQUESTED IN 2023

Enforcement:

- Ensure that the Criminal Investigation Bureau (CIB), Telecommunication Police Brigade (TPB), and Criminal Investigation Brigade (CIBr) continue to investigate and prosecute more online piracy cases (including those involving PDs and apps under the amended Copyright Act), with the goal of seeking deterrent-level punishment against commercial piracy operations.
- Take effective action to deter unauthorized theatrical camcording incidents, including issuing deterrent penalties.

Legislative:

- Enact legislation to:
 - Provide a clear legal basis for rights holders to obtain no-fault injunctions to order Internet service providers (ISPs) to disable access to infringing content on websites, including foreign websites (and including, as necessary, amendments to the Civil Procedure Code and the Intellectual Property Adjudication Act to overcome potential civil procedure restrictions);
 - Make all criminal copyright infringement, including Internet piracy, “public crimes” to permit *ex officio* action against infringement;
 - Clarify the ISP liability framework to ensure that all intermediaries are properly incentivized to act against online piracy and that safe harbors apply only to passive and neutral intermediaries that do not contribute to infringing activities; that such intermediaries fulfill certain conditions, including adoption and implementation of a repeat infringer policy, with encouragement to institute a “know your business customer” (KYBC) policy; and that, upon obtaining knowledge of infringement (including a notice) or otherwise becoming aware of circumstances from which infringement is apparent, intermediaries promptly take steps to limit, stop, and prevent further infringement, including expeditious takedown of infringing content and other measures demonstrated effective in preventing or restraining infringement;
 - Further amend Article 87 of the Copyright Act to: (1) clarify that the list of acts setting out “an infringement of copyright” is non-exhaustive to ensure the provision is applied to other acts of infringement, such as stream ripping; and (2) remove the pre-condition for liability that infringers “receive benefit” from the infringement;
 - Extend term of protection in line with international best practices (to 70 years after the death of the author, or in cases in which term is calculated based on publication, to the term of 95 years, but in any case, no less than 70 years);
 - Make unauthorized camcording of motion pictures in theaters a criminal offense;
 - Enhance Article 88 of the Copyright Act by removing restrictive language on calculating damages and the NTD1 million limit; and
 - Correct Taiwan Intellectual Property Office (TIPO) collective management practices to allow a royalty rate based on a fair market rate and eliminate delays in fixing the rate in dispute settlement cases.
 - Ensure sound recordings are treated the same as literary, musical, and dramatic or choreographic works, including but not limited to providing exclusive rights for public performance and retransmissions of sound recordings.
- Issue implementing regulations ensuring that recent amendments to the Copyright Act can be read in a way that is consistent with Taiwan’s WTO TRIPS Agreement and Berne Convention obligations, namely, to ensure new educational exceptions meet the three-step test.
- Recognize a commitment to comply with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively the WIPO Internet Treaties) irrespective of formal accession, which might not be politically possible.

Market Access:

- Eliminate market access barriers that discriminate against U.S. audiovisual content (including investment restrictions in the Cable Radio and Television law, the rate cap for basic cable TV service, and local discriminatory content quotas on television content; and ensure that any new OTT regulations (e.g., the Internet Audiovisual Services Act (IAVSA)) or any regulations on intermediary platforms (e.g., the Digital Communications Act) do not disincentivize foreign investment by, for example, requiring foreign OTT service providers to register, set up local permanent establishments, disclose sensitive commercial information, and comply with a rating system that is potentially inconsistent with international standards, or mandating local content obligations.

TAIWAN'S ONLINE MARKETPLACE

The creative industries make significant contributions to Taiwan's economy. Taiwan is the 28th largest music market in the world in 2021 by revenue, down three places from last year.² However, Taiwan is still a hub of music production for the Chinese-speaking world and a major exporter of "C-pop." Recorded music revenues for streaming increased by 6.8% to US\$67.6 million in 2021.³ The total market size for music in 2021 was US\$88 million.⁴ Additionally, nearly 9 million Taiwanese subscribed to video-on-demand (VOD) services in 2020, and 56% of Internet users in Taiwan use VOD at least once a week.⁵ In 2021, Taiwan's cinema industry was estimated to generate a revenue of US\$177 million, showing a decrease compared to US\$184 million in 2020.⁶ The revenue of both 2020 and 2021 was affected heavily by the COVID-19 outbreak, and the figure was projected to be US\$439 million in 2026.⁷ In 2022, the annual revenue of the video games and eSports market in Taiwan was projected to reach US\$3.87 billion, showing an increase for six consecutive years.⁸ Unfortunately, Taiwan's online marketplace permits unhampered access to unlicensed services, which compete with and undermine legitimate digital services. Prior IIPA reports on Taiwan contain detailed discussions of piracy and enforcement issues. This report serves only as an update to those prior reports and should not be considered an exhaustive review of all concerns.⁹

Online Piracy: Online and mobile device piracy in Taiwan continued in 2022. Foreign websites that provide illegal content remain a significant problem and undermine the ability of rights holders and legitimate services to distribute copyrighted content and prevent rights holders from seeing their investments reach their full potential in Taiwan. Streaming and linking sites that aggregate and index links to pirated content stored on other sites continue to make up a large amount of piracy consumption in Taiwan. For example, the highly popular Chinese language *Gimy* pirate website family now redirects to *Gimy.app* (the main domain), *Gimytv.com*, *Gimy.cc*, and *Gimy.one*. *Gimy*'s global SimilarWeb ranking is 2,149 but has a local rank of 42 in Taiwan. The *Gimy* website/domains had an aggregate of 35 million monthly visits in August 2022, a 52% increase in traffic year-on-year, according to SimilarWeb. A criminal referral was made in Taiwan in December 2020, and there was a raid in early 2021. Despite this enforcement action, which resulted in several key *Gimy* pirate domains going offline, *Gimy* has re-emerged with the domains noted above, and the case remains in the evidence-gathering phase with Taiwan prosecutors.

Another popular infringing website is *gimyvod.cc*, unrelated to *Gimy* discussed above. *Gimyvod.cc* is believed to be operated by an individual in China, but this website is not accessible in China. This site was previously at

² International Federation of the Phonographic Industry (IFPI), *2022 Global Music Report*, p. 183.

³ Id.

⁴ Id.

⁵ Frontier Economics, *The Economic Impact of Video-on-Demand Services in Taiwan*, 2021, p. 2, available at <https://www.mpa-apac.org/wp-content/uploads/2021/11/TW-Frontier-The-Economic-Impact-of-VOD-in-Taiwan.pdf>.

⁶ Statista, *Annual revenue of the cinema industry in Taiwan from 2017 to 2021, with forecasts until 2026*, available at <https://www.statista.com/statistics/1194461/taiwan-total-revenue-of-cinema-industry/#:~:text=In%202021%2C%20Taiwan's%20cinema%20industry,million%20U.S.%20dollars%20in%202020.>

⁷ Id.

⁸ Statista, *Annual revenue of video game and eSports market in Taiwan from 2017 to 2021, with forecasts until 2026*, available at <https://www.statista.com/statistics/1194527/taiwan-annual-revenue-of-video-games-and-esports-market/>.

⁹ See, e.g., IIPA, Taiwan, 2022 Special 301 Report (January 31, 2022), available at <https://www.iipa.org/files/uploads/2022/01/2022-SPEC301-3.pdf> and IIPA, Taiwan, 2021 Special 301 Report (January 28, 2021), available at <https://www.iipa.org/files/uploads/2021/01/2021SPEC301TAIWAN.pdf>.

gimyvod.com and is one of the most popular streaming Chinese language websites in the Asia region. It offers a vast library of motion picture, television, anime content, and Asian dramas. *Gimyvod.cc* uses Cloudflare to mask its IP location, which hinders rights holders' ability to identify the site's precise host and location of the website's server. Notorious piracy sites *Dytt8.net*, *Dy2018.com*, *Dygod.net*, and *Ygdy8.com* allegedly have their servers located in Taiwan.¹⁰ While these sites remain under investigation, Taiwan should take effective action by imposing deterrent-level punishments against the operators of these sites and services, as discussed below.

The long-standing forum site *Eyny.com* also remains a primary piracy concern in Taiwan. There are more than 17 million visits per month to *Eyny* from Taiwan from users seeking to download music, film, television episodes, and software and video games. Cyberlockers such as *Katfile.com* and *Mega.nz* receive more than 4 million visits between them from Taiwan each month while stream-ripping destinations such as *Y2Mate* (1.0 million visits per month) and BitTorrent portals like *Rarbg* (1.1 million visits) are also widely used to obtain pirated content.

Stream ripping, where users of legitimate online platforms use tools, such as an app or a website, to illegally "rip" the streamed audio or video content, is a growing problem that first impacted the music industry but is now beginning to impact other creative industries as well. The legal framework in Taiwan presents challenges for taking action against persons who facilitate this activity (i.e., the app developer or website operator). In other jurisdictions, courts have found such services to infringe the reproduction or making available rights, and to unlawfully circumvent technological protection measures (TPMs), but in Taiwan no such cases have been brought, in part because operators are located outside Taiwan. As discussed below, Article 87 of the Copyright Act should be further amended to expressly confirm that it can be used against foreign-based services.

A newer form of piracy involves a mobile app for use with karaoke machines that allows consumers to access and download content from a cloud database located overseas. The app provides access to a vast amount of unauthorized karaoke audiovisual content. A recent case in Taiwan concerned a karaoke audiovisual content cloud database that is believed to be legally licensed for only the China territory. However, the database was accessed and used by Taiwanese consumers who were able to download the karaoke content via an app provided by the owner of the cloud database. Rights holders of those karaoke audiovisual content in Taiwan suffered a significant loss from this issue but are unable to pursue either the machine manufacturer or the Taiwanese distributor under Article 87-1-8 of the new OTT legislation because those audiovisual content are believed to be legally licensed in China.

Social media platforms have also become a popular way to share pirated content. Apps for PDs and mobile devices, such as *Mixerbox 3*,¹¹ have become a significant platform for disseminating illegal content. Prior to the pandemic, Taiwan had also seen an increasing amount of unauthorized camcording. Illicit camcord data for 2020-2022 remains anomalous because of the widespread closure of theaters in 2020, 2021, and into 2022 amid the COVID-19 pandemic. In addition to improving the legal framework (discussed below), the government should take actions under current law, including issuing deterrent-level penalties, and work with industry to persuade exhibitors to provide staff with more training and to take proactive security measures.¹² The resumption of normalcy in movie-going attendance provides an important opportunity to "reset" on this key issue.

¹⁰ USTR identified *Dytt8.net* in its 2021 Review of Notorious Markets for Counterfeiting and Piracy (February 2022), available at [https://ustr.gov/sites/default/files/files/Press/Releases/2020%20Review%20of%20Notorious%20Markets%20for%20Counterfeiting%20and%20Piracy%20\(final\).pdf](https://ustr.gov/sites/default/files/files/Press/Releases/2020%20Review%20of%20Notorious%20Markets%20for%20Counterfeiting%20and%20Piracy%20(final).pdf) ("2020 Notorious Markets Report"). The related sites *Dytt8.net*, *Dy2018.com*, *Dygod.net*, and *Ygdy8.com* are consistently high ranking with recording more than 23 million monthly visits in mainland China in August 2022, according to SimilarWeb. With a very user-friendly interface and the provision of direct links to third-party storage providers, this website remains a particular threat to legitimate services in greater China. These sites are under investigation.

¹¹ *Mixerbox.com* is a website that allows users to watch embedded YouTube clips stripped of advertisements, providing a service similar to a streaming service like Spotify or KKBOX, except with unlicensed content. *Mixerbox.com*, which has seriously disrupted the local music streaming market, has 623 thousand monthly visits, with 91.71% of its traffic from Taiwan. The website also disseminates the popular mobile app *Mixerbox 3*, which also provides unauthorized music video content streamed from YouTube, stripped of advertisements.

¹² It 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.

Book Piracy: While unauthorized photocopying remains a concern, the availability of unauthorized copies of textbooks on online sites has overtaken this problem. Online shopping forums, such as *www.shopee.com* and *www.ruten.com/tw* host numerous vendor accounts that sell or re-sell unauthorized copies of textbooks, test banks, and solutions manuals in both PDF and print form.¹³ The *shopee.com* platform, in particular, continues to be problematic, with reports of infringing content, i.e., counterfeit versions of textbooks and unauthorized ebooks, on the site remaining high. Unfortunately exacerbating the problem, the process for reporting infringing content is cumbersome and responses to takedown notifications have been inconsistent.

Piracy Devices (PDs): Notwithstanding specific legislative reforms, the proliferation of PDs remains a problem in Taiwan, and enforcement against PD operators has been insufficient.¹⁴ Streaming devices that run with proprietary infringing apps enable access to live channels and VOD content and are readily available online and in physical marketplaces. Popular illicit streaming devices (ISDs) include *UnblockTech*, *EVPAD*, and *SVI Cloud* (which specifically target users in Taiwan and are all manufactured in China). Sellers of streaming devices try to distance themselves from the installing of infringing apps by claiming that the manufacture or sale of the boxes themselves is not illegal and that resellers instead provide a code for their customers to install infringing apps.

The 2019 amendments to Articles 87 and 93 of the Copyright Act provide a clear legal basis for enforcement against the dissemination of certain piracy apps and the manufacture and trafficking of PDs and piracy apps. To ensure the law accomplishes its goal of deterring the sale of PDs in the marketplace, IIPA is hopeful that recent enforcement actions will result in increased deterrence against the manufacturers and distributors of PDs and piracy apps, as well as against resellers of devices that do not have piracy software or apps pre-loaded (but who are well equipped by the manufacturer or by middleware providers to install illicit software or apps). In light of the amended law, local associations, including the Taiwan OTT Media Services Association, continue to ask the government to set up a specialized enforcement unit to handle cases involving unlawful PDs. The local audiovisual industry has recently worked well with enforcement authorities (including CIB, TPB, and CIBr) on PD cases, and IIPA is hopeful enforcement authorities continue to pursue such cases, using the amended law to its maximum extent.

ENFORCEMENT UPDATES IN TAIWAN

Taiwan's Internet users often obtain unauthorized content primarily from websites located overseas. Unfortunately, Taiwan's legal framework to address overseas infringements remains inadequate. No-fault injunctive relief directing ISPs to stop providing access to infringing content on piracy websites does not appear available under current law (or any procedure for that matter, whether civil, criminal, administrative, or voluntary), although an unpublished Taipei District Court case, as well as the *Gimy* criminal action (see below), may pave the way for an approach by Taiwan Network Information Center (TWNIC) to disable access to sites engaged in illegal activity. However, since that is a criminal process and applies only to the defendant domains identified, there is no dynamic impact, and pirate operators can easily evade orders that are not permanent. Taiwanese government officials and stakeholders have had discussions with ISPs about the severe problem of online piracy. While ISPs are generally sympathetic, they require the government to direct them or courts to order them to act. Meanwhile massive online piracy continues to cause significant damage to American creators and businesses, which have invested in production, distribution, and exportation of copyrighted content.

The government has been more proactive in combating piracy websites when the operations have a clearer nexus to Taiwan. A criminal referral was made in Taiwan related to *Gimy* in December 2020, and there was a raid in

¹³ Vendors on these online forums purchase DVD-ROMs containing pirated content from vendors on *Taobao* (China) or download infringing copies from other high traffic piracy sites (such as *Libgen* or *ThePiratebay*) and upload the infringing copies to their seller accounts.

¹⁴ Piracy Devices (PDs) refer to media boxes, set-top boxes, or other devices and their corresponding apps and services. Mostly originating from China, PDs are available openly throughout Taiwan, including at so-called "3C" shops, 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 may have an SD card slot, which helps novices connect to foreign piracy sites. More than 30 different brands of such devices are now available in the marketplaces in Taiwan. Manufacturers of popular PDs in Taiwan include *Unblock Tech*, *EVPAD*, and *SVI Cloud*.

early 2021. Despite this enforcement action, *Gimy* has redirected to new domains, including *Gimy.app* (the main domain), *Gimytv.com*, and *Gimy.cc* and continues to be very popular. The case remains under investigation by Taiwanese prosecutors. More actions should be taken against the new domains to cease infringement by *Gimy*. A Taiwan court also delivered a verdict in a February 2021 criminal case involving the Chuang Yi TV box, in which the defendant was found guilty of breaching Article 92 of the Copyright Act for public transmission of a copyright work without authorization. Unfortunately, while the defendant initially received a sentence of 6 months imprisonment, it was commuted to a fine, so the result is less than deterrent.

Taiwan has a mechanism to report and ensure permanent removal or blocking of content that facilitates illegal activities such as child pornography, human trafficking, and defamation/cyber-bullying. Government involvement and support is essential to expand this cooperation to content that infringes copyrights. Without such a remedy, Taiwan is becoming an outlier in Asia, as many other countries in the region (and elsewhere in the world) are taking active steps to address rampant online and mobile piracy.

Furthermore, civil remedies are inadequate. Article 88 of the Copyright Act includes restrictive language on calculating damages and limits damages to NTD1 million in cases where actual damages cannot be clearly determined. Due to the nature of much copyright piracy, and the lack of available data to rights holders, in most cases, actual damages cannot be clearly determined, which is why the United States has deterrent-level statutory damages. Article 88 should be enhanced by removing these impediments. Without overall effective remedies, online piracy investigations suffer, and piracy proliferates. 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, but also because most piracy websites are hosted outside Taiwan, where CIBr does not have jurisdiction.

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 are drawn out and generally do not result in deterrence (although the “Response Policy Zone” process has led to some temporary disabling of access of domains associated with criminal online copyright infringement on a couple of occasions). In the criminal context, prosecutors have settled for “suspension of indictment” in digital piracy cases, and judges have commuted prison sentences to a fine or suspended punishment altogether. The Judicial Yuan would benefit from and may be receptive to trainings for judges and prosecutors on specific issues related to IP infringements, focusing on the following: 1) technical particularities of Internet and new technology-based copyright infringement cases; 2) aspects of the civil and criminal system that are not operating smoothly for rights holders; and 3) 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 Government of Taiwan has failed to provide for legal remedies and procedures that would enable effective copyright enforcement online, and the legislative proposals in previous years have been going in the direction of diluting the level of copyright protection and weakening the enforcement framework even further.

Amendments to the Copyright Act: Taiwan has in recent years introduced only minor amendments to its Copyright Act. As previously reported, in 2019 Taiwan enacted amendments to Articles 87 and 93 of the Copyright Act. This legislation followed 2018 guidance from the TIPO that streaming devices are prohibited under the Copyright Act and an August 2018 IP Court decision confirming this interpretation. Revised Article 87 maintains the condition that violators must “receive benefit” from their actions. This requirement should be removed, since in some cases the “benefit” may be indirect and difficult to prove. It should be clarified that the list of acts setting out “an infringement of copyright” is non-exhaustive to allow the provision to be applied to other acts of infringement, such as stream ripping. Also, the requirement to prove the offender’s knowledge that the broadcast or transmitted content was copyright infringing may make this new provision unenforceable when the content is licensed to broadcast or transmit in a specific territory but then broadcasted or transmitted beyond the licensed territory. Moreover, this amendment is of limited

practical relevance to rights holders given that the majority of services potentially caught by its scope are based in and operated from outside of the Taiwanese jurisdiction and no mechanism exists for rights holders to bring action in Taiwan against such services.

Other longstanding draft copyright amendments unfortunately propose many changes that would weaken rather than strengthen the scope of substantive copyright protection. In April 2021, TIPO proposed a draft bill amending the Copyright Act (Draft Bill), which was passed from the Executive Yuan to the Legislative Yuan for review in May 2021. The Draft Bill is largely based on earlier proposals. Unfortunately, the Draft Bill contains problematic provisions for rights holders, including a broadly drafted exception that allows public presentation of works using home-style equipment for non-recurring and non-profit purposes that risks including audiovisual works released through VOD services and does not address many of the criticisms IIPA raised in comments on the previous drafts that TIPO had released for public comment. As of December 2022, the majority of the Draft Bill remains under consideration by the Legislative Yuan. Of note, in May 2022 the Legislative Yuan passed a small portion of the Draft Bill focused on broader education exceptions in the Copyright Act that may result in weakened protection for copyright.

Prior IIPA submissions have detailed the flaws in the draft amendments.¹⁵ As noted, while many of the online services built on infringing activities or facilitating infringement are located outside of Taiwan, a significant amount of infringing activity occurs within Taiwan and should create a nexus for action. In prior communications with industry, ISPs in Taiwan have indicated a willingness to address the problem of flagrantly infringing websites but insist they would do so only upon being ordered by a court or the government. It remains unclear whether the current legal framework could be interpreted to enable ISPs to do more or whether it inhibits them from doing so. Several dozen jurisdictions around the world have remedies in place to halt copyright infringing websites from being accessed by users. IIPA believes the Taiwanese government should propose legislation to provide an appropriate remedy that is narrowly tailored with appropriate processes to halt services that are built on, facilitate, or encourage infringement. It is unfortunate that no such proposals have been included as part of the copyright reform process. Governments in the region, including Australia, South Korea, Singapore, India, Indonesia, Malaysia, Thailand, and Vietnam have adopted or refined approaches that provide a remedy requiring ISPs to disable access to infringing sites.¹⁶ Moreover, the amendments fail to address several deficiencies in Taiwan's existing legal regime, including the need to:

- Provide a clear mechanism to address the problem of foreign hosted piracy websites that target users in Taiwan through the availability of no-fault injunctions to disable access to pirated content;¹⁷
- Clarify the ISP liability framework to ensure that all intermediaries are properly incentivized to act against online piracy and that safe harbors apply only to passive and neutral intermediaries that do not contribute to infringing activities and that such intermediaries fulfill certain conditions, including adoption of a repeat infringer policy, with encouragement to institute a KYBC policy, and that, upon obtaining knowledge of infringement (including a notice) or otherwise becoming aware of circumstances of which the infringement is apparent, intermediaries promptly take steps to limit, stop, and prevent further infringement, including expeditious takedown of infringing content and other measures demonstrated effective in preventing or restraining infringement;
- Deem all criminal copyright infringement, including Internet piracy, “public crimes” (as was so successfully done regarding optical disc piracy), which would be an effective deterrent and would benefit all rights holders, including those who cannot afford to pursue civil enforcement actions;
- Extend the term of protection for copyrighted works, including sound recordings, in line with the international trend, i.e., to 70 years after the death of the author, or in cases in which term is calculated based on publication, to the term of 95 years, but in any case, no less than 70 years;

¹⁵ See prior IIPA, Taiwan, 2019 Special 301 Report (February 7, 2019), pp. 83-84, available at <https://www.iipa.org/files/uploads/2019/02/2019SPEC301REPORT.pdf>.

¹⁶ IIPA also encourages Taiwan to look at how Europe has addressed this problem, in particular through Article 8.3 of the European Information Society Directive, which is the basis for injunctive relief against intermediaries to remove access to infringing content.

¹⁷ To 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 (IP) Case Adjudication Act.

- Make it a criminal offense to engage in unauthorized camcording of motion pictures in movie theaters or of live musical performances;¹⁸
- Correct problematic TIPO practices regarding tariff setting and tariff dispute resolution for uses managed by collective management, as well as other collective management related issues;¹⁹ and
- Ensure sound recordings are treated the same as literary, musical, and dramatic or choreographic works, including but not limited to providing producers and performers exclusive (rather than mere remuneration) rights for public performance and retransmissions of sound recordings.

In addition, like earlier proposals, the Draft Bill contains several provisions that are inconsistent with evolving international norms and raise questions regarding compliance with Taiwan's existing international obligations, including the following:

- Numerous broad exceptions and limitations to protection, including fair use,²⁰ which would call into question Taiwan's compliance with its WTO TRIPS Agreement obligations;²¹
- A reduction of criminal liability standards (e.g., requiring participation in collective management organizations (CMOs) as a prerequisite for criminal enforcement, exempting a broad range of uses of copyright works from criminal liability, and removing the minimum prison sentence of six months for making and distributing infringing copies);²² and
- Requiring rights holders to file a formal complaint rather than providing *ex officio* authority for law enforcement to take action against criminal acts of infringement.

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) Implementation:

Taiwan also passed its Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) Implementation Law in 2022 that purports to implement the CPTPP standards.²³ The CPTPP requires compliance with the WIPO Internet Treaties. However, the changes Taiwan will introduce to the Copyright Act will come into effect only if Taiwan joins the CPTPP or when otherwise specified by the Executive Yuan. There is no specific timeline for this process so far. CPTPP members are required to ratify the WIPO Internet Treaties, an important step in improving protection and enforcement. However, the law does not mention the required accession to the treaties or even recognize a commitment to comply with the treaties irrespective of formal accession, which might not be politically possible. The Government of Taiwan should recognize a commitment to comply with the WIPO Internet Treaties irrespective of formal accession.

Additionally, the law does not contain anything on term extension. While term of protection is a "suspended" provision in the CPTPP and not mandatory, this substantive issue was discussed in the copyright reform process in

¹⁸ The music industry reports that infringement through camcording live concerts is increasing.

¹⁹ Corrections should include allowing the setting of fair market based rates for collectively managed rights (instead of tariffs determined by the Taiwan IP Office (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.

²⁰ Article 65(1) of the draft states that all of the enumerated exceptions (Articles 44-63) are subject to fair use without any requirement that they be confined to the fair use factors outlined in Article 65(2). Article 65(2) instead appears to function as an additional "catch all" fair use exception. As a result, the draft sets out a sweeping exception regime that is largely exempt from the safeguards set out in Article 65(2), which was originally intended to confine the enumerated exceptions to the three-step test. All of these exceptions should be expressly confined to the three-step test (e.g., WTO TRIPS Agreement, Article 13) to ensure compliance with Taiwan's international obligations.

²¹ Other problematic exceptions include an exception for using "common domestic reception appliances" to retransmit works publicly that have been publicly broadcast, and a broad exception for public performance of works for "nonprofit" activities. To ensure compliance, the three-step test 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.

²² The 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. Parallel imports should not be decriminalized, 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. Also, the exemptions from criminal liability set forth in Article 37 are too broad, covering, for example, exploitation of digitized karaoke machines or jukeboxes, which contain reproductions of musical works for public performance and re-transmission.

²³ See, e.g., IIPA 2019 at 84-85.

Taiwan and is very important to U.S. rights holders. The implementation law revises the list of copyright infringement offenses that qualify as a “public crime” (i.e., a crime capable of *ex officio* enforcement).²⁴ Some of the amendments are positive (e.g., both the concepts of unauthorized public transmission and unauthorized reproduction and distribution in digital format are included under “public crime”), but the scope of these changes are limited by the inclusion of the requirements that the “whole” work is exploited “for consideration,” and the minimum damage threshold is set at NTD1 million. This threshold is far too high and does not address goods that have a low market price. It appears that the damage threshold would be applied on a per infringement basis, but this should be clarified by the TIPO. Furthermore, reconsideration of a reasonable minimum damage threshold is needed.

Collective Management Organization (CMO) Act: In 2022, Taiwan recently amended its Collective Management Organization Act (CMO Act), but it still presents shortcomings that affect the establishment of new CMOs, such as the obligation for half of the promoters of a new CMO to be residents in Taiwan and obstacles for rights holders’ associations and current members of a CMO to be promoters of a new one, and their governance, such as the introduction of term limits for management-level positions and internal control, which are difficult to apply to CMOs in which a reduced number of rights holders hold significant shares of the market.

Draft Internet Audiovisual Services Act (IAVSA): In May 2022, the National Communications Commission (NCC) released a draft “legal framework” for the revised IAVSA, which has been undergoing drafting since 2020. The “framework” for the IAVSA would obligate foreign OTT service providers to register with the NCC, appoint a local agent, comply with a rating system that is potentially inconsistent with international standards, and potentially disclose sensitive commercial information. Although the NCC states that they are primarily concerned with regulating OTT services and promoting “legal” copyrighted streaming content, such requirements, if applied to all OTT services, would stifle business development and add a burdensome barrier to market entry. The draft legal framework also suggests local content prominence obligations and associated penalties for noncompliance. The full revised draft of the IAVSA has not been released to date.

Unfortunately, some local stakeholders have pointed to the significant problem of piracy originating outside of Taiwan (as discussed above) to advocate for local registration requirements. While local registration requirements would discriminate against legitimate services, such requirements would be ineffective against the problem of illicit piracy services located outside of Taiwan that target the Taiwanese market. As noted above, Taiwan needs effective remedies to address this problem, such as no-fault injunctions to block access to foreign-hosted piracy services.

Draft Digital Information Services Act (DISA): A Digital Information Services Act (DISA) put forward by the NCC was met with widespread disapproval from stakeholders and was shelved in September 2022. The issues of greatest concern were the breadth of definitions, remedies proposed with respect to certain intermediaries, transparency reports, and description of user rights. IIPA understands the draft was shelved, and there is no interest on the part of the government in re-introducing it any time soon (particularly now in light of the results of the recent elections).

MARKET ACCESS UPDATES AND RELATED ISSUES

Local Content Quotas: In January 2017, the NCC issued regulations that included significant local content requirements that limit the broadcasting of U.S. audiovisual content on terrestrial and satellite television.²⁵ These

²⁴ Unfortunately, to qualify as a public crime, the “whole” work must be exploited “for consideration” and the infringement value must exceed NT\$1 million (about US\$32,000). These are unnecessary obstacles that should be removed, particularly the high threshold, because calculating the value of infringement is fraught with uncertainty and the high bar does little to deter online infringement and may actually encourage it.

²⁵ The Administrative Regulation for the Terrestrial TV Stations Broadcasting Local Production Programs and the Administrative Regulation for the Satellite TV Channels Broadcasting Local Production Programs require terrestrial TV stations to broadcast at least 50% of locally produced dramas between 8 pm and 10 pm and 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. These regulations require 40% of these locally produced programs to be new productions. Furthermore, cable TV services must broadcast at least 20% of local programming.

discriminatory conditions limit consumer choice, undermine the growth of the pay-TV sector in Taiwan, restrict U.S. exports, and should be repealed.

Additional Barriers Against Audiovisual Content: Taiwan maintains several other discriminatory barriers against U.S. audiovisual content. The Cable Radio and Television law limits foreign direct investment in a domestic cable television service to 20% of the operator's total issued shares. Foreign investment in satellite television broadcasting services is also restricted to no more than 50%. In 1990, Taiwan set a rate cap for cable TV service of NT600 (US\$20) per month per household, which has never been adjusted to keep up with inflation. Other restrictions on television services include a mandatory carriage requirement of 90-100 channels in the basic cable package and, for all Internet Protocol TV (IPTV) offerings above the basic level cable TV services, only *à la carte* pricing is allowed. Such investment restrictions and rigid regulations of retail cable rates by the central and local government have hindered the development of the cable TV industry, satellite operators, and content providers.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

The deficiencies in Taiwan's enforcement framework outlined above—including 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 WTO 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 WTO TRIPS obligations including, in particular, those under TRIPS Article 13 on exceptions and limitations.