

TAIWAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2024 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Taiwan be placed on the Special 301 Watch List.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 taking enforcement actions against violators over the past few years. Recent raids against the distributors of *Ubox* and *SviCloud* are positive signs that the government is taking its commitment to address unlawful PDs more seriously. However, sentences against pirate operators in legacy cases remain too low to deter piracy. It is hoped that ongoing investigations and cases will lead to more deterrent outcomes.

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 in the areas of over-the-top (OTT) services and intermediary platform regulations. 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 a minimum, Taiwan should ensure its enforcement framework and its copyright legislation comply with its obligations under the WTO TRIPS Agreement (TRIPS), 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.

PRIORITY ACTIONS REQUESTED IN 2024

Enforcement

- Ensure that criminal authorities 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 through existing laws to provide a mechanism that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities.
- Take effective action to deter unauthorized theatrical camcording incidents, including issuing deterrent penalties.

Legal Reforms

- Enact legislation to address the gaps under the amended Copyright Act to provide effective relief for copyright infringement, including mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities; provide proper incentives for ISPs; and other matters not addressed in the amendments.
- Ensure the adequacy of civil remedies by enhancing Article 88 of the Copyright Act to remove the restrictive language on calculating damages.
- Issue implementing regulations or guidance ensuring new or proposed exceptions meet the three-step test.

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/2024/01/Appendix-B-2024.pdf>.

- Address shortcomings in amendments to the Collective Management Organization (CMO) Act.
- Comply with the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty irrespective of formal accession.
- Ensure that any potential over-the-top (OTT) regulations or any regulations on intermediary platforms do not disincentivize foreign investment.

Market Access

- Eliminate market access barriers to U.S. audiovisual content, including investment, the basic cable rate cap, and discriminatory television content quotas.

ENFORCEMENT

- **Ensure that criminal authorities 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.**

Online and mobile device piracy in Taiwan continued at a concerning level in 2023. Both domestic and foreign websites that provide illegal content remain a significant problem and undermine the ability of rights holders and legitimate services to distribute copyrighted content. These sites 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. Social media platforms have also become a popular way to share pirated content.

Apps, PDs, and mobile devices, such as *Mixerbox 3*,² are a significant platform for disseminating illegal content. Notwithstanding specific legislative reforms, the proliferation of PDs remains a problem in Taiwan, and enforcement against PD operators is insufficient.³ Streaming devices that run with proprietary infringing apps enable unauthorized access to live channels and video-on-demand (VOD) content and are readily available online and in physical marketplaces. Sellers of streaming devices try to distance themselves from the installation of infringing apps by claiming that the manufacture or sale of the boxes themselves is not illegal and that, instead, resellers 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. 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 that 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 the Criminal Investigation Bureau (CIB), Telecommunication Police Brigade (TPB), and Criminal Investigation Brigade (CIBr)) on PD cases, and IIPA is hopeful that enforcement authorities will continue to pursue such cases, using the amended law to its maximum extent.

² *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 provides unauthorized music video content streamed from YouTube, stripped of advertisements.

³ 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 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*, *EV PAD*, and *SVI Cloud*.

In September 2023, the Taiwan Police announced that they had completed a successful raid against the distributors of SVICLOUD PDs, seizing more than 1,000 PDs and equipment including mobile devices and computers. Seven suspects were arrested. At the event, officials also urged the public to refrain from using PDs, reminding them of the security risks associated with streaming content illegally. Such enforcement action and consumer messaging are welcome and encouraging, but sustained action and messaging remains necessary to address the problem of PDs in Taiwan.

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 industry⁴ 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 stream ripping (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.

Taiwan’s Internet users often obtain unauthorized content primarily from websites located overseas. Unfortunately, Taiwan’s legal framework to address overseas infringements remains inadequate. Taiwan’s legal system does appear to offer mechanisms that ensure ISPs can, on a no-fault basis, impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites, upon rights holders’ applications to appropriate authorities. An unpublished Taipei District Court case, as well as the *Gimy* criminal action (see below), may pave the way for an approach by the Taiwan Network Information Center (the entity in Taiwan responsible for domain name registration and IP address allocation) to disable access to sites engaged in illegal activity. However, pirate operators can evade these temporary orders. The current remedy available to disable access to such sites (i) can only be initiated via a criminal process; (ii) is entirely discretionary and the duration for which access is disabled is dependent on subsequent prosecution of the operators of the identified infringing sites; and (iii) even when implemented, access is disabled only in relation to the specific defendant domains identified, i.e. there is no dynamic impact. 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. The Taoyuan District Court delivered a verdict in April 2023 involving the *8maple* website (domains including *8drama.com*; *8maple.ru*; *fenglin.to*; *eyny.tv*). The two defendants were found guilty, and each sentenced to prison for one year and six months. In addition, the court announced confiscation of the defendant’s illicit gains, which amounted to more than TWD 58,000,000 (approx. US\$1,946,000). The case is currently on appeal.

A criminal referral was made in Taiwan related to the piracy service *Gimy* in December 2020, and there was a raid in early 2021. A criminal trial against four criminal defendants is currently ongoing before the Taipei District Court, with a first instance decision expected in early 2024. Although eight *Gimy* domains were seized at the outset of the matter, no mechanism appears to be in place to ensure that new domains or redirects are seized or disabled while the criminal trial remains ongoing. As such, *Gimy* continues to evade these seizures by creating new domains, including *Gimy.ai* (the main domain), *Gimy.tube*, *gimy.is*, *Gimy.video*, and *gimy.cc*. These domains continue to be the most popular piracy domains within Taiwan.

Although the recent criminal actions (and in the *8maple* case) deterrent penalties issued on first instance are welcome developments, there remain areas for improvement in the criminal referral process in Taiwan. First, the criminal referral process continues to take a significant amount of time. The delay between the filing of the referral and

⁴ For example, *Backupmp3.com* received 11.0m visits from Taiwan in Q1 2023, *Y2mate* received 1.4m visits, and *Yout.com* more than 0.7m visits.

conviction, coupled with the absence of mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities, means that piracy operators can continue operating their websites while the case goes through the courts (including appeals).

Second, procedural requirements continue to introduce unnecessary complexity and delay to an already lengthy criminal referral process. Notarized and legalized powers of attorney continue to be required for the filing of each individual criminal referral and before each level of Court. For example, the same power of attorney used for the first instance trial would not be sufficient when the same case goes on appeal.

The Government of Taiwan should ensure that the CIB, TPB, and 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. 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 or cyber-bullying. Government involvement and support is essential to expand to content that infringes copyrights. Without a similarly definite and impactful remedy to address piracy sites and services, Taiwan is becoming an outlier in Asia, as many other governments in the region (and elsewhere in the world) are taking active steps to address rampant online and mobile piracy.

The need for such enforcement measures has become even more crucial following the emergence of new means of infringement, such as mobile apps with built-in karaoke capability imported from China or manufactured in Taiwan. These apps allow consumers to access and download content from a cloud database located overseas, with the app providing access to a vast amount of unauthorized karaoke audiovisual (AV) content. Several proceedings have been launched in Taiwan in the last two years, including against karaoke AV content cloud databases legally licensed only for use in the mainland China territory but that were nonetheless 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 such karaoke AV content in Taiwan have consequently suffered significant losses as a result of this issue. The rights holders took legal actions against those distributors of the machine in Taiwan according to Article 87(1)-(7) & (8) and Article 93, but most of them were either not indicted or not found guilty because the prosecutors and judges (1) deny the infringing evidence collected by rights holders; or (2) are unable to verify the authorization document issued by the machine manufacturers that in fact applied only to the mainland.

The long-standing forum site *Eyny.com* remained a key piracy concern in Taiwan. There were more than 25.3m visits to *Eyny* from Taiwan in Q2 2023 (according to Similarweb) from users seeking to download music, film, television episodes, software, and video games with 83.5% of all visits to the site from Taiwan. Forum sites like *Eyny* often link to downloads hosted on cyberlockers, and these sites were also widely used in Taiwan. For instance, there were 7.8m visits from Taiwan to *Mega.nz* during Q2 2023, 5.0m visits to *Katfile.com*, and 1.7m visits to *Rapidgator.net*.

- **Take effective action through existing laws to provide a mechanism that ensures ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities.**

Taiwan should use existing laws to provide in its legal system mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities.

- **Take effective action to deter unauthorized theatrical camcording incidents, including issuing deterrent penalties.**

In addition to improving the legal framework (discussed below), the government should enact actions under current law, including issuing deterrent-level penalties.⁵ The resumption of normalcy in movie-going attendance provides an important opportunity to “reset” on this key issue.

LEGAL REFORMS

- **Enact legislation to address the gaps under the amended Copyright Act to provide effective relief for copyright infringement, including mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders’ applications to appropriate authorities; provide proper incentives for ISPs; and other matters not addressed in the amendments.**

Taiwan has in recent years introduced only relatively minor amendments to its Copyright Act.⁶ As previously reported, in 2019, Taiwan enacted amendments to Articles 87 and 93 of the Copyright Act. This legislation followed 2018 guidance from the Taiwan Intellectual Property Office (TIPO) that illicit streaming devices are prohibited under the Copyright Act and an August 2018 IP Court decision confirming this interpretation. However, 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 infringed copyright 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 located outside of Taiwan, and no mechanism exists for rights holders to bring action in Taiwan against such services.

Prior IIPA submissions have detailed the flaws in the 2019 amendments.⁷ 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. IIPA believes the Taiwanese government should propose legislation to provide in its legal system mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders’ applications to appropriate authorities. 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, and Thailand have adopted or refined approaches that provide a remedy requiring ISPs to disable access to infringing sites.⁸ Moreover, the amendments fail to address several deficiencies in Taiwan’s existing legal regime. Taiwan should:

- Clarify the ISP liability framework to ensure that intermediaries are incentivized to act against online piracy and that safe harbors apply only to passive and neutral intermediaries that do not contribute to infringing activities; such intermediaries should fulfill certain conditions, including adoption of a repeat infringer policy,

⁵ 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 would be desirable for Taiwan to adopt *sui generis* provisions specifically covering the act of camcording.

⁶ 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 is 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.

⁷ 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>.

⁸ Europe has addressed this problem 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.

with a requirement for marketplaces and encouragement for all ISPs to institute “know your business customer” (KYBC) policies; and that, upon obtaining knowledge of infringement (including a notice) or otherwise becoming aware of circumstances of which the infringement is apparent, intermediaries should 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 and audiovisual works, 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;
- Make it a criminal offense to engage in unauthorized camcording of motion pictures in movie theaters or of live musical performances;⁹
- 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;¹⁰ 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, draft amendments released in 2021 contain 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,¹¹ which would call into question Taiwan’s compliance with its TRIPS obligations;¹²
 - A reduction of criminal liability standards (e.g., requiring participation in 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);¹³
 - 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; and
 - Failing to treat producers of sound recordings fairly by denying them exclusive rights for public performance (including where this has been “simultaneously further communicated to the public”).
- **Ensure the adequacy of civil remedies by enhancing Article 88 of the Copyright Act to remove the restrictive language on calculating damages.**

⁹ The music industry reports that infringement through camcording live concerts is increasing.

¹⁰ Corrections should include allowing the setting of fair market-based rates for collectively managed rights (instead of tariffs determined by TIPO); establishing judicial dispute resolution mechanisms in lieu of the requirement to have CMO 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.

¹¹ 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 Article 13) to ensure compliance with Taiwan’s international obligations.

¹² 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.

¹³ 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.

Civil damages in Taiwan for copyright infringement are currently inadequate. Article 88 of the Copyright Act includes restrictive language on calculating damages and limits damages to NTD1 million (roughly US\$31,787) in cases where actual damages cannot be clearly determined. Due to the nature of much copyright piracy, and the lack of available data for 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 the limits and restrictive language. The 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. Without overall effective remedies, beyond civil damages and the needs for improvement in efforts such as mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities, online piracy investigations suffer, and piracy proliferates. In recent reports, the music industry cites 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, a cooperative tool developed by enterprises, businesses, and public associations, has led to some temporary disabling of access of domains associated with criminal online copyright infringement). 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, training 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.

- **Issue implementing regulations or guidance ensuring new or proposed exceptions meet the three-step test.**

Other longstanding draft copyright amendments proposed by the Taiwan Intellectual Property Office (TIPO), which are now before the Legislative Yuan, propose many unfortunate changes that would weaken copyright protection. The draft amendments contain problematic provisions for rights holders, including a broadly drafted (i.e., poorly defined) 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 October 2023, most of the draft amendments remain under active consideration by the Legislative Yuan. However, in May 2022, the Legislative Yuan passed a small portion of the draft amendments focused on broader education exceptions in the Copyright Act that may result in weakened protection for copyright.

- **Address shortcomings in amendments to the Collective Management Organization (CMO) Act.**

In 2022, Taiwan amended its CMO Act. The Act still presents shortcomings, however, that affect the establishment of new CMOs and their governance. For example, the Act includes 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. Moreover, the Act introduces term limits for management-level positions and internal control that are difficult to apply to CMOs in which a reduced number of rights holders hold significant shares of the market.

- **Comply with the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty irrespective of formal accession.**

While it may be politically impossible for the Government of Taiwan to officially join the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively the WIPO Internet Treaties), it should nonetheless comply with the treaties, which provide the global minimum standard of protection for copyrighted works online.

- **Ensure that any potential over-the-top (OTT) regulations or any regulations on intermediary platforms do not disincentivize foreign investment.**

The National Communications Commission (NCC) continues to actively consider a draft “legal framework” for the revised Internet Audiovisual Services Act (IAVSA), which has been undergoing drafting since 2020 and is understood to still be under active consideration as of 2023. The “framework” for the IAVSA would obligate foreign OTT and VOD service providers to register with the NCC, appoint a local agent, comply with a content regulation system that is potentially inconsistent with international standards, and potentially disclose sensitive commercial information. The draft also proposes local content obligations and associated penalties for noncompliance. The full revised draft of the IAVSA (based on the framework) 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. Local registration requirements would discriminate against legitimate services and be ineffective against the problem of illicit piracy services located outside of Taiwan that target the Taiwanese market. As noted above, there are other remedies that would effectively address this problem.

Additionally, a Digital Intermediary Services Act (DISA) put forward by the NCC, which focuses on regulating platform accountability, illegal content, transparency, and disclosing business information and service terms to protect users’ rights, 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 (particularly with respect to online content regulation) and possible disclosure of sensitive commercial information. As of December 2023, the draft remains shelved, although we understand the DISA remains under active consideration and may be revived following Taiwan’s presidential elections in January 2024.

MARKET ACCESS

- **Eliminate market access barriers to U.S. audiovisual content, including investment, the basic cable rate cap, and discriminatory television content quotas.**

The Cable Radio and Television law limits foreign direct investment (FDI) in a domestic cable television service to 20% of the operator’s total issued shares. FDI 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 with at least one major channel provider announcing their exit from the market in 2023.

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.¹⁴ These discriminatory conditions limit consumer choice, undermine the growth of the pay-TV sector in Taiwan, restrict U.S. exports, and should be repealed.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

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

¹⁴ 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.