

# THAILAND

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2024 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that Thailand remain on the Watch List in 2024.<sup>1</sup>

**Executive Summary:** The Royal Thai government continues to struggle as it combats piracy, and recent changes in the government raise further questions about the long-term stability of its intellectual property (IP) policies. Though amendments to the Computer Crime Act (CCA) establishing a judicial remedy to disable access to infringing content gave rights holders hope of improving efforts to combat rampant online piracy in the country, the mechanism has faced difficulties and has had inconsistent and mostly ineffective results to date. Overall, existing enforcement against piracy remains largely non-deterrent. Thai-language piracy sites and services continue to dominate the online ecosystem, unfairly competing with legitimate rights holders. After officially acceding to the WIPO Copyright Treaty (WCT) in 2022, the government is now reviewing the Copyright Act to meet the requirements of the WIPO Performances and Phonograms Treaty (WPPT) with the goal of joining the treaty in 2026. IIPA urges the Government of Thailand to take advantage of this opportunity and the opportunity presented by the European Union (EU)-Thai Free Trade Agreement (FTA) negotiations to make necessary improvements to Thailand's legislative and enforcement framework, including an injunctive relief provision to address online infringement more effectively. The Royal Thai government should also remove market access barriers that negatively impact the creative industries.

#### **PRIORITY ACTIONS REQUESTED IN 2024**

##### **Enforcement**

- Ensure enforcement officials increase the number of enforcement actions against commercial-scale digital piracy services, and critically bring criminal prosecutions through to convictions.
- Clarify the criminal prosecution process, which remains excessively lengthy and lacks transparency, against commercial-scale piracy websites.
- Ensure proper implementation and application of CCA Section 20(3) regarding actions to combat pirate websites, including by ensuring Internet service providers (ISPs) comply with such measures and training enforcement officials on prominent digital piracy methods.
- Implement effective measures by e-commerce platforms to prevent distribution of infringing physical goods, including by repeat infringers.
- Act against rogue collective management organizations (CMOs) and combine this enforcement action with regulatory reforms to change the criteria for CMO registration.

##### **Legal Reforms**

- Introduce legal reforms, including further amendments to the Copyright Act, to address several critical issues (e.g., injunctive relief, making IP infringement non-compoundable, service provider liability, technological protection measures (TPMs), rights management information (RMI), theatrical camcording, collective management, exceptions, and term of protection) to improve Thailand's copyright protection and enforcement framework.

##### **Market Access**

- Remove market access restrictions negatively impacting the creative industries, such as foreign ownership and censorship restrictions, screen quotas, television must-carry requirements, and over-the-top (OTT)/video-on-demand (VOD) regulations.

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<sup>1</sup> For more details on Thailand's Special 301 history, see previous years' reports, at <https://iipa.org/reports/reports-by-country/>. For the history of Thailand's Special 301 placement, see <https://www.iipa.org/files/uploads/2024/01/Appendix-B-2024.pdf>.

## **ENFORCEMENT**

Prior IIPA reports on Thailand contain a more detailed discussion of piracy and enforcement issues. This report serves only as an update to those reports and is not to be considered an exhaustive review of issues.<sup>2</sup>

- **Ensure enforcement officials increase the number of enforcement actions against commercial-scale digital piracy services, and critically bring criminal prosecutions through to convictions.**

Both U.S. producers and distributors, as well as local Thai producers and services, are profoundly harmed by online piracy services, which specifically target Thai users with Thai-language sites.<sup>3</sup> Streaming unauthorized content is the most popular form of piracy, whether through streaming websites, apps, piracy devices, circumvention devices or software, or even through social media. Many websites serve as portals that allow users to download apps that provide access to pirated content, including the latest theatrical run motion pictures, television content, sporting events, and live streamed pay-per-view events and concerts. The most popular streaming sites in Thailand are home-grown and operated from within the country, including *123-hd.com* (between January to November 2023 183.4 million visits from Thailand and 206.9 million global visitors according to SimilarWeb) and *037hdmovie.com* (154.5 million visits from Thailand and 159.8 million global visitors during the same period). BitTorrent indexing and tracker sites, cyberlockers, and BBS/forums also remain problematic. The popularity of peer-to-peer (P2P) networks remains a concern. Many of the top piracy sites in Thailand are domestic BitTorrent sites: *Siambit.me* (59.2 million visits from Thailand and 59.8 million global visitors between January to November 2023 according to SimilarWeb), *dedbit.com* (14.2 million visits from Thailand and 14.4 million global visitors during the same period), and *tt-torrent.com* (26 million visitors between January to September 2023) until the site was taken down in October 2023.

Popular stream-ripping services include *mp3fromlink.com* (11.0 million visits from Thailand in Q3 2023 according to SimilarWeb), *ssyoutube.com* (4.6 million visits from Thailand in the same period), *y2mate.com* (2.2 million visits in the same period), and *savefrom.net* (2.5 million visits in the same period). Some of these services have been subject to website blocking orders or other litigation in some jurisdictions, yet no action has been taken in Thailand. Cyberlockers that egregiously or primarily facilitate access to infringing materials also remain a problem in Thailand, such as *Mega.nz* (5.8 million visits from Thailand in Q3 2023) and *4shared.com* (1.8 million visits in the same period). Illegal apps on smartphones are popular among Thai users seeking to access vast amounts of pirated content either for free or at a very low cost. These include apps for downloading infringing MP3 content. Increasingly, piracy websites are using content delivery networks and cloud services, making identification of website operators and server locations very difficult.

Enforcement against online piracy sites and services remains largely insufficient and non-deterrent, although cooperation over the past few years between the Police Cyber Taskforce (PCT), the Royal Thai Police Economic Crimes Division (ECD), and the Department of Special Investigations (DSI) has been good, resulting in some notable enforcement actions against several large piracy sites. Unfortunately, these enforcement actions have resulted in insufficient and non-deterrent outcomes against the pirate operators or have yet to be prosecuted despite the enforcement action taking place in 2018 or 2019 (see next section on the criminal prosecution process for additional details). As a result, there have not been significant reductions in piracy or needed deterrence and Thai-language piracy sites and services continue to operate largely with impunity, unfairly competing with legitimate rights holders.

- **Clarify the criminal prosecution process, which remains excessively lengthy and lacks transparency, against commercial-scale piracy websites.**

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<sup>2</sup> See, e.g., IIPA, Thailand, 2023 Special 301 Report, January 31, 2022, at <https://www.iipa.org/files/uploads/2023/01/2023THAILANDSPEC301.pdf>.

<sup>3</sup> Notwithstanding the expanding availability of legitimate services for music and audiovisual materials, increasing access to broadband Internet, particularly on mobile devices, has led to escalating piracy of recorded music, motion pictures, television and streaming content, video games, published materials, and broadcasts. Legitimate services in Thailand for content include iTunes, Google Play Store, Netflix, Disney+, Hotstar, Amazon Prime Video, HBO Go, Viu, WeTV, iQIYI, TrueID, Deezer, KKBox, Spotify, YouTube, and AIS, among others.

Legitimate online services are harmed by the increasing threat from copyright infringing websites. It is imperative that Thai authorities prioritize and expedite the prosecution process, ensuring that pirate website operators face timely and appropriate legal ramifications. In particular, the Royal Thai government should prosecute commercial-scale streaming piracy sites and services, including *Movies2Free* and *Sakarinsai8*, that have yet to be referred to the procuracy. An example of the need for a more efficient prosecution process is *Movies2free*,<sup>4</sup> which was shut down by the DSI in November 2019. After the enforcement action, the DSI announced that the piracy site was one of the largest in Thailand and had been generating US\$160,000 per month in advertising revenue alone.<sup>5</sup> This delay highlights the challenges in the current system, in which forensic procedures and the prosecution process can extend over several years, hindering the effectiveness of legal action against such piracy operations. A commitment to robust enforcement, timely prosecutions, and appropriate deterrent penalties are essential to curtail current levels of piracy in the country.

- **Ensure proper implementation and application of CCA Section 20(3) regarding actions to combat pirate websites, including by ensuring Internet service providers (ISPs) comply with such measures and training enforcement officials on prominent digital piracy methods.**

In a significant development, the 2016 Amendment to the CCA B.E. 2550 (2007) added IP infringement as a predicate crime in Section 20, permitting injunctive relief against ISPs to disable access to infringing websites hosted outside of Thailand. The Amendment entered into force in July 2017. While this was a promising reform, results with use in practice have been mixed. In recent years, cases seeking full disabling of access to pirate websites have not succeeded, notwithstanding hundreds of URL-specific blocking orders. ISPs are capable of blocking the entire website, and industry seeks a process whereby the applicants may obtain full website blocking. In appropriate cases involving egregious infringers, orders should be directed to disable access to entire domains, as opposed to specific URLs, and be dynamic to address sites that “hop” to another domain to circumvent the original order.

Further steps should also be taken to ensure that ISPs comply with such website blocking processes. Compliance remains an issue as many ISPs do not comply with court orders, and the penalty provision for non-compliant ISPs is not enforced. Under Section 27 of the CCA, ISPs can be subject to fines (Baht 200,000 / US\$6,400 and a further daily fine of Baht 5,000 / US\$160) until they comply with the relevant blocking order. Enforcement of the penalty provision for non-compliant ISPs would help to ensure an effective site blocking program in Thailand, but the Ministry of Digital Economy & Society (MDES) has never enforced it. The National Broadcasting and Telecommunications Commission (NBTC) has provided concrete support by issuing notices of administrative orders to ISPs to closely examine and comply with the pending court orders. Enforcement authorities should support efforts to ensure that ISPs comply with website blocking orders, including pursuing enforcement actions against ISPs that do not comply. Enforcement authorities should also receive training on prominent digital piracy methods, such as stream ripping and cyberlockers, to enable rights holders to effectively utilize available enforcement tools and remedies.

- **Implement effective measures by e-commerce platforms to prevent distribution of infringing physical goods, including by repeat infringers.**

The distribution of infringing physical products, including counterfeit CDs and digital storage devices pre-loaded with infringing music content, remains an issue on e-commerce platforms in Thailand. According to the Thai Entertainment Content Trade Association (TECA) report, the Department of Intellectual Property (DIP) took swift action against repeated infringers by cooperating with an e-commerce platform, namely Shopee, within two days after TECA sent the report to DIP regarding music products that infringed the rights of its members. DIP has provided good support to TECA for a range of activities, including work on site blocking for stream ripping, conducting anti-piracy workshops with TECA, assisting TECA and platforms with the Memorandum of Understanding on the Protection of IPR on the

<sup>4</sup> *Movies2free* was the 15<sup>th</sup> most popular site in Thailand with 34 million visits in Q3 2019.

<sup>5</sup> See <https://torrentfreak.com/police-shut-down-thailands-most-popular-pirate-site-following-hollywood-request-191108/>

Internet, and working on repeat infringer and other infringement issues. However, repeat infringers are still able to distribute infringing products on various e-commerce platforms.

E-commerce platforms should implement effective measures to prevent the distribution of infringing products on their platforms, including by repeat infringers (including, for example, “Poohstudio1999”, which manifested itself across several platforms and using several derivative names like “poohstudio1976”). Authorities should, *inter alia*, leverage the existing Memorandum of Understanding on the Protection of Intellectual Property Rights (IPR) on the Internet for meaningful action by e-commerce platforms.

- **Act against rogue CMOs and combine this enforcement action with regulatory reforms to change the criteria for CMO registration.**

The music industry is concerned that many operators of restaurants, bars, shops, and other commercial establishments have been harassed by “rogue” entities, despite having obtained licenses from legitimate CMOs and paid royalties for the use of sound recordings played on their premises. A proliferation of these “rogue” entities has caused serious market disruption, directly harming music rights holders, legitimate CMOs, as well as users in Thailand. Enforcement officials should act against these rogue CMOs and as discussed below, legal reforms are also needed to effectively address this problem.

## **LEGAL REFORMS**

- **Introduce legal reforms, including further amendments to the Copyright Act, to address several critical issues (e.g., injunctive relief, making IP infringement non-compoundable, service provider liability, technological protection measures (TPMs), rights management information (RMI), theatrical camcording, collective management, exceptions, and term of protection) to improve Thailand’s copyright protection and enforcement framework.**

On July 13, 2022, Thailand officially acceded to the WCT, effective October 13, 2022. After amending the Copyright Act in February 2022, the Government of Thailand is now undertaking a review of the Copyright Act as part of efforts to meet the requirements of the WPPT, with the goal of acceding to the treaty by the end of 2026. DIP is seeking stakeholders’ views on the proposed draft amendments. The proposed amendments are broadly drafted, and in some respects are not consistent with the WPPT. The draft amendments also propose removing minimum penalties in the Act, which could result in non-deterrent penalties for copyright infringement. The proposal, if enacted, could send a troubling signal that copyright infringement does not have serious adverse economic impacts on rights holders, authors, and performers. The following are critical issues that remain with the proposed amendments to the Copyright Act that should be addressed in subsequent drafts to ensure that the Royal Thai government achieves its stated goals of modernizing its copyright law, complying with its international obligations, and fully implementing and adhering to the WCT and WPPT (collectively, the WIPO Internet Treaties).

- **Injunctive Relief:** To improve the effectiveness of enforcement against online copyright piracy, the draft amendments should provide 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 (analogous to the CCA remedy, which applies to all IP crimes). The current FTA negotiations between the EU and the Royal Thai Kingdom present a good opportunity to agree to disciplines in this area.
- **Infringement a Non-Compoundable Offense:** IIPA urges the Royal Thai government to amend the Copyright Act to ensure that IP infringement becomes a non-compoundable state offense, thus enabling the police to act on

their own initiative (i.e., *ex officio*) without any requirement of a formal complaint from rights holders. In the age of online piracy, this ability for authorities to take ownership of investigations and cases is critically important.<sup>6</sup>

- **Service Provider Liability Amendments:** The 2022 amendments to the Act included helpful improvements to the intermediary liability framework, including requiring an effective notice-and-takedown mechanism and repeat infringer policies. Nevertheless, further improvements are still needed. First, the law should clearly establish an initial basis for liability of online service providers for infringements carried out by third parties using their services. This secondary liability provides legal incentives for online service providers to cooperate with rights holders to deter the unauthorized storage and transmission of copyrighted materials on their services. Without a clear basis for secondary liability, safe harbors (granting exemptions for such liability) would be unnecessary. Second, the eligibility criteria for safe harbors should be clarified to ensure that appropriate repeat infringer policies are an additional condition for eligibility, rather than itself giving rise to an exemption to liability. Finally, the eligibility criteria for safe harbors from liability should include, in addition to the notice-and-takedown requirement, a requirement for ISPs to implement other measures demonstrated effective in preventing or restraining infringement.
- **TPMs:** TPMs are critical for the success of services that are providing legal content to users in Thailand today, and they need to be protected. The 2022 amendments and related implementing regulations made several improvements to TPMs protections in Thailand, including prohibiting acts of circumvention of TPMs and trafficking in circumvention technologies, devices, components, and services (e.g., enabling actions against stream-ripping websites or other such services). IIPA requests the government issue further regulations or guidelines on the provisions for TPMs to clarify that service, promotion, manufacture, sale, or distribution of piracy devices and applications/software/add-ons available thereon violate TPMs protections.<sup>7</sup>
- **RMI:** Exceptions to protections for RMI are overly broad and should be narrowed. For example, the blanket exclusion of educational institutions, archives, libraries, and non-profit broadcasting organizations from violating the RMI protections is inappropriate and unjustified.
- **Theatrical Camcording Provision Should Be Revised:** Thailand enacted anti-camcording legislation in 2014. However, the anti-camcording provision falls short because it requires a link between the act of theatrical camcording and a copyright infringement, instead of criminalizing the camcording act itself.<sup>8</sup> Criminalizing the act of camcording, including audio-only captures, without requiring a link to copyright infringement, would empower law enforcement to intercept illegal recordings before they enter the online pirate ecosystem. These provisions should be revised to ensure that the possession of an audiovisual recording device in an exhibition facility with the intent to copy or transmit a whole or part of an audiovisual work (including the video, the soundtrack, or both) is prohibited, and that exhibition facilities are given standing to bring complaints. Those engaging in the act proscribed should be subject to interdiction by cinema employees and the police, immediate seizure and forfeiture of the equipment used and any unlawful copies made, as well as civil and criminal penalties.
- **Collective Management Provisions:** The current collective management and collection system for music is unwieldy and remains unclear, with many collecting bodies operating in the market. IIPA welcomes indications from DIP that it is keen to resolve this issue. However, the DIP proposal at this stage is only to introduce a voluntary

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<sup>6</sup> In May 2022, the Supreme Court of India held that offences under Section 63 of the Copyright Act, 1957 are cognizable and non-bailable offences. *M/s Knit Pro International v The State of NCT of Delhi & Anr.*, CRIMINAL APPEAL NO. 807 of 2022, Sup. Ct. India, May 20, 2022. Thailand should follow India's lead on this issue to fully modernize its system and provide enforcement apparatus the tools necessary to tackle online piracy.

<sup>7</sup> Piracy devices include media boxes, set-top boxes, or other devices that allow users, through the use of installed piracy apps and software, to stream, download, or otherwise access unauthorized content from the Internet. Such devices are still being purchased in malls and on e-commerce websites but are rarely sold with pre-installed infringing applications, making enforcement action and takedowns more challenging.

<sup>8</sup> Thailand continues to represent a potential risk for illicit theatrical camcording, particularly in relation to illegal Thai audio tracks. Although there were no forensically traced camcords to Thai theater locations in 2023, a large number of Thai audio files are still being made and subsequently edited onto illicit movie versions. If effectively implemented, the Copyright Act provision that deems camcording an infringement of copyright could help, but this provision should be strengthened to adequately address the problem.

code of conduct for CMOs, which is not a sufficient response to the long-standing challenge in the Thai market. The number of CMOs now stands at 35, with 13 of them confirmed to have applied DIP's code of conduct. Although DIP intends to certify and promote these qualified CMOs, there is no policy to prevent new CMOs from registering. The Copyright Act should therefore be amended to include provisions setting out certain principal conditions for CMOs to operate in Thailand, such as complying with a code of conduct that requires good governance, transparency, fair and accurate distribution, and of course actually representing the rights holders it claims to represent. Regarding the latter point, IIPA recommends that the Copyright Act be amended to provide that an entity wishing to act as a CMO must be registered with the Ministry of Commerce, must be authorized by rights holders, and must comply with the code of conduct. Registration criteria should be fair, objective, transparent, and reasonable and include the requirement for the CMO to operate in a transparent and non-discriminatory manner and in accordance with principles of good governance. In deciding whether to grant permission to a CMO to operate (i.e., register a CMO), the Ministry should consider the number of members, as well as the size of the catalogue of titles and rights under management, and should be entitled to refuse any application for registration or revoke any registration if the CMO does not satisfy such conditions. However, the Thai government should resist proposals to create, by government dictate, a single collection body. While voluntary cooperation between CMOs can be cost-effective and beneficial for participating CMOs and rights holders, experience shows that mandatory single collection bodies lead to inefficient and unaccountable structures.<sup>9</sup>

- **Exception for the Visually, Hearing, Intellectually, or Learning Impaired:** Copyright Act Number 4 B.E.2561 (2018) was published in November 2018 and entered into force in March 2019. The Act permits persons with disabilities who do not have access to copyrighted work due to impairment in vision, hearing, movement, intellect or learning, or other deficiencies to have equal opportunities to other persons to access, make copies, modify, or distribute the copyrighted work. DIP has issued a Ministerial Regulation on the details of authorized or recognized entities and how such copies may be distributed. The Thai exception goes well beyond the mandate of The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, which creates a limitation and exception for the benefit of the blind, visually impaired, and otherwise print disabled. That exception will be mandatory for individual WIPO members that ratify the Treaty. From the music industry's perspective, in accordance with the Marrakesh Treaty, sound recordings should not be covered by the exception at all, and in the alternative, the exception should be properly defined and restricted in scope to apply solely to specific acts regarding specific works for the benefit of specific individuals, with adequate safeguards, and with equitable remuneration payable to rights holders. This exception should be amended or implemented in such a way that it faithfully implements the Marrakesh Treaty and does not conflict with the "three-step test" of the Berne Convention, WTO TRIPS Agreement, and WIPO Internet Treaties.
- **Inadequate Term of Protection:** Thailand should extend its term of copyright protection to align it with the international trend of 70 years after the death of the author, or, in cases in which term is calculated based on publication (such as sound recordings), to at least 70 years from publication. Unfortunately, the most recent amendments to the Copyright Act did not change the term of protection, which remains at 50 years. In the case of sound recordings, there are now at least 73 countries worldwide that provide for a term of protection of 70 years or more. Thailand is encouraged to act quickly to catch up with the new international standard of protection, or risk development of the Thai music market being adversely affected. Further, if the term of protection is not extended in time, some Thai classics from the 1970s—including the classics of Soontaraporn, Suraphol Sombatcharom, and Paiboon Buth—will soon fall out of copyright protection, even though they are still widely consumed by the public. This will have a negative effect on local artists' income, especially those who have retired and rely on the royalties for a living.

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<sup>9</sup> An example of a well-functioning voluntary joint organization is MPC Music Co. in Thailand, which is a joint licensing agency formed by two collective management organizations (CMOs), Phonorights (Thailand) Co., Ltd. (PNR) (for sound recording rights) and Music Copyright (Thailand) Co. Ltd. (MCT) (for musical works rights).

- **Section 32 and Fair Use Guidelines:** IIPA also continues to call for a narrowing or clarification of Articles 32(6) and (7) of the Copyright Act, and to ensure administrative guidance on fair use is kept within the legal bounds of existing exceptions and that affected publishers and stakeholders are afforded the opportunity to provide input into the guidelines.

## **MARKET ACCESS**

- **Remove market access restrictions negatively impacting the creative industries, such as foreign ownership and censorship restrictions, screen quotas, television must-carry requirements, and over-the-top (OTT)/video-on-demand (VOD) regulations.**

**Foreign Ownership Restrictions:** Foreign ownership of terrestrial broadcast networks is prohibited in Thailand. Further, rules established in 2015 require National Broadcasting and Telecommunications Commission (NBTC) approval when a television license holder seeks to either invest more than 25% directly or more than 50% indirectly in another licensed company. This rule severely limits investment and creates significant barriers to entry for U.S. companies.

**Screen Quota:** Section 9(5) of the Motion Picture and Video Act (MPVA) allows the Film Board to establish ratios and quotas for foreign films. If implemented, such restrictions would create new barriers and reduce consumer choice. The Ministry of Culture has considered amending the MPVA since 2017. IIPA urges the Ministry to delete Section 9(5) and the related Section 68.

**Censorship Restrictions:** The MPVA imposes onerous classification and censorship requirements on films. Thailand should remove these onerous requirements, including the 15-day period for obtaining ratings and censorship approval, the associated high costs for film ratings, and the severe penalties for failure to comply.

**Television Must-Carry Requirements:** Although some media reports suggest the 2012 “must carry” rules—which require that the programs aired on free-TV be broadcast on any platforms (including satellite and Internet protocol TV (IPTV)) without conditions—will finally be reversed by the NBTC. Until this is done, the regulations raise important IPR issues, precluding the ability of rights holders to enter exclusive distribution arrangements in Thailand.

**OTT/VOD Regulation:** Various government agencies, including the NBTC, have publicly noted their interest in regulating OTT services as recently as August 2023, including the possibility of requiring streaming operators to set up a local presence to respond to government requests around content that the government finds objectionable (a form of mandatory content moderation) as well as to “promote” local content via local content investment obligations. These regulations, if enacted, would limit consumer choice, stifle business development, and add further burdensome barriers to market entry.

## **COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES**

Many of the deficiencies in Thailand’s enforcement framework described above—including inadequate efforts to combat piracy, burdensome and inefficient civil and criminal procedures, and inadequate and non-deterrent civil and criminal remedies—run afoul of Thailand’s obligations under the WTO TRIPS Agreement enforcement provisions, including Articles 41, 42, 45, and 61.