

GLOBAL STANDARDS FOR TACKLING CONTENT PIRACY

June 23, 2022

Objectives

The Objective of this paper shall be to analyze the global standards and trends for tackling content piracy including in relation to music, audio-visual section, sports telecasting and other related content via the emerging means of technology and through other modes. In view of the same, the paper shall aim to outline and suggest possible measures to curb piracy in India by adopting the most effective and best practices from around the world.

Context

The rampant increase in piracy due to the easy availability, sharing and access of content has vastly impacted the revenues of the original content creators and owners of the copyrighted work. Further, the unbridled, unsupervised increase in short-form video apps and streaming apps has facilitated the sharing of content at an unprecedented pace coupled with increased ransomware attacks¹ and other cyber-crimes under the garb of pirated websites.

During a survey conducted from January – September 2021, India was ranked third in the world in terms of accessing pirated websites after US and Russia². The recent statistics from March 2022 also highlight the growing rate at which content piracy is growing its foothold in India which is much higher than the rest of the global counterparts³.

Given the scale and extent of easy access to pirated content it becomes of high urgency and importance to deliberate upon possible ways to curb piracy and one of the ways to do so could be by way of learning from other countries from their successful attempts to curtail piracy to a considerable extent. To take an example, Indian Judiciary adopted the concept of Dynamic injunction in 2019 from Singapore jurisprudence and has been effectively using the same to curb the growing menace of rogue mirror websites. India can learn a lot from other countries of the world in terms of controlling piracy through inter-alia capacity building, maintaining an Infringing Website List (IWL), measure over and above the Take down notices and blocking piracy enabling websites.

Examples of anti-piracy measures from across the globe

- 1) **WIPO:** WIPO created a global database named 'WIPO Alert System' with extensive details of piracy-enabling websites under the initiative called 'Building Respect for Intellectual Property' (BRIP). WIPO Alert is meant for utilization by Advertisers and advertising agencies of WIPO

¹ [2021 Notorious Markets List.pdf \(ustr.gov\)](#)

² [pirated content: India ranked third globally for accessing piracy websites in January-September 2021: Study, Telecom News, ET Telecom \(indiatimes.com\)](#)

³ [Music piracy rate in India higher than the global average, IMI report reveals \(medianama.com\)](#)

Private and confidential

Member States. The international and national advertising agencies refer to the WIPO Alert database before placing advertisements on unknown websites so as to restrict the revenue sources of the listed copyright-infringing websites⁴.

Advertisers, advertising agencies and their technical service providers can apply to become authorized users of WIPO ALERT in order to access aggregated lists of infringing websites from around the world. They can use this information in their automated advertising systems to avoid placing advertisements on such sites. In this way, they can avoid supporting copyright infringement and protect their brands from negative reputational effect of association with illegal activities.⁵

In the interests of transparency, WIPO ALERT Authorized Contributors provide details of their operating procedures in compiling their lists of websites which deliberately infringe copyright.⁶ The WIPO Alert search page is accessible [here](#)⁷.

- 2) **United States of America:** Various measures taken in the USA to curtail piracy are enlisted herein below:

Anti-Piracy Warning Seal - The Federal Bureau of Investigation (FBI) of the United States of America, authorizes use of an Anti-Piracy Warning (APW) Seal by all U.S. copyright holders, subject to specific conditions of use⁸. This APW Seal, is used by the US Copyright holders, subject to specific conditions, in order to remind media users about the consequences of pirating copyright works. Even though this seal is not an indication of the site being validated or authenticated by FBI as being original, it is a clear reminder of FBI's authority and goals with respect to combating infringement of Intellectual Property Rights⁹.

Use of the APW Seal in a manner inconsistent with the required conditions constitutes an unauthorized use of an official FBI insignia and the same violates federal law resulting in fines or imprisonment¹⁰.

Public-Private Partnership - The National Intellectual Property Rights Coordination Center (IPR Center) and the Recording Industry Association of America (RIAA) entered into public-private

⁴ [WIPO ALERT - https://www.wipo.int/wipo-alert/en/](https://www.wipo.int/wipo-alert/en/)

⁵ <https://www.wipo.int/wipo-alert/en/>

⁶ https://www.wipo.int/wipo-alert/en/operating_procedures.html. The 5th WIPO Alert Stakeholders' Meeting was held on April 4, 2022 with 50 participants from all over the world. Also, as on April 14th, 2022, Zulu A.G. (Swiss tech startup active in brand safety protection and ad fraud detection) became the 18th Authorized user of WIPO Alert by signing a user agreement with WIPO. [5th WIPO ALERT Stakeholders' Meeting](#)

⁷ [WIPO ALERT Database Search: www.torrents.org](http://www.torrents.org)

⁸ The APW Seal must be placed near the authorized warning language. Additionally, the FBI advises the copyright holders to use independent, industry-recognised copyright anti-circumvention or copy protection techniques to discourage copyright of the APW Seal. <https://www.fbi.gov/investigate/white-collar-crime/piracy-ip-theft/fbi-anti-piracy-warning-seal>

⁹ [FBI Anti-Piracy Warning Seal — FBI](#)

¹⁰ <https://www.govinfo.gov/app/details/CFR-2017-title41-vol3/CFR-2017-title41-vol3-sec128-1-5009> and [Section 701](#), 709 and 712 of Title 18 of the United States Code. The APW Seal must be placed near the authorized warning language. Additionally, the FBI advises the copyright holders to use independent, industry-recognised copyright anti-circumvention or copy protection techniques to discourage copyright of the APW Seal. <https://www.fbi.gov/investigate/white-collar-crime/piracy-ip-theft/fbi-anti-piracy-warning-seal> <https://www.law.cornell.edu/cfr/text/41/128-1.5009>

Private and confidential

partnership and a long-term agreement towards expanding and formalizing their partnership on digital anti-piracy efforts in April 2022. As per the terms of the MoU, RIAA and IPR Centre will coordinate public-private sector and implement an aggressive multi-layered strategy to strengthen the digital ecosystem, educate the consumers, conduct joint training events, enforce IPRs and dismantle large-scale online criminal enterprises¹¹.

SMART Copyright Acts - It is further pertinent to state that 'Strengthening Measures to Advance Rights Technologies (SMART) Copyright Act of 2022' has been introduced in March 2022 in the USA to amend the existing Digital Millennium Copyright Act, 1998 (DMCA). If enacted, it will empower the Copyright Office to designate standard technical measures (STMs) to identify, remove or filter out piracy from their services. The STMs would be customized for various industries such as television, music, publishing and failure to implement the same would incur liabilities for non-compliance including actual and statutory damages without having an impact on the safe harbour principles laid under the USA law though the Bill does not detail the technical measures per se.¹²

Key provisions of the SMART Act which are proposed to be added in DMCA are enlisted herein below¹³:

- 1) The Register of Copyrights shall consider the following factors while examining the rule-making process initiated by the Librarian re Technical Measure:
 - a. Availability and use of technical measures to identify, manage, or protect particular types of the copyrighted works
 - b. Whether any intellectual property rights need to be licensed by service providers to accommodate technical measures
 - c. Total cost that accommodating or not interfering with the technical measure may impose on the type of service providers
 - d. Burden the technical measure may impose on the systems or networks of service providers
 - e. Avoid designating a technical measure that is otherwise a standard technical measure under DMCA
 - f. Impact technical measures may have on criticism, comment, news reporting, teaching, scholarship, research, increasing information sharing or other relevant public interest considerations
 - g. Whether technical measures pose an undue cyber security threat
 - h. Impact of technical measure on privacy and data protection
 - i. Impact technical measures may have on competition among service providers and among copyright owners

¹¹ <https://www.ice.gov/news/releases/ipr-center-riaa-launch-partnership-combat-digital-piracy>

¹² <https://www.tillis.senate.gov/services/files/435EB2FD-145A-4AD6-BF01-855COA78CEFC>; <https://www.authorsguild.org/industry-advocacy/ag-supports-introduction-and-passage-of-the-smart-copyright-act-of-2022/?msclkid=81549a3dcf9711eca0e4e8f5e0cde1da>; <https://www.digitalinformationworld.com/2022/03/new-bill-is-going-to-effectively.html>

¹³ Section 3 of SMART Copyright Act, 2022: Designation of certain technical measures to identify, protect, or manage copyrighted works

Private and confidential

- j. Whether certain categories or types of service providers should be exempt from the subset of service providers covered by a designation such as libraries, educational institutions, etc.
 - k. Whether the proposed technical measure may conflict or interfere with other proposed technical measures or designated technical measures
- 2) Civil remedies: The proposed Act also provides for the Court to grant a temporary or permanent injunction to prevent or restrain a violation, award damages, recovery of cost, reasonable attorney fees or expert witness fee to the prevailing party.
- 3) Damages: The Court shall award to the Copyright owner the actual damages suffered by the Copyright owner as a result of the violation. Other statutory amount that may be recovered under various circumstances are:

Damages	Violation
Not less than \$200 and not more than \$25,000 per violation and not more than \$150,000 in the aggregate	First time
Not less than \$5,000 and not more than \$400,000 per violation and not more than \$800,000 in the aggregate	Repeated (2 or more)
The Court may increase the award of damages to not more than triple the cost of violations under the category of '2 or more'	Repeated (3 or more)
The court, in its discretion, may reduce or remit the total award of damages in any action brought against a service provider	Innocent Violations

- 4) Chief Technological Advisor: The Register shall appoint a Chief Technology Advisor within 180 days after the enactment of the SMART Copyright Act of 2022. The Advisor shall advise the Register on technology issues related to copyright law.

Measures by Copyright Holders -Copyright holders have also undertaken various measures including the adoption of new technologies to secure their content from piracy and to control financial damages, especially on P2P Networks. Disney is one of the forerunners in this aspect as they hold a patent describing a blockchain configuration for secure content delivery approved by

the United States Patent Office¹⁴. DISH also has been granted a patent for its blockchain-based anti-piracy system¹⁵.

- 3) **United Kingdom:** UK has been the first country to successfully work on the concept of Infringing Website List (IWL) to control piracy. UK government launched Operation Creative in 2013 to prevent websites from providing unauthorised access to copyrighted content. The operation was led by Police Intellectual Property Crime Unit (PIPCU)¹⁶ in partnership with the creative and advertising industries. Under this Operation Creative, rights holders identify and report copyright infringing websites to PIPCU with evidence indicating how the site is involved in illegal copyright infringement. PIPCU evaluates the websites and verifies whether they are infringing copyright of the right holder. If infringement is found, the site owner is contacted by PIPCU officers and offered an opportunity to engage with the police, to correct their behaviour and to begin to operate legitimately. If a website fails to comply and engage with the police, then a variety of other tactical options are used including:
 - (a) contacting the domain registrar to seek suspension of the site,
 - (b) Advertisement replacement and disrupting advertising revenue through the use of IWL which is controlled by PIPCU.¹⁷

- 4) **China:** China's Sword Net Action, an annual campaign, running since the year 2005, is one of the leading anti-piracy measures which is supported by a number of Chinese Agencies and Government organizations such as National Copyright Administration of the People's Republic of China (NCAC), Cyberspace Administration of China (CAC), Ministry of Industry and Information Technology of China (MIIT) and Public Security Bureau (PSB).¹⁸ Sword Net Action allows for the removal of pirated content and shut down of infringing websites and applications on account of the action undertaken by NCAC as a result of claims of copyright made by authors. Along With the actions undertaken under the Sword Net Policy, it is also mandatory for all websites in China to display their Internet Content Provider (ICP) Registration Code which is issued once the ownership and location of origin details are provided to MIIT, thus enabling the administration to take action against the infringer.¹⁹

¹⁴ <https://www.technadu.com/disney-patents-blockchain-content-distribution-system-help-fight-piracy/275672/>

¹⁵ <https://www.technadu.com/dish-network-moves-blockchain-anti-piracy-system-forward/248505/>

¹⁶ PIPCU is a dedicated IP crime unit launched in 2013, run by the City of London Police and funded by the IPO. PIPCU coordinates the activities of industry, government, and law enforcement agencies to help counter IP crime, working closely with others such as **Trading Standards**, Border Force, and the UK Visas and Immigration division of the Home Office. PIPCU's success has led to the development of a new unit in the North West which was set up in 2020. Both PIPCU units are key partners in the fight against serious and organized online piracy and counterfeiting <https://www.gov.uk/government/publications/ip-counter-infringement-strategy-2022-to-2027/intellectual-property-counter-infringement-strategy-2022-to-2027?msckid=a5053c68cf9011ecb0da6b3e2e501cae>

¹⁷ http://news.cityoflondon.police.uk/r/842/operation_creative_prevents_millions_of_pounds_en; <https://www.iabuk.com/policy/infringing-website-list-iwl>;
<https://www.mondaq.com/copyright/708896/infringing-website-list-turning-off-the-taps>; <https://www.gamblingcommission.gov.uk/news/article/infringing-website-list-iwl-for-gambling-operators>

¹⁸ The special action of "sword net 2021" has achieved phased resultshugewealth finance- (hugewealthfinance.com)

¹⁹ <http://english.ipraction.gov.cn/article/ns/202106/346653.html>;

<http://www.chinaiptoday.com/post.html?id=1589&msckid=c60cfa90cf8511ec9852175f62d6563c> s

The NCAC 2020 annual report on the adequacy and effectiveness of the protection and enforcement of digital copyright in China released on June 1, 2021 showed that in 2020, the NCAC registered a total of 5,039,543 works whose authors filed claims to copyright, an increase of 20.37% from the previous year. The “Sword Net Action”, aimed at cracking down on online piracy and copyright infringement, was carried out in June 2020, when 3,239,400 links to pirated content were removed and 2,884 infringing websites and apps were shut down.²⁰

5) **Spain:**

Protocol for reinforcement of Copyright Protection - Spanish Protocol for the Reinforcement of Copyright Protection was approved on 8 April 2021 to tackle online piracy.²¹ To use this procedure, the infringement must be carried out by service providers which represent a certain economic activity in the digital environment²². The Protocol is a voluntary code of practice that aims to improve collaborative measures targeted at Internet access providers, amongst other things, by blocking access to mirror sites more easily²³.

Ministry of Culture - Spain offers a streamlined administrative procedure to challenge and resolve online infringements to the Copyright holders, rather than pursuing enforcement through the courts. Cases can be filed at the Copyright Commission of the Spanish Ministry of Culture (“Copyright Commission”) by an administrative application²⁴ so that the infringer would withdraw infringing content or access to the infringing website is blocked. The procedure may be directed against those information society service providers which are liable for copyright infringement, either directly or indirectly, by actively facilitating or enabling such infringement. This procedure can be used when the infringement takes place via the Internet. Copyright holders, their representatives and even copyright management societies (e.g. SGAE, CEDRO, AGEDI or EGEDA) are entitled to initiate the procedure.

According to the report on “Data Analysis of the Copyright Commission of the Spanish Ministry of Culture [Section Two]”, published in March 2020 by the Spanish Ministry of Culture (“Copyright Commission report”), the Copyright Commission has increased its website-blocking activity by 443%. It is important to mention that the application itself does not automatically open the procedure; The Copyright Commission may decide whether to open the case based on the level of audience in Spain, the specific business model of the information society service, and the number of protected works which can be accessed over the service.²⁵

Anti-Piracy Commission - The *Sección Segunda de la Comisión para la Propiedad Intelectual* (the Second Section of the Intellectual Property Commission), also known as the "Anti-Piracy Commission" works actively to curb piracy in Spain. Its main function is to safeguard intellectual

²⁰ <http://www.chinaiptoday.com/post.html?id=1589&msclkid=c60cfa90cf8511ec9852175f62d6563c%20s> Further, the blockchain system has been widely adopted and has ensured the security and legality of the generation, collection, storage, and transmission of digital evidence in China.

²¹ <https://www.lexology.com/library/detail.aspx?g=9d116727-2987-4981-a978-bdba4f0ad162>

²² exclude merely private activities

²³ <https://mediawrites.law/new-spanish-offensive-against-online-piracy/>

²⁴ Article 195 of the Spanish Copyright Act and by Royal Decree 1889/2011

²⁵ <https://mediawrites.law/safeguarding-copyright-online-in-spain-using-administrative-proceedings/>

Private and confidential

property rights at the request of a party against infringement by those responsible for information society services, provided that they, directly or indirectly, act for profit or their activity has caused or is likely to cause economic damage to the right holders. The Commission has the authority to pass site blocking orders.²⁶

Piracy & Sports - La Liga, a division of the men's football of Spanish football league has taken extensive steps to control piracy and even illegal streaming of its matches. The League also launched its anti-piracy campaign titled "*When piracy appears, football disappears*" in the year 2017²⁷. La Liga has also undertaken actions against infringing website in other jurisdictions such as Russia²⁸ and Denmark²⁹.

- 6) **France:** Authority for the Regulation of Audiovisual and Digital Communication's (ARCOM)³⁰ is responsible for implementation and execution of measures to fight online infringement such as maintaining a list of manifestly infringing websites, creating new procedures to fight against mirror sites and sites involved in unlawful broadcasting of sporting events. ARCOM also promotes voluntary agreements wherein the signatories, once in a year, furnish information about their relationship with the sites included in the IWLs in their annual corporate report (required as per the statutes of the French Commercial Code).³¹

Further, ARCOM itself or on orders of a judicial authority, may prevent access or order a search engine to dereference a website upon simple referral by a right-holder who is a part of the concerned legal proceeding³².

- 7) **Italy:** Regulation on copyright protection on electronic communications networks³³ was issued in 2013, by AGCOM³⁴. It introduced a faster and cost effective alternative procedure as compared to judicial remedies to fight online copyright infringements. The procedure starts with the petition of the right holder requesting AGCOM to remove a digital content. If AGCOM finds merit in the matter, it opens the proceeding and formally informs the Internet Service Provider (ISP), the website manager and the uploader, if traceable, within seven days from the date of the petition.³⁵ The ISP, website manager and uploader may spontaneously remove the content or rebut the petition within five days from the AGCOM notice.

²⁶ <https://www.culturaydeporte.gob.es/va/dam/jcr:9db0eb08-f015-45d5-bd08-e0a801f1f6d8/2019-1q-report-secc2-cpi.pdf?msclid=61cb6af3d05d11ec934e402457325e10>; <https://www.culturaydeporte.gob.es/cultura/propiedadintelectual/informacion-general/gestion-en-el-ministerio/comision-de-propiedad-intelectual.html>

²⁷ <https://www.nytimes.com/2017/04/08/sports/soccer/la-liga-gets-tough-on-piracy-of-its-content.html>

²⁸ <https://www.sportspromedia.com/news/la-liga-2020-anti-piracy-ruling-moscow-russia-illegal-streams/>

²⁹ <https://www.sportspromedia.com/news/serie-a-la-liga-illegal-streaming-piracy/>

³⁰ ARCOM was created in order to replace the old Conseil Supérieur de l'Audiovisuel (CSA) and HADOPI by the modification of the French Intellectual Property Code (IPC) in 2021.

³¹ <http://copyrightblog.kluweriplaw.com/2022/01/06/france-rcom-a-new-regulatory-authority-to-fight-online-copyright-infringement/>;
<https://torrentfreak.com/goodbye-hadopi-france-will-launch-new-arcom-anti-piracy-agency-in-2022-211029/>

³² <http://copyrightblog.kluweriplaw.com/2022/01/06/france-arcom-a-new-regulatory-authority-to-fight-online-copyright-infringement>

³³ The Regulation is only addressed to intermediary service providers and not to end users. If the owner has already filed a claim on the same matter before the judicial authority, AGCOM has to dismiss the matter. <https://thelawreviews.co.uk/title/the-technology-media-and-telecommunications-review/italy#footnote-090>

³⁴ Italy's Communication Authority

³⁵ The authority can dismiss the petition, if it considers the same *prima facie* inadmissible or devoid of valid grounds.

Private and confidential

A collegial body is in charge of the dismissal of the case or adoption of measures after lapse of five days of notice. The following relevant measures are directly addressed to the ISP:

- a) When the server is located in Italy, the collegial body will order, the hosting provider removal of the infringing content. In the case of a mass violations, AGCOM can order the disabling of the access to the webpage.
- b) If the server is located outside Italy, the collegial body will order to the ISP based in the Italian Territory to disable the access of Italian users to the webpage / website.
- c) AGCOM may also order the service provider to automatically redirect the requests of access to the infringing websites to a webpage created pursuant its instructions in order to inform the public of the proceeding. The Regulation has been very successful.³⁶

In addition to AGCOM, Italy also has an Anti-piracy Service (SIAE) that works closely with AGCOM. SIAE's aim is to prevent and detect infringements of Authors' rights and its authority includes blocking sites that breach the copyright regulations online. It is also actively involved in performing intelligence activities through the collection and verification of news and reports concerning incidents of piracy.³⁷

- 8) **Germany:** Germany has a unique approach towards combatting piracy. It has given way to the establishment of CUII (Clearing Body for Copyright on the Internet) which has all leading German ISPs and major associations of Copyright holders as its members. The group has devised and executed a domain-name lock system (DNS) to restrict the customers from getting access to websites with pirated content. This group ensures quick action against infringers without relying on legal proceedings. This initiative is backed by the German Federal Network Agency (BNetzA) and it also assess the recommendation of the CUII in favour of the requested DNS block and only if there are no concerns with regard to the Net Neutrality requirements the ISPs set up a DNS block.³⁸
- 9) **South Korea:** South Korea has stepped up its efforts to block piracy websites. In January 2019, the Korean Communication Standards Commission announced the establishment of a new anti-piracy enforcement unit – ‘the Copyright Infringement Response Team’. The new response team is to reinforce the blocking policy with immediate blocking action. Site blocking has had a positive impact on the piracy rates in the country, leading to piracy decline rates of up to 90% three months after the imposing of the blocking action.³⁹

Additionally, the Broadcasting and Communications Commission has undertaken to restrict https websites (including overseas websites) that deal in illegal activities including circulation of illegal

³⁶ <https://www.lexology.com/library/detail.aspx?g=dffbee3b-b0a1-4a37-886d-8ab886062c19>;

<https://www.osborneclarke.com/insights/protecting-copyright-in-italy-agcom-procedure-proving-successful>

³⁷ <https://www.siae.it/en/utilizzatori/other-services-stamps-certifications-data-and-statistics/anti-piracy/anti-piracy> Its scope of work also includes preparing and presenting reports on behalf of Judicial Authorities with the use of modern techniques of computer forensics.

³⁸ <https://usenetreviewz.com/news/cuii-starts-dns-locking-campaign-in-germany/?msclkid=94cc2c2bd03f11eca39064205e829514>

³⁹ <https://www.trademarksandbrandsonline.com/news/south-korea-sets-up-new-anti-piracy-unit-as-part-of-crackdown-5384>; <https://www.technadu.com/south-korea-escalate-fight-against-piracy-2019/54514/?msclkid=317ccf05cfac11eca727e320b1c16c57>; https://www.mpa-apac.org/wp-content/uploads/2018/01/MCAA_Impact_of_Site_Blocking_in_South_Korea_2016.pdf

works by way of Server Name Indication (SNI) blocking method enhancing the blocking function of the relevant systems by collaborating with Internet Service Providers.⁴⁰

- 10) **Singapore:** The High Court of Singapore, in the case of *Disney Enterprises, Inc. v. M1 Ltd.*⁴¹, granted a dynamic injunction in favour of copyright owners of several cinematographic films against the Defendants by issuing orders to the Internet Service Providers (ISPs) to block the websites that host infringing content. This order is known as the Dynamic Injunction. It allows the IP addresses of the Rogue Websites (Flagrantly Infringing Online Locations (FIOLs))/ mirror websites through different urls to be blocked automatically without approaching the court multiple times. Adopting the same, in India, the Delhi High Court granted its first Dynamic Injunction in 2019 in the case of *UTV Software Communications Ltd. v. 1337X and Ors.*⁴² against the John Doe rogue websites and has since then utilized the same in numerous cases in order to defend the rights of the content owners from the expansive network of digital piracy by way of hydra-headed mirror websites.⁴³

This year Singapore High Court granted an Order to block 30 illegal streaming sites and almost 150 associated domains responsible for the distribution of considerable quantities of illegally streamed content in Singapore, in a case initiated by CAP members such as BBC Studios, Discovery Communications, LaLiga and TVB International. The Order is a part of CAP's ongoing campaign in Singapore⁴⁴.

- 11) **Japan:** Japan is one of the few countries where not just uploading and making available pirated content but also downloading pirated content (including illicit downloading of manga, magazines and academic texts) is a criminal offense.⁴⁵
- 12) **Hong Kong:** In 2017, the Hong Kong Creative Industries Association (HKCIA) initiated the launch of IWL which is shared with the advertisers, agencies and intermediaries leading to restriction of advertisements on the piracy enabling websites and thereby affecting their revenue source. A number of major advertisers, agencies and intermediaries have joined the IWL scheme since its launch. The IWL is also available on HKCIA website which facilitates the stakeholders and members of the industry to voluntarily contribute towards combating piracy. The Review Committee of HKCIA (in collaboration with the Customs & Excise Department) oversees that the processes are fair and accurate. Such infringing websites are included in the IWL if the offenders are unable to correct the wrong upon information by HKCIA.

⁴⁰ <https://kcc.go.kr/user.do?mode=view&page=A05030000&dc=K05030000&boardId=1113&cp=1&boardSeq=46820>

⁴¹ (2018) SGHC 206

⁴² 2019 SCC OnLine Del 8002; 2019(78) PTC 375(Del)

⁴³ <https://www.thelawgazette.org/post/dynamic-injunctions-a-novel-specie-of-injunctions-in-the-realm-of-digital-piracy?msclkid=48c8adf0cf9111ecb914a5da854dc8b5>

⁴⁴ <https://avia.org/singapore-court-orders-largest-block-of-illegal-streaming-sites-in-singapore/>

⁴⁵ <https://english.kyodonews.net/news/2020/06/33f524714d35-japan-enacts-copyright-control-law-to-ban-pirated-manga-downloads.html#:~:text=The%20Japanese%20parliament%20enacted%20Friday%20a%20revised%20anti-online,that%20were%20already%20covered%20by%20the%20existing%20legislation.?msclkid=f4a46edad03811ecbd20d8a9caa6acfe>

- 13) **Taiwan:** Taiwan Intellectual Property Alliance (TIPA)⁴⁶ entered into a MoU with Hong Kong Creative Industries Association (HKCIA) for combating digital piracy by reciprocal exchange of IWLs. These IWLs have proved beneficial in drastically reducing the volume of advertisements on some of the listed websites, thereby restricting their revenue sources.

Another IWL is maintained by TIPA in collaboration with film and television sector and some players from the OTT (Over-the-top) Sector. This collaboration furnishes reviewed IWL every few months to the advertisement industry including to the various Advertising and Advertisers' Associations in Taiwan in order to restrict the source of income for the piracy enabling websites. TIPA also publishes a list of latest IWLs on its website.

The reliability and validity of IWLs was verified by the case of mapple.com⁴⁷, one of the leading infringing websites of Taiwan. The Founders of the website were caught by the police for their piracy activities since their revenue decreased by virtue of inclusion of the website in IWL and they had to set up an advertising website thus creating a traceable flow of money.⁴⁸

- 14) **Indonesia** – Indonesia has taken the following key measures to combat piracy:

IP Task Force - Indonesia is striving to develop an efficient and effectively enforced IP ecosystem to stop rampant piracy (and counterfeit products) by improving a regulatory framework, networking, **establishing an IP Task Force**, providing training for investigators, IP awareness-raising campaigns and enforcement against IP infringements. The Intellectual Property Rights Directorate General has established an IP task force in early September, 2021 to replace the previous inactive task force which inter alia involves Bareskrim⁴⁹, Communications and Information Ministry and the Customs and Excise Directorate General. The IP Taskforce is partly aimed at bolstering Indonesia's status as an investment-friendly destination with respect to adequate and effective IP protection and enforcement.⁵⁰

Administrative Site Blocking – The Ministry of Information and Communication Technology (KOMINFO) in Indonesia undertakes blocking of illegal streaming sites as a measure following the complaints from the anti-piracy Task Force of the Directorate General of Intellectual Property (HAKI)⁵¹. KOMINFO also works in close collaboration with the Video Coalition of Indonesia (VCI) in order to take measures to stop the piracy-enabling websites and Illicit Streaming Device (ISD) applications⁵².

Further, the Coalition Against Piracy (CAP) has been tracking traffic to sites that have been blocked as well as traffic to pirate sites and legitimate sites in Indonesia. The Indonesian government

⁴⁶ TIPA is an alliance between five major copyright owners' associations representing the movie, recording, publishing and software industry. TIPA works closely with the Taiwan Government to ensure effective execution of the legislation, raise public awareness and also strengthen the protection of IP rights.

⁴⁷ In the year 2014

⁴⁸ <https://asiaiplaw.com/sector/trademarks/taiwan-boosts-infringing-website-list-efforts?msclkid=cc852c51d05311ec850a36ec417cdf4e>

⁴⁹ Criminal Investigation Agency, Indonesia

⁵⁰ <https://www.thestar.com.my/aseanplus/aseanplus-news/2021/10/03/indonesia-builds-ip-protection-ecosystem-to-combat-piracy-and-counterfeit-products>;

<https://www.thejakartapost.com/adv/2021/10/03/indonesia-builds-ip-protection-ecosystem-to-combat-piracy-counterfeit-products.html>

⁵¹ <https://en.tempo.co/read/1287974/kominfo-shuts-down-over-thousand-illegal-streaming-sites>

⁵² <https://advanced-television.com/2020/07/15/indonesia-major-drop-in-streaming-piracy/>

started blocking illegal sites in the middle of 2019 and have blocked 3,500 by April, 2022. CAP's latest data showed traffic to all pirate sites in Indonesia was down by 75% as of January, 2022 compared to September 2019. Traffic to legitimate sites in Indonesia had tripled over the same period. The effectiveness of the blocking is evident from YouGov consumer surveys undertaken by CAP. The survey revealed that 50% of Indonesian consumers have stopped or rarely access pirate services as a result of blocking. 76% of Indonesian consumers are accessing more legal content and 26% claim to have subscribed to legitimate sources as a result of illegal streaming sites being blocked. Also, 95% of Indonesian consumers agreed that online piracy has negative consequences.⁵³

15) **Malaysia** – Malaysia has taken the following steps to combat piracy:

- a. IWL: In 2017, Malaysia launched its IWL⁵⁴ to combat piracy and to identify illegal streaming websites. This initiative was launched by a collaboration between stakeholders from the creative and advertising agencies⁵⁵. The initiative aims at restricting the advertising revenue of the piracy enabling websites by listing them in the IWL and making the list available to the advertisers for removal of the advertisements published on those websites.⁵⁶
- b. Stringent Punishment: Further, in 2021, Malaysian Parliament passed an amendment to the Copyright Act under which punishment for enabling pirate streaming has been increased to imprisonment up to 20 years or fine from thousand ringgit to two hundred thousand ringgit⁵⁷ or both⁵⁸.

16) **Philippines:** Intellectual Property Office of the Philippines (IPOPHL) actively enters into MoUs with industry stakeholders in order to battle piracy; some of which are enlisted herein below:

- a. IPOPHL has recently signed an MoU with the Philippine Retailers Association (PRA) in order to facilitate adoption of anti-piracy policy and fake-free policy among PRA members⁵⁹.
- b. IPOPHL also collaborates with the Japan's leading anti-piracy group Content Overseas Distribution Association (CODA) to build a mechanism for the purpose of streamlining the exchange of information, research work, data and trends by which IPOPHL and CODA may work towards copyright protection in their respective jurisdictions and enhance

⁵³ <https://avia.org/indonesia-continues-to-lead-the-way-in-site-blocking/>

⁵⁴ Malaysia became the third country in the Asia-Pacific region after Viet Nam and Hong Kong to launch IWL.

⁵⁵ Media Prima Bhd, Astro, Communications and Multimedia Content Forum of Malaysia (CMCF), Motion Picture Association (MPA), Centre for Content Promotion and Media Specialists Association (MSA)

⁵⁶ <https://www.nst.com.my/news/nation/2017/10/289556/malaysia-launches-infringing-website-list-initiative-combat-digital>

⁵⁷ USD 228 to USD 45,568

⁵⁸ <https://finance.yahoo.com/news/malaysia-stream-piracy-copyright-law-215917198.html?guccounter=1>; <https://www.lowyat.net/wp-content/uploads/2021/12/Parlimen-CopyrightAct1987-ammdment-dec21-01.pdf>

⁵⁹ <https://www.ipophil.gov.ph/news/ipophil-pra-toughen-efforts-against-counterfeiting-piracy-in-retail-industry/>

Private and confidential

enforcement. Both offices also plan to collaborate and share best enforcement practices such as on prevention, online piracy monitoring and rolling takedown and site-blocking⁶⁰.

- c. IPOHL has partnered with the Office of Alternative Dispute Resolution (OADR) for developing and promoting IPOHL's ADR services for resolving all IP cases in the country⁶¹.
 - d. IPOHL also collaborates with private sector-stakeholders such as Motion Pictures Association (MPA) in order to receive assistance in developing an effective piracy monitoring system and a rolling site-blocking regime in order to restrict the access to piracy-enabling websites⁶².
- 17) **Lithuania** - In April 2019, amendments to the Lithuanian Copyright Act came into force, which provided for a new administrative procedure allowing rightsholders to obtain a website-blocking order within a month.⁶³ Rightsholders send a takedown notice to the site operator and the hosting provider, and the operator and/or hosting provider has five days to remove the notified content. They also ensure the same content is not re-uploaded (i.e., provide for "stay-down"). If the content is not taken down, the rightsholder can apply to the Radio and Television Commission of Lithuania to issue a decision ordering ISPs to block their users' access to the site. The Commission has 14 days to issue the decision, which is subsequently approved by a Lithuanian court within a three-day window.⁶⁴
- 18) **Greece:** Committee for the Notification of Copyright and Related Rights Infringement on the Internet ("anti-piracy committee") established in 2017 deals with cases of online infringement of copyright and related rights through an extrajudicial mechanism in Greece. Greece strengthened the said mechanism by introducing new legal provisions in 2021. Under the new provisions, the Committee may order under the new provisions access to a URL or domain name to be disabled for 15 days in case of imminent large-scale infringement of protected copyright with respect to national or international television or to prevent an immediate, serious and imminent danger or irreparable harm to the public interest or to the beneficiary. The Committee may take additional measures to ensure the cessation, non-repetition or prevention of the infringement between 6-12 hours of the Notification from the Commission.

Other amendments include disabling of second-level domains which enable access to pirated content through third or next level domain and restriction of repetition of infringement, including

⁶⁰ <https://www.ipophil.gov.ph/news/ipophil-teams-up-with-japans-leading-anti-piracy-group/>

⁶¹ <https://www.ipophil.gov.ph/news/ipophil-partners-with-oadr-to-strengthen-alternative-dispute-resolution-of-ip-cases/>

⁶² <https://www.asiaplaw.com/article/philippines-partners-with-motion-picture-association-mpa-to-develop-piracy-monitoring-system>

⁶³ European Union Intellectual Property Office (EUIPO), *Study on Dynamic Blocking Injunctions in the European Union* (Brussels: EUIPO, March, 2021), <https://euiipo.europa.eu/tunnel->

web/secure/webdav/guest/document_library/observatory/documents/reports/2021_Dynamic_Blocking_Injunctions/2021_Study_on_Dynamic_Blocking_Injunctions_in_the_European_Union_FullR_en.pdf.

⁶⁴ <https://itif.org/publications/2022/01/26/decade-after-sopa-pipa-time-to-revisit-website-blocking>

in cases of Transferred broadcasts wherein the illegal broadcast has been transferred after a decision by the Commission to block the original URL⁶⁵.

It is pertinent to add that the Committee for the Notification of Copyright and Related Rights Infringement on the Internet (EDPPI) works towards handling of IP infringement complaints with respect to online channels. EDPPI may issue orders against ISPs and operators of websites unless there's an ongoing case in the matter.⁶⁶

- 19) **European Union:** The European Audiovisual Observatory released its 2021 Mapping Report on national remedies against online piracy of Sports commissioned by the European Commission.⁶⁷ The Report details the measures undertaken by various countries to restrict online piracy of sports events including the availability of procedures such as notice and take-down, existence of a competent authorities for dealing with copyright infringement, permanent and temporary injunctions, removal and blocking orders, dynamic injunctions, live blocking injunctions and so on.⁶⁸

On December 9th, 2021, the European Commission also released its report titled, "*Online Copyright Infringement in the European Union Music, Films and TC (2017-2020), Trends and Drivers*"⁶⁹ which dealt majorly with the issue of digital piracy and online consumption of Copyright-infringing content in Europe.⁷⁰ The report states that except for a temporary increase in film piracy in the spring of 2020, the decline in digital piracy continued during the COVID pandemic: piracy decreased by 20 % in 2018, by 6 % in 2019 and by 34 % in 2020 due to *inter alia* awareness of legal offers and presence of a higher number of legal platforms.⁷¹

In 2020, Eurojust⁷² with Europol and the support of about 19 countries, dismantled a criminal network of copyright infringing hackers. The group of hackers called Sparks Group, was involved in pirating movies and hosting illegal content worldwide causing losses of over tens of millions of USD annually to the industry. Eurojust functioned as a coordination centre for swift exchange of information between law enforcement and judicial authorities for formulating and executing a joint strategy along with transmission and facilitation of execution of letters of requests for taking down servers and providing technical support in the matter⁷³.

⁶⁵ <https://www.lexology.com/commentary/intellectual-property/greece/a-k-metaxopoulos-partners-law-firm/anti-piracy-committee-and-new-legal-framework-according-to-law-48212021>

⁶⁶ <https://rm.coe.int/mapping-report-on-national-remedies-against-online-piracy-of-sports-co/1680a4e54c>

⁶⁷ <https://rm.coe.int/mapping-report-on-national-remedies-against-online-piracy-of-sports-co/1680a4e54c>

⁶⁸ <https://rm.coe.int/mapping-report-on-national-remedies-against-online-piracy-of-sports-co/1680a4e54c>

⁶⁹ https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/online-copyright-infringement-in-eu/2021_online_copyright_infringement_in_eu_en.pdf

⁷⁰ [Digital piracy in Europe: the new EUIPO report - Brevettinews](https://www.euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/online-copyright-infringement-in-eu/2021_online_copyright_infringement_in_eu_en.pdf)

⁷¹ Other factors influencing consumption of pirated content in a given country included socio-economic variables (income levels, education, inequality, unemployment); demographic variables such as the proportion of young people in the population; variables related to the features of the relevant marketplace, including market size, the extent of the internet infrastructure and the number of legal offers for the various types of content; and attitudes towards intellectual property infringement, as reported in the IP Perception study published by the EUIPO.

⁷² European Union Agency for Criminal Justice Cooperation

⁷³ <https://www.eurojust.europa.eu/news/new-major-crackdown-one-biggest-online-piracy-groups-world-international-coordination-led>

20) **International Collaborations:**

- a. **Coalition against Piracy (CAP):** Asia Video Industry Association's (AVIA in short and formerly known as CASBAA) CAP brings together leading video content creators and distributors in their endeavor against content theft and piracy. They are also actively involved in addressing the threats of Illicit streaming devices and several other digital platforms including mobile applications that facilitate piracy of audio-visual content including sports, movies, TV series, etc.⁷⁴

CAP has enabled the formation of Video Coalition of Indonesia (VCI), Vietnam Content Alliance (VCA) and the Video Coalition of the Philippines (VCOP).⁷⁵ Further, it is pertinent to state that CAP's recent YouGov consumer surveys revealed that regular site blocking prevents consumers from accessing pirated content online and encourages them to visit legitimate sources. Further, Consumers stated in the surveys that they would subscribe to paid online services if the content they prefer to watch is unavailable via a pirated source.⁷⁶

- b. **Alliance for Creativity and Entertainment (ACE):** ACE is one of the world's leading content protection coalition dedicated to restricting digital piracy. ACE's goal includes reducing and mitigating piracy and related threats through effective enforcement strategies targeting the operators of illegal sites and services along with the intermediaries who knowingly facilitate piracy. In order to achieve this goal they collaborate with global partners including IPR Center, USTR, DOJ, Europol, European Commission and Interpol and industry stakeholders such as Disney, Discovery, Fox, HBO, Hulu, MGM, etc.⁷⁷
- c. **BSA: The Software Alliance:** Established by the Microsoft Corporation, BSA now represents leading software makers in the world. The objective of this Alliance includes protecting its members from Intellectual Property infringement by means of rewarding whistle blowers, thorough investigation of cases brought by end –users and other stakeholders across a network of over 60 countries⁷⁸. The Alliance also provides for a platform for reporting matters of use of unlicensed software⁷⁹.

21) **Technological Collaboration:**

Copyright industry stakeholders use online content protection tools to tackle digital piracy. LaLiga employs the use of application and software such as **Marauder** to geolocate illegal websites, social

⁷⁴ <https://avia.org/>

⁷⁵ <https://avia.org/anti-piracy/>

⁷⁶ <https://avia.org/cap-consumer-survey-shows-the-benefits-of-site-blocking/>

⁷⁷ <https://www.alliance4creativity.com/about-us/>

⁷⁸ <https://profiledefenders.com/blog/know-bsa-anti-piracy-service/>

⁷⁹ <https://reporting.bsa.org/r/report/add.aspx?src=us&ln=en-us>

Private and confidential

media accounts and apps, **Lumiere** for digitally extracting evidences to assist in investigations related to piracy and **NEKO** to allow for the filing of reports on social media in a quick and efficient manner⁸⁰. Some of the other examples are provided herein below:

- i. Screeener Copy (Custos): The South Africa Tech company created its irremovable virtual watermarking technology. This technology is used to embed monetary tokens in media files so as to be able to track whether a file is pirated or not. CustosTech identifies its watermark and is capable of reporting the site enabling piracy and bringing it to the notice of the Copyright owner.
- ii. Muso: With the headquarters at London, MUSO is used to monitor all kinds of piracy activity through various modes such as streaming, stream rippers and web downloads. It creates cumulative content in order to provide a bigger picture for the stakeholders of the industry in order to support the right holders and restrict piracy by taking appropriate action⁸¹.

Some other such applications used to restrict piracy are **Vevue** and **Rawg**. Vevue is used to track and record life-cycle of a media content. Rawg, on the other hand, is used in the gaming industry by using blockchain technology and rewarding gamers with cryptocurrency only when they're using non-pirated goods⁸².

Recommendation

In pursuance to the anti-piracy framework of other countries, as discussed in this paper, the Author is of the opinion that the following measures may be taken by the relevant authorities and stakeholders in India to control the increasing menace of piracy:

- 1) Maintaining IWL: The relevant Authorities including Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Electronics and Information Technology (MeitY) and Ministry of Information and Broadcasting (MIB) may maintain an IWL which is not only communicated to the Advertising Associations but also ISPs in order to restrict the flow of money to the infringing websites.

The concerned Department of Government of India (GoI) may also consider becoming a part of the WIPO Alert System. This along with collaboration with the Advertising Agencies Associations of India and Advertising Standards Council of India will ensure that the money flow to the Copyright Infringers is restricted by adopting the “follow the money” approach wherein Advertisers are directed /advised not to place their advertisement on infringing and rogue websites.

⁸⁰ <https://newsletter.laliga.es/global-futbol/how-laliga-tackles-audiovisual-piracy>

⁸¹ <https://www.muso.com/>

⁸² <https://businessblockchainhq.com/business-blockchain-news/blockchain-to-prevent-control-the-massive-boost-in-online-piracy-activity/#:~:text=%20Blockchain%20to%20Prevent%20%26%20Control%20the%20Massive,industry%20as%20well%20that%20has%20been...%20More%20>

- 2) Administrative body for site-blocking: In line with the Anti-Piracy Commission of Spain and AGCOM of Italy, an administrative body may be set up for quick disposal of matters that require site-blocking orders, without exerting more pressure on the Indian judicial system

The Body will process complaints of the right holder requesting to remove infringing digital content on account of copyright infringement and piracy and the same may prove to be quite beneficial to prevent rogue websites from multiplying.

- 3) Anti-piracy Task Force: Setting up an exclusive anti-piracy task force (as present in different forms in Greece, Spain, Italy, South Korea and Indonesia) may also help in combatting the issue of piracy in India. This task force may be helpful in quick resolution of piracy matters involving take-down of piracy enabling websites especially in cases which require swift action. The task force may also undertake to execute other remedies such as dereferencing or delisting or demotion of websites in the results of the Search Engines.

The Copyright holders in relation to short-term events such as telecast of sports events may approach such task force for registering their event before the same is broadcast/telecast along with the details of the authorized channel of broadcast/telecast with the Anti-Piracy Task Force. This will enable a swift take-down of all sources that stream the event illegally (as implemented in Lithuania).

- 4) Private collaborations: A system to facilitate (similar to that of CUII of Germany) and encourage cooperation between the private stakeholders such as Copyright holders, ISPs and Advertising agencies may go a long way in curtailing piracy. This system may result in adoption of systems such as DNS blocking and curbing the illegal flow of money through advertisements which can restrict piracy without the involvement of cumbersome legal means and authorities. Some of the steps which may be taken by industry stakeholders are as follows:
- a. Notification by ISP in the form of Pop-ups to consumers accessing pirated content online may also help in changing consumer behavior.
 - b. Copyright Holders may adopt and develop their own technological measures by the use of blockchain, encrypted codes, and digital watermarks and so on to identify and control the illegal sharing of copyrighted content.
 - c. Certifications to identify licensed apps for music and movie streaming and downloading may be helpful to consumers to lean towards the legitimate content.
 - d. A mandate by National Internet Exchange of India (NIXI) requiring KYC documents from all .IN domain name registrants may be helpful in ensuring that legitimate entities acquire domain names since majority of the infringers do not provide correct and accurate contact details for the fear of being held accountable by the enforcement authorities. .

Private and confidential

- 5) Public-private partnership: DPIIT, Bureau of Indian Standards (BIS), MIB, MeitY or other government entities may enter into Memorandum of Understanding (MoUs) with various sports and media associations such as BCCI, Associations of Stakeholders from the Media and Entertainment Industry in order to
 - a. understand the scope, extent and reasons of widespread piracy in India
 - b. understand the existing and latest modes and methods of piracy such as stream-ripping and commercialization of snippets or part of copyrighted content and the technology which help in accelerating piracy
 - c. understand the scope and extent of efficiency of existing anti-piracy measures
 - d. to create a system that fosters reciprocity of information from the industry stakeholders who are the actual victims of piracy, including the names of websites that must be included in IWLs as done in Taiwan and USA (partnership between IPR Centre and RAI)
 - e. to implement an aggressive multi-layered strategy for strengthening the digital ecosystem, educating the consumers, conducting training sessions and
 - f. dismantling large-scale online criminal enterprises.
- 6) Incentives: Introduce schemes for startups that work towards tackling the issue of piracy or creation of software that may assist the Copyright holders in protecting their content.
- 7) Customer sensitization: GoI through its ancillary organs such as CIPAM may undertake extensive awareness programmes for the content users, content creators, ISPs, advertisers, search engines and other stakeholders. . Attractive and catchy slogans such as *“Get it right from a genuine site”*, *“You wouldn’t steal a car”* and *“Piracy. It’s a Crime”* used in the UK may be put to use to garner consumer attention.
- 8) Training programmes for affiliated government organs: Cyber cells and Police enforcement teams must be provided adequate training so that they are better equipped to handle and act upon matters related to copyright piracy.
- 9) Creation of Standards by categorization of Consumer trends: The author recommends a study to be conducted to track the trends and consumption pattern of pirated content from various sources in order to understand consumer behavior and what encourages them to resort to use of pirated content so as to formulate specific strategies and standards to control the same and change consumer attitude.

These standards may be further categorized on the basis of the kind of content in question for instance, audio-visual, live telecast/broadcast, short-length, etc.

Private and confidential

- 10) Anti-piracy seal: The Copyright Office may consider creating an anti-piracy seal (drawing inspiration from USA's FBI Anti-Piracy Seal). The usage of seal will ensure that the content users get a fair warning before they attempt to unknowingly or willingly infringe right owners' copyright.

In light of the preceding paragraphs, it is the Authors' opinion that a conscious collaborative efforts by the Government and the Industry stakeholders is required for formulating a multi-level efficient plan to deal with rampant piracy in India. These efforts may include not just administrative and judicial measures but extensive awareness programmes and warnings to act as deterrent. It is also essential for India to adopt suitable measures from other jurisdictions depending upon the contemporary consumer trend of piracy in the country. It will not be wrong to state that nothing less than a multi-pronged approach is viable to combat piracy in India.

- **Authored by**
Shilpi Mehta Nanda, Founding Partner
Malvika Shanker, Associate
ZEAL Attorneys

CONFIDENTIAL