



November 2021

Intellectual Property [Call](#) for Input - South Korea, Vietnam, Ecuador, Peru, Colombia

We are responding to the Call for Input in preparation for the upcoming engagements with South Korea, Vietnam and the Andean countries as part of the UK government's intellectual property implementation programme. As you know, UK Music represents performers, producers, composers and publishers as well as the live sector of the UK music industry which is world leading and an important UK export industry. In terms of our policy objectives across the sector, we are looking for the UK government's help in the context of trade negotiations to create environments which afford rights owners the same level of protection that exists in the UK. These are our asks:

South Korea

- Full compliance with WPPT in particular in relation to:
 - The right of 'digital audio transmission' ("DAT") which is currently subject to a compulsory licence and also to compulsory collective management. The delineation between the exclusive right of making available, guaranteed in the WIPO treaties, and the DAT right has suffered from a lack of clarity, causing damaging legal and commercial uncertainty, and should be removed.
 - The incomplete recognition of the public performance right of producers needs to be remedied - despite the changes to the 'positive list' of venues through the August 2017 amendment of the Presidential Decree (which added categories to the list of venues where the public performance right is recognised). Korea's broad exemption from the public performance right still exists for a number of users, unjustifiably requiring sound recording producers and performers to subsidise these businesses which are using their content to drive their own revenues. We therefore recommend the complete abolition of this limitation and full recognition of the public performance right, which would resolve Korea's long-standing violations of its treaty obligations and the three-step-test. In conjunction with this, royalty rates remain so low in Korea as to make collections effectively pointless. This should also be addressed.

- Korean collective management organisations force composers and music publishers, de facto to assign their rights to them before entering the Korean market. This infringement of both contractual freedom and internationally recognised principles of collective management constitutes a barrier to market access. This practice can be addressed by repeating the wording of the UK /Japan Comprehensive Economic Partnership Agreement. Art 14.16. of the Copyright Act requires collective management holders in a manner that is fair, efficient, transparent and accountable.
- The Korean courts' interpretation of Art. 45 of the Copyright Act in terms of enforcement of rights, limits the individual freedoms of rightsholders. Collective management organisations to represent right organisations (called copyright trust service providers) have trust agreements with rightsholders based on a transfer of copyrights to the collecting society as a trust property. Following the jurisprudence of Korean highest courts (e.g. Yedang Entertainment v KOMCA, Supreme Court Case No. 2004Da10756, of July 4th 2006 or KOSA v Won-Hee Lee, Seoul High Court Case No. 95Na41279, of July 12th 1996) those rights include the exclusive competence to sue for copyright infringement. Both the inability to proceed by an individual rightsholder with a parallel legal action and the sole competence of CMOs to bring a case regardless of a rightsholder's will or interest are contrary to the international IP obligations of South Korea.
- Although Korea has a website blocking procedure, it needs to be clarified to ensure that it provides an effective remedy against a sufficiently broad scope of online infringements, including against cyberlockers and stream ripping which is the single greatest threat right now for rightsholders. Also, although copyright registration is not mandatory, it is required in order to claim statutory damages in infringement actions which limits the effectiveness of remedies guaranteed by IP treaties.

Vietnam

- Accession to WPPT (and WCT), which Vietnam is obligated to do under CPTPP.
- As part of accession to WPPT, Vietnam should:
 - Clarify the unclear making available and public performance rights for sound recording producers.
 - Bring its TPM provisions in line with its WPPT commitments.
- Vietnam should extend the term of protection for sound recordings to 70 years and for composers and authors to 70 years from death in accordance with international norms.

- Remove the market access restrictions existing in the music sector, in particular in the area of collective rights management, to ensure that right holders (regardless of their nationality) can set up CMOs, join as members and obtain board seats.
- Clarify the currently uncertain scope of the website blocking procedures.
- Amend the heavy burden of proving damage by an individual plaintiff. Only CMO claims based on a pre-determined royalty rate are universally accepted by the courts.

Ecuador

- Five years after the enactment of the Code of the Social Economy of Knowledge, Creativity, and Innovation (COESCI), the creative sector in Ecuador has still not benefitted from the progressive transformations promised by the Government during the preparatory process of the legislation. In fact, unlike the majority of music markets in the region, Ecuador's digital and creative economy stagnated during these years, primarily because COESCI proved to be a lengthy and complicated piece of legislation, full of exceptions and limitations to copyright that inhibited new investments into the production of Ecuadorian talent as well as market development generally. This clearly contrasts with the situation of the music market in neighbouring countries in the Andean region (Colombia and Peru) where local production of music talent has experienced significant growth in recent years. The Ecuadorian Government should be encouraged to conduct a transparent amendment process to COESCI, giving the private sector and all affected parties the opportunity to intervene and provide opinions on the most important areas.
- The Ecuadorian Government should be encouraged to expand its actions against digital piracy through the National Intellectual Property Service (SENADI), in particular by issuing ex-officio blocking orders against stream ripping and other online infringing services.
- CNT, the state-owned cable TV company, which signed an agreement with SOPROFON back in 2019 to settle claims for uses of phonograms from 2011 to 2019, is now at fault again after failing to comply with the licensing agreement that covers the use of sound recordings from 2020 to 2023. This failure of one of the biggest competitors in the cable market - which is also a company owned by the Ecuadorian State - sets a bad precedent for the rest of the paid TV market in the country. The Ecuadorian Government should be encouraged to instruct CNT to comply with the performance rights licence signed with SOPROFON at the end of 2019.

Peru

- In recent months, the Peruvian Intellectual Property Office (INDECOPI) has made several strides towards the enforcement of copyright and neighbouring rights in the digital environment. In December 2020, the first blocking order was issued against the most popular stream ripping service in Peru, Y2MATE. The order was directed to all ISPs and was swiftly complied with, resulting in disruption to this pirate site and an estimated 84% reduction in traffic to the site. Subsequently, additional orders were issued by INDECOPI in May 2021, including one ex-officio action, resulting in the permanent blocking of 10 stream ripping services, many of them dedicated to the unauthorised copying of music videos and sound recordings of national and international labels and artists. These results show a clear political will by INDECOPI, its Copyright Commission and the Director of the Copyright Department, Mr. Fausto Vienrich, to develop a long-term campaign, exercising ex-officio powers granted by law. These efforts have been praised by copyright industries, but their impact has been limited to the scope of the applications filed by right holders and the resources available. INDECOPI should exercise its ex-officio powers to develop a long-term campaign, covering the most prevalent form of music piracy in Peru - stream ripping.

Colombia

- Urgent need to enact the new ISP Liability Law.
- While website blocking is available in Colombia, there is an absence of a national anti-piracy effort. The Colombian Copyright Office (DNDA) should be encouraged to implement an aggressive campaign against digital piracy including blocking orders against major stream ripping services targeting the country.

(submitted by email)