

Copyright Reform Beyond Brazil

28 April 2010

Jeremy Malcolm

Consumers International



About Consumers International...

- Global federation of consumer organisations
- Over 220 member organisations in 115 countries
- Independent and not-for-profit
- Global research and campaigns through and for our members

Brazil leads the world in IP reform

- Speaks up in international fora
 - Proposed WIPO Development Agenda
 - Supporter of treaty for visually impaired
- It also “walks the walk” at home
 - Government support for free software
 - Compulsory licensing of AIDS drugs

The good news

“Brazil is leading us into the digital age... with a balanced view of IP and its relation to the public domain. What could humanity accomplish if we all played the game like Brazil?”

– RIP: A Remix Manifesto

“Creative Commons was born to set culture free. ... The most important place where that conversation began was here in Brazil.”

– Lawrence Lessig

The bad news

- Brazil's copyright law is now amongst the worst in the world for consumers
- The 1996 copyright law is much more restrictive than the 1973 law it replaced
 - Private non-profit copying prohibited
 - Copyright term increased by 10 years
- Very limited exceptions and limitations
 - No copying for preservation purposes

Features of Brazil's copyright law

Does not allow:

- new uses of works through new technologies
- full use of copyright works for educational and scientific purposes
- preservation work of organizations to protect the cultural heritage
- access to works in the public domain

The result



But Brazilians do want to do the right thing!

I consider purchasing an original version of a copyright work rather than a pirated copy when	1	2	3	4	5
The price of the original is affordable	11%	9%	13%	22%	45%
The quality of the original is better than the copy	5%	5%	13%	25%	52%
An original version of the title I want is readily available	6%	11%	26%	29%	28%

A snapshot of the 2010 IP Watchlist

- Covers 34 countries from every region
- The best-rated countries have *broad* and *general* copyright exceptions such as “fair use” or “private copying”
- The worst-rated countries have not updated their copyright laws recently, *except* to increase the rights of authors

Results of the 2010 IP Watch List

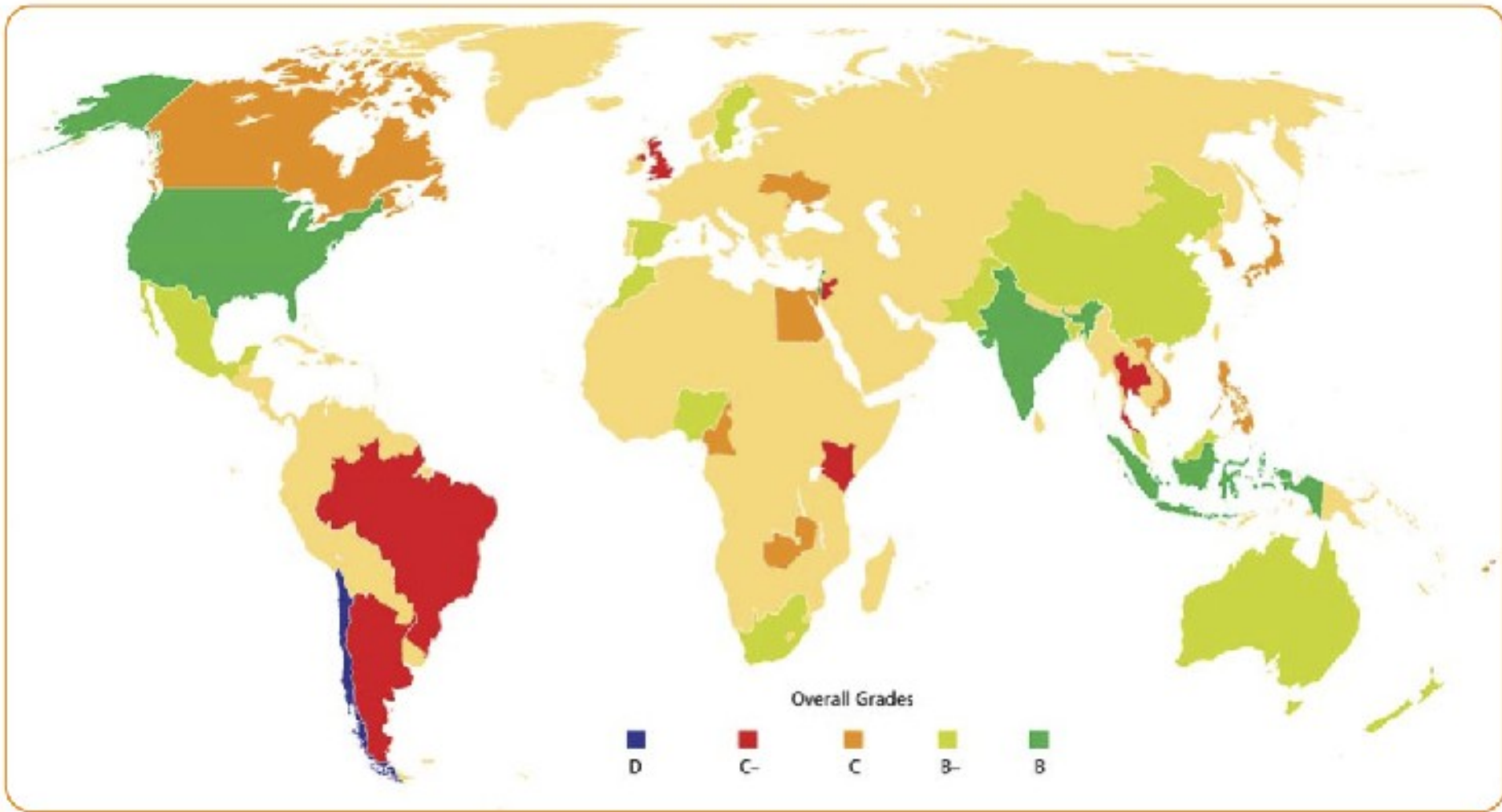
Best-rated countries

- | | |
|------------------|-----------------|
| 1. India | 6. South Africa |
| 2. Lebanon | 7. Bangladesh |
| 3. Israel | 8. Morocco |
| 4. United States | 9. Sweden |
| 5. Indonesia | 10. Pakistan |

Results of the 2010 IP Watch List

Worst-rated countries

- | | |
|-------------------|--------------|
| 1. Chile | 6. Argentina |
| 2. Jordan | 7. Brazil |
| 3. United Kingdom | 8. Zambia |
| 4. Kenya | 9. Egypt |
| 5. Thailand | 10. Japan |



Is national income a factor?

Best-rated countries

- | | |
|------------------|-----------------|
| 1. India | 6. South Africa |
| 2. Lebanon | 7. Bangladesh |
| 3. Israel | 8. Morocco |
| 4. United States | 9. Sweden |
| 5. Indonesia | 10. Pakistan |

Is national income a factor?

Worst-rated countries

1. Chile	6. Argentina
2. Jordan	7. Brazil
3. United Kingdom	8. Zambia
4. Kenya	9. Egypt
5. Thailand	10. Japan

Categories of criteria

- Scope and duration of copyright
- Freedom to access and use (by home users / for education / online / by content creators / by the press / by libraries / by disabled users / in public affairs)
- Freedom to share and transfer
- Administration and enforcement

The best and worst criteria on average

- Scope and duration of copyright
- Freedom to access and use (by home users / for education / online / by content creators / **by the press** / by libraries / by disabled users / in public affairs)
- **Freedom to share and transfer**
- Administration and enforcement

Questions on libraries

May libraries copy works that cannot reasonably be obtained commercially?

NO

May libraries copy works for users for the purpose of research or study?

NO

Are libraries allowed to make preservation or archive copies of materials in their collections?

NO

In making permitted copies, are libraries entitled to circumvent technological protection mechanisms (TPMs)?

NO

Improvements to the criteria

- Added some questions
- Is there a fair use-style exception?
- Are open document formats fostered?
- May libraries break copy protection?
- Is publicly funded research open?
- Reworded some questions
- on copying levies and three-strikes

Improvements to the criteria

- Questions were removed for being:
- less relevant to consumers (only to ISPs, musicians, professional advisors)
- too esoteric (on copyright collectives, registering copyright, making available)
- “big asks” (file sharing right, copying multiple complete works for education)
- too divisive (recognition of traditional knowledge or folklore)

Best Practices

Three areas of best practice highlighted from the countries in this year's IP Watchlist:

- Fair use
- Innovative business models
- Orphan works

Fair use

- Copyright exceptions are limited by the Berne three step test to *special cases*
- So most countries have specific narrow exceptions for education, press, etc.
- Fair use is a general “catch-all” exception that balances a set of criteria
- CI recommends both kinds of exceptions, with fair use filling the gaps

Innovative business models

- A blanket licence for file sharing proposed by Canadian songwriters
- Brazilian SMD technology allowing low cost distribution of digital content
- Free digital distribution, using Creative Commons and FLOSS licensing
- Other sources of income for artists are services, patronage, licensing...

Orphan works

- Works for which no author can be found, so they cannot be copied
- Various different approaches:
 - Put them in the public domain
 - Allow them to be licenced by a central authority
 - Limit remedies for infringement
 - But most countries do nothing at all

Concerns

Three areas of common concern highlighted from the countries in this year's IP Watchlist:

- Private copying
- Graduated response
- Digital Rights Management

Private copying

- In some countries a copying levy is imposed on blank media or equipment
- Consumers must get good value for money from any levy paid including:
- The right to copy for private purposes from any source
- Must go further than time, space and format-shifting... which should be free

Graduated response

- The film and music industries want ISPs to disconnect Internet users for sharing files after two warnings
- Already France, Korea, Taiwan, New Zealand and the UK have passed laws based on this model
- Consumers reject this enforcement measure because it is both *indiscriminate* and *disproportionate*

Digital Rights Management

- Only protects TPMs that control copying, not other acts eg. viewing.
- Does not constrain circumvention for purposes the law allows.
- Doesn't outlaw production of devices that can circumvent for legal purposes.
- Items with TPMs must contain notice.
- Distributor must assist circumvention for legal purposes.

Looking forward

- Special 301 report released on Friday
- Historically, sets an excessive standard of adequate and effective IP protection
- PhRMA and IIPA submissions urge term extension, criminalisation, WCT...
- But this year 100s of consumers wrote
- First report under an Obama appointee may be more balanced?

Conclusion

- Brazil's current copyright law is awful
- Other countries in Latin America are even worse
- This results in piracy and reduces the effectiveness of Brazil's IP leadership
- The new law can't come soon enough
- The IP Watchlist is a tool for promoting greater balance in IP law and policy



Here's to the next 50 years!



consumersinternational.org