

Policy Brief

Creative Industries – Anti-Piracy

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Policy Brief

Creative Industries – Anti-Piracy

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1. Introduction

In the last decade, the Georgian government and international donors have paid increasing attention to a sectoral development policy, with an emphasis on identifying and supporting the most competitive value chains. In 2019, USAID’s Economic Security Program (ESP) conducted a value chain prioritization and gaps assessment study, which evaluated the competitiveness potential and systemic impact of more than 20 sectors of the Georgian economy. Ultimately, the following four sectors were identified as having the highest potential with respect to job creation, investment, and revenue generation: (1) tourism; (2) shared intellectual services; (3) light manufacturing; and (4) creative industries. In addition, the study further explored the competitiveness of specific value chains within the selected sectors, as demonstrated in Table 1 below:

Table 1. Growth Potential of the Priority Value Chains¹

Potential for Georgia				Timeframe of Opportunities
Sectors/VCS	Employment	Revenues	Investment	
Tourism				
Adventure	Moderate	Significant	Moderate	Short/Medium
Gastronomic	Significant	Significant	Moderate	Short
Cultural	Moderate	Significant	Significant	Short/Medium
Shared Intellectual Services				
Offshore Services	Significant	Significant	Small	Short
E-Commerce	Small	Significant	Moderate	Medium/Long
Light Manufacturing				
Packaging	Small	Moderate	Significant	Medium/Long
Furniture	Small	Moderate	Significant	Medium/Long
Creative Industries				
Production	Significant	Significant	Significant	Short/Medium
Post Production	Significant	Significant	Significant	Short/Medium
Artisan	Moderate	Significant	Significant	Medium

This policy brief builds on the findings of the above-mentioned value chain assessment. More precisely, it concentrates on the production and post-production (of audiovisual content) value chains within the creative industries sector and aims to facilitate dialogue between private and public sectors on the most critical policy/regulatory challenges.

2. Global Review

The creative industries sector has been increasingly regarded by governments as not only culturally important but as one of the main contributors to economic development. Recent years have seen pronounced global growth in this sector, particularly in film production. Increased consumer demand for audiovisual content and significant investment from international production studios has resulted in the unprecedented levels of production of audiovisual content.

¹ Source: Value Chain Prioritization and Gaps Assessment, Table 1. USAID Economic Security Program, 2019.

For example, according to the data collected by the European Audiovisual Observatory, the estimated number of feature films produced annually globally increased by 10% between 2014 and 2018 (Olsberg•SPI, 2019a), mainly due to rapid increase in Chinese and South Korean feature film output, as well as strong growth in the US. At the European Union (EU) level, the evidence suggests that the EU's audiovisual industry is worth 97 billion euro per year, employs more than 1 million people, and has been growing 2% annually. Cultural and creative industries collectively provide 7.5% of the EU's workforce and generate around 5.3% of the EU's total gross value added (Olsberg•SPI, 2019b). This growth in the film industry is projected to increase over the medium-term with significant contributions to be made from non-English language markets, creating more opportunities for new production destinations on a global level (Olsberg•SPI, 2019a).

Audiovisual services is a substantial contributor to other areas of the creative industries sector such as marketing, advertising, publishing, performing arts, and digital media. For example, an SPI study showed that in addition to standard economic impacts, the film industry stimulates benefits across other creative industries, which the study refers to as the 'creative industry ripple effect.' The analysis showed that 38% of film and 47% of television drama expenditure had a positive impact on other creative industries².

The film industry is becoming more and more global as it is highly mobile and able to relocate production to whichever countries offer the more attractive incentives and environment. While the scale and global nature of audiovisual content production presents an opportunity for governments to attract international productions, governments are also becoming increasingly aware of both the potential benefits of hosting international projects as well as the importance of encouraging the creative industries sector domestically. As a result, governments have to ensure their corresponding policies and regulations allow them to be competitive.

Taking into account the multiplier effects, namely that new expenditure in the film and television industry amplifies the economic impact made by the sector, the total contribution made by the creative industries sector to the economy is even larger than it would initially seem. In addition to the direct economic effects that the film and TV industry produces due to the additional spending in these sectors, there are also indirect and induced channels of economy-wide impacts generated by this new expenditure. The indirect effects are supported by the film and TV industry supply chain as a result of purchases of domestic intermediate goods and services from other industries. The induced effects stem from household members who are directly employed within the film and TV industry or within the supply chain, and spend their income on goods and services in the wider economy, thereby generating new economic activities.

Through the application of input-output tables, Oxford Economics estimated the indirect and induced impacts that the Dutch film and TV industry had on the Gross Domestic Product (GDP) and national employment in 2011. The study arrived at an employment multiplier of 2.03,

² <https://www.o-spi.co.uk/wp-content/uploads/2017/07/SPI-Creative-Industries-Report-2017-07-31.pdf>

meaning that for every person employed directly by the Dutch film and TV industry, a further 1.03 jobs were supported in the whole economy. The main beneficiaries of this impact included the arts, culture and lottery sector, sports and recreation, and firms engaged in employment placement and the provision of temporary employment and payroll services. The associated gross value added (that could be interpreted as GDP) multiplier was estimated to be 2.08, meaning that every additional euro of final demand for the Dutch film and audiovisual services industry generates 2.08 euro of value added.

3. Review of Industry Challenges in Georgia

During this study, the key challenges faced in audiovisual content creation and distribution value chains were identified based on consultations with private and public sector stakeholders. These issues were later ranked according to the economic impact as well as the legal, political, and technical viability of relevant solutions, taking into account the potential timeframe for the implementation of these solutions.

At this stage, we present a brief summary of the identified challenges followed by a detailed ranking thereof at the end of the section.

1. VAT on the export of services

Based on the current Tax Code of Georgia, value-added tax (VAT) is applied to services produced within Georgia by foreign companies, which results in potential “double taxation” for the film industry – imposing an additional burden on businesses and compromising the attractiveness of the country for foreign investment.

Georgia is obliged to incorporate the EU Directive on the Common System of Value-added Tax³ (2006/112/EC), which prescribes for a VAT exemption on exported services being incorporated into the Tax Code. The relevant amendments to the law were prepared by the Ministry of Finance of Georgia and submitted to the Parliament on 19 February 2020 for discussion and adoption⁴.

2. Fiscal incentives

Governments across the world offer fiscal incentive programs to attract audiovisual content production in one of the following three forms: cash rebate; tax credit; and tax shelter. Rebate and tax credit systems have become substantially more popular lately with tax shelter comprising only 2 percent of global film production incentives in 2019 (Olsberg•SPI, 2019b).

According to the majority of respondents, current cash incentives provided as part of the Film in Georgia program are sufficient and, when coupled with the Georgian tax system, the terms are competitive (20%+5% of qualified expenses) for investment even compared to jurisdictions offering higher returns on qualified expenses. However, industry stakeholders claim that the temporary termination of the program (as it undergoes a redesign) poses challenges for the

³ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006L0112>

⁴ <https://info.parliament.ge/#law-drafting/19842>

Georgian film sector in terms of creating uncertainties for potential investors. As mentioned above, film production is a highly mobile industry and production companies can move swiftly to a more favorable jurisdiction. Therefore, the proper management of investors' expectations represents one of the most critical success factors, according to the private sector respondents. The public sector respondents, to a large extent, did not share the concerns related to the redesign of the cash rebate program. They claimed that the changes to this system, once finalized, will result in a more efficient and sustainable program and that the redesign process would not deter potential foreign investors.

Two more issues related to the fiscal incentive program in Georgia are worth mentioning here, namely its legal form and VAT on exported services. A number of stakeholders believe that the rebate program, if adopted as a law rather than a government decree, would contribute to stability and certainty, thus making the Georgian environment more attractive for investment. Finally, it should be emphasized that the potential amendments to the Tax Code of Georgia, described above, will bring the discussion regarding the scope and magnitude of the cash rebate program back to the table.

3. Limited access to EU-funded programs

Georgia is only partially eligible for Creative Europe's MEDIA sub-program (with access to only four out of 14 actions⁵). For full participation to be realized, Georgia's legal and regulatory framework will need to align with Directive 2010/13/EU⁶ (on Audiovisual Media Services).

The relevant amendment to the Law on Broadcasting has been developed by Georgian National Communications Commission (GNCC) and submitted to the Parliament's Sector Economy and Economic Policy Committee in December 2018 but has not been adopted yet. Most of the stakeholders emphasized the benefits of full participation in the MEDIA sub-program for film and animation producers, specifically in terms of the increased funding for co-productions and development of the film distribution sector in Georgia.

4. Piracy

Piracy poses a threat to the profits of producers and distributors of audiovisual content, which affects their motivation to invest. Online piracy in Georgia is at an alarming level. The urgency of the situation was depicted in a letter⁷ from the Motion Picture Association in the EMEA region (MPA EMEA) to the National Intellectual Property Center of Georgia, which indicated the significance and scale of the problem caused by providers of illegal content (such as adjaranet.com and imovies.cc). The fact that these two websites are among the most popular of all websites in Georgia speaks for itself here. The problem is further aggravated by consumers' low level of awareness about intellectual property rights, as well as insufficient enforcement of the existing laws and regulations.

⁵ https://eacea.ec.europa.eu/creative-europe/actions/media_en

⁶ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010L0013>

⁷ <https://bm.ge/en/article/hollywood-against-georgia--studios-are-concerned--due-to-movie-piracy/44433/>

To a large extent, the perceived solution to the online piracy of audiovisual content is incorporated in the amendment to the Law on Broadcasting mentioned above, which introduces an authorization requirement for any on-demand content providers.

5. Skills gap and shortage in film production and post-production

The increasing prevalence of film production in Georgia has resulted in a higher demand for a range of production service professionals - both above- and below-the-line⁸. In the country, there are only a handful of professionals above-the-line who are highly skilled with extensive practical experience, which is not sufficient to meet the increased production demand. The technical skills of the below-the-line crew are also insufficient, due to the lack of training opportunities and generally low interest in film production among young people. Georgia also lacks skilled heads of departments, production managers, production assistants, audio engineers, light technicians, gaffers, grips, makeup artists, and production designers. The existing educational programs, provided mainly by Shota Rustaveli Georgian State University of Theater and Film and Ilia State University, are focused on film directing and scriptwriting; they do not fully correspond with modern requirements and technological developments in the industry, nor do they provide vocational education programs that teach practical skills. According to various industry stakeholders, there is a wide range of below-the-line occupations that need to be introduced at vocational education level. However, many also mentioned that gaining practical experience could make up for the currently insufficient classroom training being provided/offered. Respondents also emphasized the low level of soft skills among film professionals such as English-language and networking skills, and this restricts their opportunities to establish international relationships and attract potential investors.

6. Low access to finance in film production

Low access to financing is a key challenge for the film industry in Georgia. The main source of funding for Georgian films is the Georgian National Film Center, which has an estimated annual budget of 7 million GEL; it is only able to support the production of 4-5 films per year. According to the private sector respondents, this amount is not sufficient to develop the film industry in Georgia. In addition, bank products for the film industry are underdeveloped, leaving a heavy burden on production companies when it comes to cash mobilization, investment in infrastructure, and equipment. This lack of sufficient financing options is, according to most of the stakeholders, attributable to a general lack of awareness about the economic benefits that could be gleaned from the film industry. In addition, it has been noted that locally-funded projects are able to attract foreign investors at a later stage and thus generate much higher economic gains through co-production opportunities.

⁸ ‘Above-the-line’ refers to professions that have creative influence on the production. These roles include but are not limited to the screenwriter, producer, director, and actors. ‘Below-the-line’ refers to professions responsible for making the product – project manager, gaffer, location manager, make-up artist, production assistant, production coordinator, script supervisor, set construction, etc.

Finally, access to finance is heavily dependent on the fiscal incentive schemes available in the country. Private sector stakeholders, representing both film and music production, advocate for additional incentives to be offered to local and international companies to invest in the industry. Our summation here is that improving access to finance policy would require a holistic analysis taking into account all of the moving pieces simultaneously in order to establish a predictable and transparent business environment for years to come.

7. Low technical capacity/infrastructure

Low access to finance impedes investment in infrastructure, equipment, and technology, which in turn limits the capacity of Georgian companies to attract international productions. Today, the country's film infrastructure capacity can serve only 4-5 international projects simultaneously. Moreover,, there are several film studios in Georgia that were built during the Soviet era, which despite being sufficiently maintained and utilized, lack the spatial capacity and other specifications to meet present-day requirements. Finally, the technical equipment of post-production studios is not sufficient to serve more than five feature films simultaneously.

8. Lack of a streamlined filming permit process

Film production requires a number of services, infrastructure, and equipment, all of which needs to be provided by municipal or central governments (with or without charge). This includes the rental of state-owned properties, vehicles, and equipment, as well as logistical support with regard to the closure of streets and sidewalks, altering street lighting, and cleaning streets. There are no standard guidelines or procedures available in Georgia for obtaining filming permits. Decisions are made on a case-by-case basis, which provides flexibility to some extent, according to industry representatives. However, as such decisions are often at the sole discretion of particular public officials, there are frequent delays and disruptions. Most of the respondents recommended streamlining and centralizing the process for granting filming permits to simplify communication and coordination with public agencies. In addition, some of the stakeholders emphasized the importance of pricing public property for rental services that would provide additional revenue for the Government.

To summarize, the eight most important challenges, described above, were identified by the private and public sector stakeholders. Table 2 presents a multicriteria assessment of these challenges, which served as the basis for further development of this policy brief.

Table 2. Multicriteria assessment of identified challenges

Identified Policy Challenges	Economic Impact	Legal Feasibility	Technical Feasibility	Political Feasibility	Timeframe
VAT on the export of services	High	High	High	High	High
Access to the EU-funded programs	Medium	High	High	High	High
Skills development	High	Medium	Low	Medium	Low
Technical capacity/infrastructure	Medium	High	Low	Medium	Low
Access to finance	High	High	Medium	Medium	Low
Fiscal incentives	High	High	High	Medium	High
Intellectual property rights/piracy	High	High	Medium	Medium	High
Streamlining film production processes	Low	Low	Low	Medium	Low



Based on the analysis, summarized above, policy issues were narrowed down to the following four most critical challenges: (1) VAT on the export of services; (2) fiscal incentives; (3) access to the EU-funded media programs; and (4) piracy. Finally, due to interlinkages between these issues, we decided to group the first two and last two challenges together for further policy analysis.

From the next section onward, this policy brief will concentrate on the issue of piracy, the elimination or at least mitigation of which will ensure, among other benefits, close-to-full access to the EU-funded media programs. It should be emphasized that the other two issues, though no less critical in any regard, are not analyzed in this policy brief as they are expected to be addressed by a new government decree, which has not been made public at this point.

4. Context of the Policy Problem and Rationale for Action

The widespread availability of the Internet and digitization of media content has transformed the scope and scale of piracy. Digital piracy is significantly more widespread than physical piracy, and is significantly more difficult to fight. Some studies have suggested that the economic losses owing to digital piracy are substantial. According to Blackburn et al. (2019), there are approximately 26.6 billion illegal pirated viewings of US-produced films each year, as well as 126.7 billion pirated viewings of US-produced television shows worldwide, mostly viewed outside the US. This has resulted in the decline of domestic revenues, with estimated losses reaching as high as US\$71 billion. The overall negative impact on the US economy was estimated to equate to a decline of between US\$47.5 billion and US\$115.3 billion in GDP and the loss of between 230,000 and 560,000 jobs.

In Georgia, the almost unlimited availability of pirated content negatively affects numerous stakeholders in the private sector. Specifically, it restricts revenue generation for the producers of audiovisual content as well as firms specializing in post-production and distribution activities. In addition to these direct negative effects, several value chains lose out due to the indirect impacts of piracy as it harms Georgia’s reputation and hinders the local film industry’s opportunities to collaborate internationally.

A potential anti-piracy regulatory framework, including an amendment to the Law on Broadcasting that was developed by the GNCC and submitted to the Parliament's Sector Economy and Economic Policy Committee in December 2018, would approximate Georgian legislation with the EU's Audiovisual Media Services Directive. Such approximation would open the door for Georgia to gain full eligibility for Creative Europe's MEDIA sub-program. As several stakeholders have emphasized, the benefits of full participation in the MEDIA sub-program would be significant for film and animation producers, would increase funding for co-productions, and would aid the development of the film distribution sector in Georgia.

4.1 Estimated Effects of Piracy on Legal Consumption

The impact of piracy on sales is an empirical question (Danaher et al., 2020). From a theoretical perspective, this effect could be either negative, positive, or neutral. Obviously, if pirates are consumers who would have otherwise purchased the content legally, piracy substitutes legal sales and reduces revenues to the rightsholders. On the other hand, if pirates are consumers who would not have purchased the content legally anyway, then piracy has no effect on legal sales. It is also possible that people who pirate content will spread the word about the pirated content that could, in turn, increase legal consumption if the people who learn about the pirated films choose to consume the content through legal channels instead. The strength of these effects is likely to differ according to the types of content and channels.

Piracy reduces legal video sales (both theatrical and home entertainment), according to nearly all peer-reviewed studies. Meanwhile, pre-release piracy occurs when the content is pirated before the film's official box office release. Studies have found that pre-release piracy causes more harm for rightsholders than post-release piracy, suggesting that the timing of the availability of pirated and legal content plays a key role in individuals' decision to pirate or purchase the content. Ma et al. (2014) estimated that pre-release piracy causes a 19.1% additional decline in sales, before taking into account any further decline caused by post-release piracy.

Danaher et al. (2019) found that in 29 out of 33 peer-reviewed studies, piracy resulted in significant harm to legal sales. In addition, they found piracy to have indirect impacts on the entertainment industry, society, and consumers.

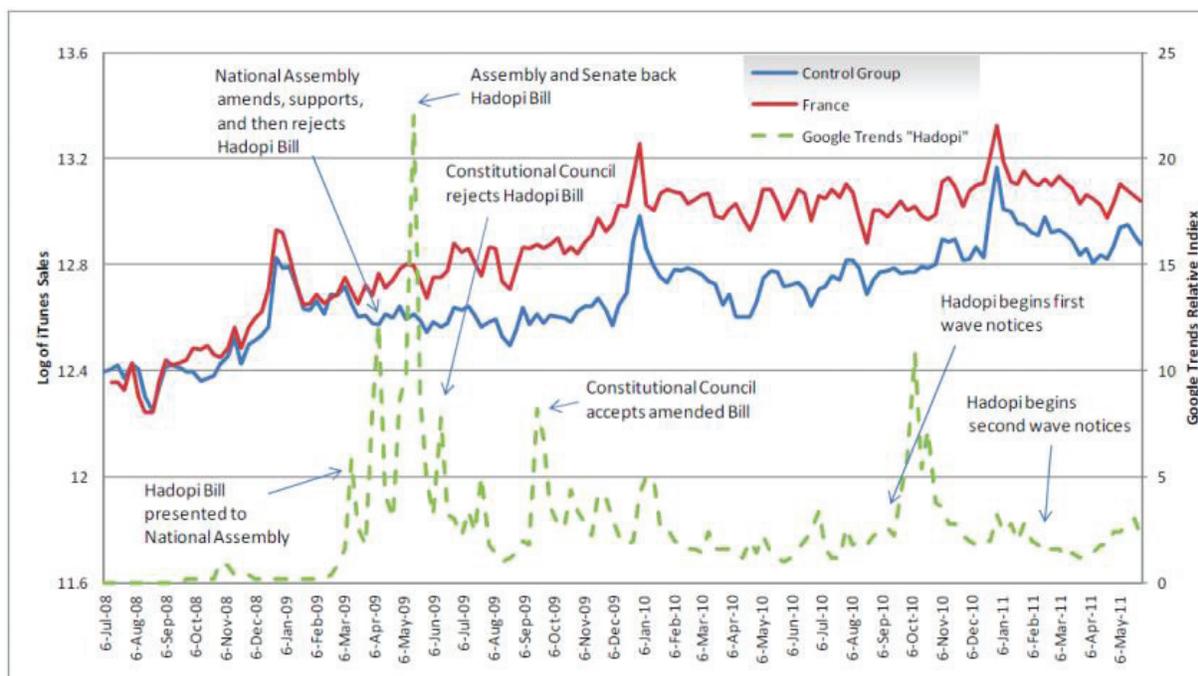
4.2 Effectiveness of anti-piracy strategies

Anti-piracy actions are broadly classified into demand-side and supply-side strategies. Demand-side interventions refer to strategies or policies targeting consumers of pirated content with warnings of potential penalties or through other awareness-raising efforts. Overall, demand-side anti-piracy strategies can increase legitimate consumption; however, consumers' awareness of the policy and their perception of the legal risks of getting caught are necessary conditions for such policies to be effective (Danaher et al, 2020; WIPO, 2015). Demand-side policies lose their impact when consumers believe the law is weakly enforced. In addition, the imposition of such policies are associated with high direct costs and legal overheads.

France's HADOPI law, one of the first demand-side policies, was introduced in 2009. The law mandated a specialized agency to disconnect suspected users from the Internet and impose penalties. HADOPI increased digital music sales by about 25% (Danaher et al. 2014). Most notably, legal sales began to increase not when the law actually became effective, but when

widespread publicity was given to heated debates on the matter in Parliament, which increased awareness of the law among French citizens⁹.

Figure 1 – iTunes Music Sales Before and After HADOPI



Sweden’s IPRED law¹⁰, came into force on 1 April 2009, making it easier for copyright holders to sue infringers and demand compensation for copyright violations. The law was heavily publicized in the first few months from its adoption, leading to a 36% increase in total music sales during the first six months compared to the control group countries. Furthermore, Internet traffic decreased by 16% during this period, which the study attributed to a 32% decrease in piracy. However, the study also found that lax enforcement of the law led to a reduction of music sales to pre-IPRED levels (Adermon and Liang, 2014).

While the difficulties in implementation and the high cost of enforcement have diminished interest in demand-side policies, the use of supply-side anti-piracy actions has grown significantly. Supply-side anti-piracy strategies target the websites, software, payment processors, or protocols that facilitate piracy. In particular, such actions include sending cease-and-desist letters to websites that contain pirated content or provide links to such content, shutting down entire sites hosting pirated content, and requiring internet service providers (ISPs) to block access to websites that host pirated content. While early research on supply-side anti-piracy policies provided mixed results on its effectiveness, more recent studies have identified conditions under which such actions may reduce piracy and increase legal consumption - efforts

⁹ The green dash line in Figure 1 indicates French Google searches for HADOPI and measures the awareness of the law.

¹⁰ Is based on the European Union’s Intellectual Property Rights Enforcement Directive (IPRED)

that remove pirated content from the Internet can influence consumer behavior with respect to legal consumption, but only when a sufficiently large number of sites are blocked simultaneously (Danaher et al., 2020).

The Megaupload website, which accounted for 4% of worldwide Internet traffic (Parloff, 2012), was shut down in 2012 after an indictment by a federal grand jury followed by the arrest of its founder and some of its managers. The shutdown, which attracted massive press coverage, created large public interest and increased consumer awareness regarding illegal services. In addition, many of Megaupload's competitors anticipated similar legal actions and reacted by shutting down or limiting their operations. An earlier study on the effects of the Megaupload shutdown showed a 6.5–8.5% increase in digital movie revenues for three major motion picture studios (Danaher and Smith, 2014). Meanwhile, a later study found a statistically and economically significant increase in ticket sales for wide-release films; shutting down Megaupload increased revenues for wide-release films, but it had no statistically significant effect on the box office revenue for limited release films. Meanwhile, the effect on limited release films was found to be negative which is in line with the theory that piracy may have positive word-of-mouth effects for small and niche films (Peukert et al., 2017).

Important conclusions can be drawn from the UK's experience of blocking piracy websites in three consecutive years. In 2012, the UK courts ordered ISPs to block access to a major indexing site for BitTorrent tracker files, known as Pirate Bay. The study found that blocking Pirate Bay caused treated users (users of Pirate Bay) to increase their visits to alternative piracy sites compared to the control group (non-users of Pirate Bay). Overall, the blocking of Pirate Bay, in spite of its popularity, did not cause an increase in legal consumption as former users found other ways of accessing the same pirated content. The subsequent blocking of a larger number of sites had a different effect on users' behavior. By the orders of the UK courts, 28 piracy sites, 19 of which hosted video content, were simultaneously blocked. According to the study, treated users increased their visits to paid streaming sites (like Netflix) by 12% compared to the control group users. Moreover, the most intense users of the blocked sites increased their legal consumption by almost 24%. The blocking of 53 piracy websites in the UK in November 2014 led to an overall decrease in the total amount of piracy and an increase in the consumption of video content through legal sites. These blocks led to an overall decrease in the total amount of piracy and an increase in the consumption of video content through legal sites. In particular, it led to a 22% decrease in total piracy for all users affected by the blocks and caused a 6% increase in visits to paid legal streaming sites (like Netflix) and a 10% increase in videos viewed on legal ad-supported streaming sites.

4.3 Indirect impacts of piracy

The effects of piracy are wide-ranging. Most of the academic literature has focused on the direct impact of piracy on legal sales. However, there are notable indirect impacts on both the entertainment industry and society in general. Indeed, Danaher et al. (2019) listed five key indirect impacts:

- (1) Piracy reduces content creators' bargaining power in negotiations with digital platforms by forcing them to accept less favorable terms from distributors than they otherwise would have obtained.
- (2) Where piracy is being practiced, sales are indirectly affected by forcing content creators to reduce the length of their release windows. Reducing release windows can lower the rightsholder's profits.
- (3) Piracy imposes additional costs for rightsholders to protect their intellectual property. These include: (1) costs of protecting digital copies of files before their release dates; (2) the cost of watermarking digital files during their digital release; (3) the costs of monitoring sites for pirated content and communication with online platforms to remove pirated content from search results; and (4) the costs of lobbying governments for stricter anti-piracy legislation.
- (4) Piracy negatively impacts artists' incentives to create.
- (5) Piracy poses computer security risks for consumers who download illegal content, and it also increases the likelihood of a user being exposed to malware (Telang, 2018).

The OECD examines the potential effects of piracy and counterfeiting, ranging from general socio-economic to micro-economic effects. Categories and approximate timings of these effects are summarized in the following table.

Table 3: Timing of the main effects of counterfeiting and piracy on key impact areas

	Short-term	Medium-term
General socio-economic effects		Innovation and growth Criminal activities Environment Employment Foreign direct investment Trade
Effects on rightsholders	Sales volume and prices Royalties	Sales volume and prices Brand value and firm reputation Firm-level investment Costs of combating counterfeiting and piracy Scope of operations
Effects on consumers	Health and safety risk Consumer utility	Consumer utility
Effects on governments		Tax revenues Costs of anti-counterfeiting activities Corruption

Source: OECD, 2008

5. Case of Georgia

Piracy in Georgia is common across many sectors, including the distribution of film and TV series, music, video games, and software. It is most prevalent in film and TV series distribution as demonstrated by an overwhelming market dominance of two pirated content providers, namely adjaranet.com and imovies.cc, which offer the widest range of content for free to their consumers.

The existing scale of online piracy threatens business revenues and investment opportunities in key value chains in the following ways: (1) local film producers cannot implement a fully feasible monetization model as their post-release revenues are threatened by illegal distribution of their productions; (2) music artists lose incentives to make sizeable investments in their work; (3) legal online distributors of audiovisual content cannot compete with pirates in terms of price and the variety of offered products and services; (4) movie theaters are not able to capture a significant share of demand as consumers often prefer to use the services of pirate websites - this diminishes the attractiveness of the distribution industry for new entrants and hinders the sector's further development; (5) piracy sets back the development of online entrepreneurship as it significantly distorts the advertisement market and does not allow legal websites to monetize their services; (6) piracy has damaged the reputation of Georgia as a whole, thus compromising international cooperation opportunities, both in terms of co-producing with foreign partners as well as attracting foreign film producers to Georgia; and (7) until approximation with the EU's Audiovisual Media Services Directive is realized, Georgia loses out on EU funding through Creative Europe's MEDIA sub-program.

As pointed out during the Working Group discussions, while reforms are associated with progress and innovation, they seldom deliver a pareto improvement. Nevertheless, it is believed that despite there being some losers in the short-run, anti-piracy reform will ultimately induce the existence of a more efficient, entrepreneurial, business-enabling, transparent, certain, and inclusive market environment.

5.1 Identification and evaluation of policy alternatives

The identification of policy alternatives was based on an analysis of international best practices as well as key contributions taken from the conducted stakeholder interviews (see Annex 1) and Working Group meetings (see Annexes 2-3).

In general, there are two key directions for the potential development of an anti-piracy legal and regulatory framework: the demand-side (consumers); and the supply-side (direct and indirect providers of relevant services). A review of international best practices (summarized in section 4.1) as well as consultations with the interested parties and Working Group meetings clearly demonstrated much higher efficiency and effectiveness on the part of supply-side interventions. Nevertheless, activities aimed at raising consumer awareness were unambiguously considered as key complementary actions to ensure the overall efficiency of the anti-piracy policy. Indeed, awareness-enhancing activities were considered crucial not only with respect to consumers, but also for representatives of media outlets, advertisement agencies, investigative bodies, and courts.

To minimize the negative impact of piracy on the industry, the following three potential supply-side interventions should be considered:

- (1) Passing legislative changes in the Law of Georgia on Broadcasting, which would broaden the regulatory mandate of the GNCC and require authorization of all on-demand providers of audiovisual services.
- (2) Introducing stricter criminal sanctions (in Georgia's Criminal Code) for copyright violations, equipping investigative bodies with more effective investigation tools (for example, wire tapping) and deterring potential criminal acts.
- (3) Implementing legislative changes in the Law of Georgia on Copyright and Related Rights, imposing responsibility on ISPs to take down (or restrict access to) pirated content when approached by rightsholders.

The first intervention above broadens the definition of audiovisual media services and, to a large extent, puts on-demand content providers under the same pre- and post-authorization scrutiny as already-regulated television companies. To be specific, entities seeking to provide their consumers with on-demand services will have to demonstrate (via contracts, permits and licenses) that they hold the rights for the distribution of the given content. The GNCC has successfully and consistently implemented similar requirements within its existent mandate and, as a result, TV, cable and transit broadcasting is currently piracy-free; their accumulated experience and established networks suggest that their efforts are very likely to succeed if the relevant legislative amendments are passed.

It has been suggested that most effective anti-piracy policies include the simultaneous and timely close-down of key (if not all) pirate websites. The alternative strategy of negotiating some sort of legalization process with the pirates bears the risk of strategic delay, aggravating policy uncertainty, and increasing the magnitude of potential negative impacts on consumers who are becoming increasingly attached to pirated content.

The second potential policy intervention above relates to the criminal responsibility for piracy. Today, encroachment upon the rights of a holder of copyright or related rights is not considered a serious crime and is, in most cases, classified as a misdemeanor punishable by a fine, community service, house arrest, or another relatively minor penalty. Only if the offender commits such crime repeatedly, acts in a group with prior intent, or seeks to gain particularly large income from said crime would he or she be subject to a prison sentence of up to three years¹¹. Such an approach has been shown to have two key flaws. First, it has not efficiently deterred crime and it has also not stimulated effective criminal investigation. The former is driven by the offenders' ability to constantly shift the criminal activity from one individual/entity to another, and thus avoid any serious punishment. Meanwhile, the latter flaw relates to law enforcement units' inability to apply the kind of investigative techniques which are only applicable in cases of serious crime. Proving intent for copyright encroachments is another challenge that is difficult to overcome during respective proceedings. Finally, a lack of competence and expertise across law enforcement units regarding investigations into copyright and related rights violations naturally decreases the efficiency of such investigations.

¹¹ Article 189, Criminal Code of Georgia - <https://matsne.gov.ge/en/document/view/16426?publication=209>

The final direction of potential policy intervention outlined above entails an indirect route, placing some responsibilities on the shoulders of ISPs. Currently, they are obliged to respond only to the requests of the GNCC, but the suggested model implies widening the scope of responsibility by including requests coming directly from the rightsholders. Such a policy development would equip rightsholders with an additional tool to pursue their interests via civil lawsuit and recover damages where their rights have been infringed. To clarify, today the rightsholders can only sue a direct provider of pirated content, which is often not a viable option as pirates tend to operate using proxy entities with no significant registered assets in their name.

Imposing the above-described responsibilities on the ISPs would expose them to the additional administrative costs and risks associated with properly adhering to the requirements. On the other hand, as ISPs in Georgia are also key players on the media market (TV and on-demand), they are also direct victims of piracy¹² and may be willing to take on these additional costs. Furthermore, as noted by anti-piracy center representatives, it is very simple to identify the rightsholders of films and TV series and, thus, adhering to such responsibilities would not be especially costly for ISPs (the same may not be true in the case of music).

Finally, it should be noted that relevant amendments to the Law on Copyright and Related Rights have been under development since 2016, but these are yet to be submitted to Parliament. To our knowledge, this is planned for the Fall 2020 sessions.

To summarize, the three supply-side policy interventions described above would create a multi-dimensional legal framework that would not only equip the regulatory body with the necessary tools for supervision, but also allows for more effective crime deterrence, criminal investigation of infringements if necessary and, finally, provides the rightsholders with a viable option to claim relevant damages via pursuing civil lawsuits.

In addition to supply-side interventions, interested parties stressed the importance of two non-regulatory interventions. First, raising consumer awareness is perceived as a key complementary component to the suggested policy framework. In partnership with other interested parties, the Anti-Piracy Center of Georgia has already developed and implemented several such campaigns. Second, the broader availability of legal content, provided both in English and Georgian languages, was perceived as another key pre-condition for the successful implementation of the policy framework. In this regard, there have already been some initial developments on the Georgian market through both Georgian and international content providers. Nevertheless, raising consumer awareness and achieving large-scale accessibility of legal content represent medium-term objectives that will require a holistic and consistent policy approach pursued jointly by governmental and non-governmental organizations, educational institutions, and other stakeholders.

Finally, although difficult to implement, regulations aimed at sanctioning advertisement placements on pirated websites may also be a policy worthy of considering. Such an intervention directly targets the profitability of online piracy and decreases its attractiveness, as the current

¹² One exemplary case is related to illegal distribution of HBO series, Game of Thrones, rights to which were purchases by one of Georgian TV Broadcasters.

monetization model of piracy relies entirely on advertisement revenues. The implementation of this policy alternative would require inclusive participation across the private and public sector and may not be treated with the desired urgency by all representatives. Nevertheless, there is clearly some room for private sector players to voluntarily refrain from placing advertisements on known pirate websites. Such steps have already been taken by several large Georgian companies.

In summary, this policy brief, based on conducted research and key inputs from Working Group members, recommends the following bundle of policy interventions:

1. Amendments to the Law of Georgia on Broadcasting, introducing authorization requirements for all on-demand content providers.
2. Amendments to the Criminal Code of Georgia aimed at increasing the severity of punishments for the encroachment upon the holders of copyright and related rights.
3. Changes in the Law of Georgia on Copyright and Related Rights, obliging ISPs to respond to the requests of rightsholders and to pursue necessary steps to stop the process of infringement.

These three policy options should be complemented with an active awareness-raising campaign aimed mainly at consumers, but also at private sector and media representatives, in addition to building the capacity of investigative bodies.

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Annexes

Annex 1. List of interviews

N	NAME	POSITION AND ORGANIZATION	DATE
1	Noshre Chkhaidze	Producer, Board Member at Film Cluster	20 February
2	David Vashadze	Executive Director & Board Member at Film Cluster and Film Commissioner at Georgian National Film Center	19 February
3	Natia Nikoleishvili	Board Member at Film Cluster and Executive Producer at Butterfly Films	21 February
4	Sophio Bendiashvili	Board Member at Film Cluster and Managing Director at Enkeny Films	20 February & 2 March
5	Tornike Zirakishvili	Deputy Director at Enterprise Georgia	27 February
6	Tatia Bidzinashvili	Head of Film in Georgia Program at Enterprise Georgia	27 February
7	Lika Mezvrishvili	Head of International Business Development at Sarke Studio	19 February
8	Vladimer Kacharava	Board Member at Film Cluster and Director at 20 Steps Production	5 March
9	Beso Kacharava	Director at Post Red	24 February
10	Zuka Bezhashvili	Founder & Executive Director at Anti-Piracy Center of Georgia	24 February
11	Otar Bubashvili	Founder & Chairman at Anti-Piracy Center of Georgia and Director at Cavea Cinema	24 February
12	Zaza Shengelia	President at Bravo Records	9 March
13	Ivane Makharadze	Head of Audio-visual Media Services Regulation Department at the GNCC	6 March
14	Keti Bochorishvili	Former Deputy Minister of Economy and Sustainable Development	2 March
15	Tsiako Abesadze	Founder & Board Member at Women in Film and Television (WIFT) Caucasus Chapter	24 February
16	Ana Dziapshipa	Documentary Film Producer	25 February
17	Paata Godziashvili	Board Member at Film Cluster and Director at Phonography Studio	5 March
18	Irakli Nadareishvili	Deputy Minister of Economy and Sustainable Development	4 March
19	Mari Khokhlenko	GIZ, Former Film Cluster Project Manager	28 February
20	Giorgi Taktakishvili	Lawyer/Intellectual Property Rights at Mikadze, Gegechkori, Taktakishvili Law Firm	2 March
21	Ketevan Shengelia	Head of Creative Europe Desk Georgia	10 March
22	Lasha Khutsishvili	Deputy Minister of Finance	4 March
23	Giorgi Kakauridze	Deputy Minister of Finance	4 March

24	Vato Urushadze	Research Coordinator at LEPL Creative Georgia	10 March
25	Dinara Maghlakelidze	Media Coordinator at Creative Europe Desk Georgia	10 March

Annex 2. First Working Group meeting participants

N	NAME	POSITION / ORGANIZATION
1.	Noshre Chkhaidze	Producer, Board Member at Film Cluster
2.	David Vashadze	Executive Director & Board Member, Film Cluster and Film Commissioner at Georgian National Film Center
3.	Keti Danelia	Producer of the Film - “And Then We Danced”
4.	Zurab Bezhashvili	Founder & Executive Director, Anti-Piracy Center of Georgia
5.	Ivane Makharadze	Head of Audio-visual Media Services Regulation Department at the GNCC
6.	Levan Maisuradze	The GNCC
7.	Zaza Shengelia	President, Bravo Records
8.	Guga Guntsadze	CEO, Bravo Records
9.	Otar Bubashvili	Founder & Chairman, Anti-Piracy Center of Georgia; Director, Cavea Cinema
10	Ketevan Shengelia	Creative Europe
11	Elene Cheishvili	Lead Specialist, Sector Economy and Economic Policy Committee, Parliament
12	Sophio Chantadze	Ministry of Culture and Sports of Georgia

Annex 3. Second Working Group meeting participants

N	NAME	POSITION / ORGANIZATION
1.	David Vashadze	Executive Director & Board Member, Film Cluster and Film Commissioner at Georgian National Film Center
2.	Keti Danelia	Producer of the Film - “And Then We Danced”
3.	Zurab Bezhashvili	Founder & Executive Director, Anti-Piracy Center of Georgia
4.	Ivane Makharadze	Head of Audio-visual Media Services Regulation Department at the GNCC
5.	Levan Maisuradze	The GNCC
6.	Guga Guntsadze	CEO, Bravo Records
7.	Elene Cheishvili	Lead Specialist, Sector Economy and Economic Policy Committee, Parliament
8.	Sophio Chantadze	Ministry of Culture and Sports of Georgia
9.	Nikoloz Gogilidze	Ex-chairman of SAKPATENTI
10.	Giorgi Dapkviashvili	MoESD
11.	Nikoloz Keburia	MoESD