Association for Competitive Technology – Submission to the DG Trade Targeted Consultation

State of Intellectual Property in Third Countries (2027)

Name of the country/countries (in order of priority)
China
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
Cybersecurity Law (2017) and Data Security Law (2021) security-review provisions that, in practice, require or pressure foreign software and connected-device vendors to disclose source code or algorithms as a precondition for market access in regulated sectors, creating trade secret exposure for European Union (EU) small and medium-sized enterprise (SMEs) technology providers with no comparable requirement for domestic competitors. This is compounded by State Administration for Market Regulation's (SAMR) Provisions Prohibiting the Abuse of Intellectual Property Rights to Eliminate or Restrict Competition (in effect since August 2015, most recently revised in 2023), which can restrict refusals to license intellectual property, including ordinary, non-standard-essential patents. This allows SAMR to compel a rights holder to license its technology to competitors on terms it does not choose — well beyond the compulsory-licensing limits generally accepted under Trade Related aspects of Intellectual Property Rights (TRIPS) Article 31 and international competition-law practice. Anti-Unfair Competition Law trade secret provisions remain narrowly and inconsistently applied in practice, leaving SME rights holders without an effective remedy. China's copyright framework contains gaps that bear directly on the members ACT represents. Several of the improvements introduced by the 2021 revision of the Copyright Law remain unimplemented, the term of protection has not been extended to at least 70 years, and the right of making available to the public is not defined in a way that allows a rights holder to act against unauthorised online distribution with any confidence. Market access restrictions on foreign digital content operate alongside these gaps and push demand toward unauthorised services, so that the two problems reinforce one another.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
Administrative enforcement against online software piracy and app-store counterfeiting remains slow and inconsistent outside major cities; IP offices and courts in secondary regions often lack the technical expertise to assess software, algorithm and app-related infringement claims; sanctions for digital piracy are frequently too low relative to the commercial gain, providing little deterrent; trade secret litigation outcomes are opaque, making it difficult for SMEs to assess enforcement risk before entering the market. Cybersecurity Law and Data Security Law 'network security assessment' obligations are also defined in vague terms, leaving SMEs unable to predict in advance when disclosure of source code or proprietary data will be required or how frequently reassessment will be triggered. SAMR's growing use of antitrust enforcement against foreign IP licensing, including in the standard-setting context, is applied with limited transparency

and raises due-process concerns — evidentiary standards, access to independent legal counsel, timely review — that fall short of the minimum enforcement guarantees expected under TRIPS Article 41. Cooperation from social media and e-commerce platforms declined during 2025 as takedown procedures became more cumbersome, administrative fines remain low relative to the revenue generated by commercial infringement, and there is little enforcement against operations that serve only foreign users or that geo-block Chinese access even where the servers or operators are located in China. The result is that an EU SME can identify infringement precisely and still have no route to a remedy that is worth the cost of pursuing.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
China remains by far the largest source of IPR-infringing goods entering the EU, accounting, together with Hong Kong, for 65.7 per cent of the articles detained at the EU border in 2023 and, on its own, for 44.53 per cent of articles detained in 2024, according to the enforcement data published by the European Union Intellectual Property Office and the Commission. For SME rights holders specifically, there is a persistent gap between the (improving) protections available to large multinational rights holders — who can resource dedicated China IP litigation — and the practical protection available to SMEs, who typically cannot. China's 'China Standards 2035' strategy channels standard-setting for artificial intelligence (AI), 5G, and internet of things (IoT) technologies through domestic 'social organisations' that are, in practice, closed to companies not headquartered in China, allowing China to develop indigenous technical standards — subsequently written into binding Chinese law — in parallel to, and increasingly divergent from, open international standards. This structurally disadvantages EU SME technology providers seeking to participate in, or simply comply with, Chinese standardisation processes. Informal pressure toward technology transfer through joint-venture requirements, foreign equity limitations and local data or source-code 'escrowing' as a condition of market access remains a recurring complaint among ACT members operating or seeking to operate in China, notwithstanding China's WTO accession commitment not to condition market access on technology transfer. Chinese entities are also increasingly the source of the tools and services used to infringe elsewhere, including piracy devices, applications and cloud-based storage of infringing material distributed through social media, e-commerce sites and linking platforms. Enforcement against those operations is weak, which means that the harm to EU rights holders is not confined to the Chinese market.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
SAMR's Provisions Prohibiting the Abuse of IPR to Eliminate or Restrict Competition (in effect since August 2015, updated 2023) is the clearest example: it permits a finding that ordinary, non-standard-essential patented technology constitutes an 'essential facility', obliging the rights holder to license it to competitors — an outcome that goes beyond the compulsory licensing limits in Article 31 of TRIPS, and beyond the way essential facility analysis is applied to non-standard-essential patents in the EU. A second example is the closed, headquartered-in-China eligibility criteria applied by 'social organisation' standards bodies operating under the China Standards 2035 framework, which as a matter of practice exclude EU

SMEs from participating in the development of standards that Chinese law subsequently makes mandatory for market access.

Article 7 of the IP Abuse Rules is the operative provision: it prevents a dominant undertaking from refusing, without justification, to license intellectual property that constitutes an essential facility on reasonable terms where the refusal eliminates or restricts competition. Applied to ordinary patents, that reasoning requires a rights holder to license technology to a competitor simply because the competitor cannot compete without it, which is a substantially wider power of compulsion than TRIPS Article 31 or accepted competition practice contemplates.

Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.

ACT engaged directly in the development of China's standard-essential patent framework, filing detailed comments on the draft Anti-Monopoly Guidelines for Standard Essential Patents that the State Administration for Market Regulation put out for consultation in 2023 and raising with several governments the respects in which the draft text departed from consensus FRAND principles. The final guidelines issued in 2024 addressed a number of those points.

ACT continues to advise its members on the practical risks of the Chinese market, including trade secret exposure arising from security review obligations and the difficulty of obtaining an effective remedy against unlicensed distribution of software.

Specific suggestions on how the identified problems could be addressed by the EU.

The EU should press for proportionality and reciprocity in cybersecurity-review-driven disclosure requirements through the EU-China IP dialogue. The EU IPR SME Helpdesk should expand support tailored to software and digital IP (source code, algorithms, trade secrets), which differs materially from traditional manufacturing IP.

The EU should also raise China's application of the 'essential facilities' doctrine to ordinary (non-SEP) patents under the SAMR IP Abuse Rules, which goes beyond internationally accepted limits on compulsory licensing and risks disincentivising EU SME innovation aimed at the Chinese market. The EU should seek reciprocal, transparent participation rights for EU companies — including SMEs — in Chinese domestic standard-setting bodies whose output is subsequently made mandatory under Chinese law. Faster, lower-cost mechanisms for reporting and taking down pirated software and app clones should be prioritised in bilateral cooperation programmes.

On copyright, the EU should press for implementation of the outstanding elements of the 2021 Copyright Law revision, for extension of the term of protection and a workable definition of the right of making available to the public, and for streamlined administrative and civil procedures that a small rights holder can use without local representation. Removal of the market access restrictions that drive demand toward unauthorised services should be pursued in the same discussions, together with China's continued adherence to the WTO moratorium on customs duties on electronic transmissions.

On standard-essential patents, ACT's position is that a fair, reasonable, and non-discriminatory (FRAND) commitment runs with the patent and binds successors, that a holder must license all whose products or services support the standard, that royalties should reflect the value of the patented invention rather than the

value conferred by inclusion in a standard, that injunctive relief against a party who seeks a license should be exceptional, and that the determination of licensing terms by a court is a legitimate judicial function rather than evidence of a failure to protect intellectual property rights. Engagement with China on these questions would be considerably more effective if the EU had adopted a framework of its own, and ACT urges the Commission to bring forward a new standard-essential patent initiative following the withdrawal of its proposal on 6 October 2025 (ACT statement, 21 November 2025).
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).
The Anti-Monopoly Guidelines for Standard Essential Patents that the State Administration for Market Regulation issued in 2024 are the most significant recent development. They take a balanced position, with transparency requirements and good-faith negotiation provisions that address supra-FRAND royalty demands and the misuse of injunctions, and they are broadly consistent with international practice. The difficulty is that this regulatory position has not been matched by judicial practice, and the gap between the two is where the risk to EU SMEs now lies.

Name of the country/countries (in order of priority)
Brazil
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
Brazil has no dedicated statutory or regulatory framework distinguishing standard-essential patents from ordinary patents. SEP disputes are therefore generally addressed under Brazil's existing patent and procedural rules, without a uniform SEP-specific framework governing FRAND conduct and without a structured FRAND/proportionality analysis for injunctive relief such as the one established in the CJEU case *Huawei v. ZTE*. Brazil has still not acceded to the WIPO Copyright Treaty or the WIPO Performances and Phonograms Treaty, a gap the Commission recorded in its 2025 report on the protection and enforcement of intellectual property rights in third countries and one that leaves the treatment of online distribution and of technological protection measures resting on general provisions of Law 9.610/1998. Proposed amendments to that Law now before the Senate would introduce an additional remuneration right alongside the existing exclusive rights and would redefine public performance and communication to the public in terms that are difficult to reconcile with the international framework.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
Preliminary injunctions in SEP disputes can be granted at an early stage, even *ex parte*, frequently without a full assessment of whether the SEP holder itself made a genuine FRAND offer before seeking relief and

before validity, essentiality, and infringement are fully adjudicated. Many SEP proceedings in Brazil are confidential, preventing SME product innovators from monitoring enforcement trends or assessing market-entry risk in advance. The concentration of SEP litigation in the Rio de Janeiro Business Courts, combined with new expert-led fast-track procedures outsourced by courts to technical personnel, has made Brazil an increasingly attractive forum specifically for patent holders seeking to pressure their opponents with speedy injunctive relief — a dynamic that structurally disadvantages smaller defendants who lack the resources to litigate complex technical and essentiality questions on compressed timelines and cannot afford to have their products blocked from such an important market. Enforcement against online infringement depends heavily on successive phases of Operation 404 rather than on sustained year-round action, and recent changes in staffing have raised questions about the continuity of political support, resourcing and expertise. Rights holders cannot plan around a programme that operates in campaigns, and small rights holders in particular have no practical alternative when a campaign is not running.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
SEP case volume in Brazil has grown sharply. Publicly reported data shows that SEP infringement filings in the Rio de Janeiro state courts, a count drawn from publicly available filings and therefore excluding proceedings under seal, increased from six cases in 2024 to 31 in 2025, as patent holders — including non-practicing entities — increasingly select Brazil as a global enforcement venue in part because injunctive relief is comparatively easy to obtain. Licensee strategies seeking court-supervised 'interim licenses' to preserve market access while FRAND terms are litigated have not reliably shielded licensees from injunction exposure. This creates disproportionate leverage against SME licensees building products that incorporate standardised connectivity technology (5G, Wi-Fi, audio/video codecs). Standard-essential patent enforcement in Brazil has also extended into the automotive sector. The first connected-car case, brought by IP Bridge against BYD in mid-2025, produced an *ex parte* preliminary injunction and settled, and three further actions were filed against other manufacturers by the end of the year. The court-ordered procedure used in these cases, which brings outsourced technical and FRAND assessment forward on a compressed timetable, makes injunctive relief both more predictable and harder to resist, and it establishes Brazil as a repeatable venue for enforcement strategies aimed at global supply chains.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
Recent proceedings before Brazil's Administrative Council for Economic Defense (CADE) illustrate both the competition concerns surrounding SEP enforcement and the absence of settled rules governing the intersection of competition law, FRAND commitments, and patent remedies. In proceedings initiated by Motorola and Lenovo against Ericsson, the companies alleged that Ericsson abused a dominant position by refusing to license its 5G SEPs independently in Brazil and instead requiring a global licence on allegedly unfair and discriminatory terms. Although the parties subsequently entered into a global licensing agreement, CADE's Tribunal concluded in April 2025 that the allegations raised sufficient competition

concerns to warrant continued investigation, including possible discriminatory pricing, abusive commercial conditions, refusal to deal, abusive exploitation of IP rights, and conduct capable of impairing competitors. The proceeding is particularly relevant because CADE expressly recognised the need to develop clearer guidance on when SEP enforcement—including requests for preliminary injunctions—may constitute an abuse of dominance. CADE's investigation remained active in 2026, and on 5 March 2026 the authority sought additional information from Ericsson concerning its decision to pursue Brazilian patent litigation rather than a local licence, the asserted patents' essentiality, and its publicly stated FRAND royalty range. This development provides a preliminary indication that CADE is stepping in to fill the sizeable gaps in Brazil's judicial enforcement of FRAND commitments, while highlighting the continued existence of those gaps.
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
CADE has begun taking a substantially more active role in SEP policy and enforcement. On 23 April 2025 its Tribunal directed CADE's General Superintendence to open an administrative inquiry into Ericsson's 5G SEP licensing practices despite settlement of the underlying dispute between Ericsson, Motorola, and Lenovo, reasoning that the alleged conduct implicated broader interests protected by Brazilian competition law. The inquiry is examining whether SEP licensing and enforcement conduct can constitute abuse of dominance, including through refusal to license, discriminatory or abusive terms, and abusive exercise of intellectual property rights. CADE has also undertaken broader policy work on SEPs, and in June 2025 its Department of Economic Studies published a study addressing the interaction between SEPs, FRAND licensing, competition policy, injunctions, and international approaches to SEP disputes, followed by a public seminar in October 2025 bringing together CADE officials and outside experts. These efforts are welcome indications that Brazilian authorities recognise the need for greater clarity in this area.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should encourage Brazil, through EU-Mercosur or bilateral IP dialogue channels, to adopt a structured FRAND/proportionality assessment prior to injunctive relief, consistent with the EU's *Huawei v. ZTE* framework, in its own SEP policy. The EU should support the development of a dedicated Brazilian SEP litigation framework to reduce reliance on conventional patent remedies unsuited to standardised technology disputes, and advocate for greater transparency of SEP proceedings so that SME implementers can assess risk before market entry. On copyright, the EU should encourage Brazil to accede to and implement the WIPO Internet Treaties, to bring the administrative site-blocking framework into consistent operation, and to reconsider the elements of the pending copyright amendments that would create an additional remuneration right and redefine communication to the public. Establishing a permanent unit within the executive branch to carry the work of Operation 404 between campaigns and extending its focus to the services and tools that circumvent technological protection measures would do more for continuity than further campaign phases. ACT adds that the EU's ability to press Brazil, or any other partner, for a structured FRAND assessment depends on the EU having such a framework itself. Following the withdrawal of the proposed Regulation

on standard-essential patents on 6 October 2025, ACT supported the European Parliament's decision of 25 November 2025 to refer that withdrawal to the Court of Justice ([ACT statement, 21 November 2025]), and we urge the Commission to bring forward a new initiative.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).
Brazil has made meaningful progress in recognising SEP licensing as an issue at the intersection of patent and competition law. Most notably, CADE's decision to continue investigating Ericsson's licensing conduct after the private parties settled demonstrates that the authority views potentially abusive SEP practices as capable of creating broader competitive harms. CADE has also begun developing institutional expertise through its SEP study, public consultations and seminars, and its ongoing administrative inquiry. These developments are positive, but they also underscore the need for greater predictability. Brazil still lacks a settled SEP-specific framework governing the relationship between FRAND commitments, competition law, and injunctive relief. Continued CADE engagement—particularly clear guidance regarding when refusal to license, discriminatory terms, or the pursuit of injunctions may constitute abusive conduct—could provide important safeguards for SMEs implementing connectivity standards. On the copyright side, ANCINE published Instrução Normativa 174 on 10 April 2026, giving effect to Law 14.815/2024 and providing for administrative action against the unauthorised online use of audiovisual works, including action taken on the authority's own initiative and extending beyond websites to applications and set-top devices, implemented through a technical cooperation arrangement with ANATEL for dynamic blocking. This addresses a delay that had persisted for two years and is a substantial improvement, although its value will depend on how consistently it is applied.

Name of the country/countries (in order of priority)
India
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
India continues to face significant uncertainty regarding the relationship between patent and competition law in SEP disputes. In *Ericsson v. Competition Commission of India*, the Delhi High Court held that the Patents Act takes precedence over the Competition Act with respect to the exercise of patent rights. However, when the matter reached the Supreme Court, the Court dismissed the petition following settlement of the underlying dispute without deciding the merits and expressly kept the relevant questions of law open for consideration in an appropriate future case, and the question has since passed through the National Company Law Appellate Tribunal and returned to the Supreme Court on the sequence set out below. The continuing uncertainty over CCI's jurisdiction risks limiting an important mechanism for addressing potentially anticompetitive SEP licensing conduct. Other recent decisions (including *Malikie v. Xiaomi*, *Dolby v. Lava*, *InterDigital v. Transsion*) have progressively lowered the evidentiary threshold for ordering

licensees to pay 'pro-tem security' at the interim stage, before essentiality or validity is fully adjudicated. However, in *K.K. Bansal v. Philips*, the Delhi High Court's Division Bench imposed important evidentiary safeguards, holding that an SEP holder must establish essentiality and infringement and demonstrate that its proposed royalty is FRAND before obtaining relief, a result the EU should support, and the case is currently under appeal. India has also not implemented its obligations under the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, to which it acceded in 2018, and a proposal to decriminalise provisions of the Patents Act and the Copyright Act would remove one of the few deterrents available against commercial-scale infringement. Market access conditions compound the difficulty: data localisation requirements and in-country cybersecurity testing mandates apply to services that a small developer delivers from outside India, and the Digital Personal Data Protection Act 2023 is being brought into force in stages under rules notified on 13 November 2025, with the principal compliance obligations falling due in May 2027.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
Findings that a licensee is an 'unwilling licensee' — and therefore not entitled to FRAND protection — are increasingly based on a detailed scrutiny of pre-litigation negotiation conduct, raising the practical bar and legal cost for SME licensees to demonstrate good-faith engagement. Interim injunctions are increasingly treated as a routine, rather than exceptional, remedy in SEP disputes. *Bansal* provides an important counterweight: the Division Bench held that the question of implementer willingness arises only after the SEP holder demonstrates that it is a willing licensor offering genuinely FRAND terms. Orders for pro-tem security require an implementer to pay before essentiality, validity, and infringement have been determined, and the practical effect for a small implementer is that the outcome of the case matters less than its cost. Specialised intellectual property benches exist only in the larger High Courts, and border enforcement remains weak, so the quality of the remedy available depends heavily on where a claim is brought.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
India's rapid 5G rollout and expanding use of connectivity standards have exposed a growing number of connected-device manufacturers and sellers to SEP licensing demands. Over the same period, Indian courts have taken different approaches to portfolio-wide damages and interim remedies, while the role of competition law remains unsettled. This uncertainty disproportionately burdens SME implementers who lack in-house patent litigation capacity, relative to large incumbents able to absorb licensing and litigation costs.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).

Recent cases illustrate the continuing uncertainty in India's treatment of SEP disputes. In *CCI v. Ericsson*, the Supreme Court declined to resolve whether the Competition Commission of India (CCI) may investigate allegedly anticompetitive conduct involving the exercise of patent rights. Because the underlying parties had settled, the Court dismissed the petition without deciding the merits and expressly left the questions of law open for resolution in an appropriate future case. Nevertheless, the National Company Law Appellate Tribunal (NCLAT) subsequently relied on the Delhi High Court's earlier *Ericsson* decision to conclude that the Patents Act prevails over the Competition Act in patent matters. The Supreme Court has taken up an appeal from that decision, and on 2 February 2026 it stayed the parts of the ruling holding the Competition Act inapplicable, with judgment reserved on the jurisdictional question. This continuing jurisdictional uncertainty risks leaving potentially abusive SEP licensing practices without effective competition-law scrutiny. At the same time, Indian courts have taken differing approaches to SEP enforcement itself. Some recent decisions have strengthened the availability of interim remedies before essentiality, validity, infringement, and FRAND terms are finally determined. By contrast, the decision of a Division Bench of the Delhi High Court of 18 May 2026 in *K.K. Bansal v. Philips* imposed important evidentiary safeguards, requiring the SEP holder to prove essentiality and infringement and demonstrate that its proposed royalty is FRAND before obtaining relief. The Court also required meaningful evidence supporting claimed FRAND rates, including comparable licence agreements, and held that the implementer's willingness becomes relevant only after the SEP holder demonstrates that it is a willing licensor offering genuinely FRAND terms.
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
The Delhi High Court's *Bansal* decision represents an important positive development toward a more balanced and evidence-based SEP framework. The Division Bench required SEP holders to establish the relevant standard, map the asserted patent claims to that standard, prove essentiality and infringement, and substantiate claimed FRAND rates with appropriate evidence. It also recognised patent exhaustion as an important protection for downstream manufacturers sourcing components through authorised supply chains and rejected automatically basing royalties on the value of an entire downstream product where the patented technology resides in a component. India's courts are also continuing to consider the proper relationship between patent and competition law. The Supreme Court's disposition of *CCI v. Ericsson* expressly left the relevant questions of law open, and the Court has since agreed to consider an appeal from the NCLAT decision addressing CCI jurisdiction over alleged abuses involving patent rights. These proceedings provide an opportunity to clarify that patent and competition law serve complementary purposes: patent law governs the existence and enforcement of patent rights, while competition law remains an important safeguard against the abuse of market power arising from the manner in which those rights are exercised.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should encourage India to develop a coherent national SEP framework that provides greater predictability for both SEP holders and implementers while ensuring that voluntary FRAND commitments remain meaningful and enforceable. Such a framework should recognise the complementary roles of patent and competition law and preserve CCI's ability to investigate potentially anticompetitive SEP licensing conduct, including discriminatory refusals to license, coercive use of injunctions, tying or bundling of

unrelated patents, and royalty demands that derive value from standardisation rather than the patented invention itself.

The EU should also encourage India to adopt clear FRAND principles providing that SEP holders license all willing implementers; royalties reflect the value of the patented invention rather than the additional value conferred by inclusion in a standard; and injunctions against willing licensees remain exceptional. Greater transparency regarding SEP ownership, comparable licences, royalty methodologies, and patent transfers would further reduce information asymmetries that disproportionately disadvantage SMEs.

Finally, EU-India technical cooperation should support greater institutional coordination among the CCI, Department for Promotion of Industry and Internal Trade (DPIIT), Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM), and Department of Telecommunications, as well as targeted education and assistance for Indian SMEs facing SEP licensing demands.

ACT has set out a fuller account of what a pro-competitive standards and SEP framework for India would involve in its paper *A Call to Action: Guiding a Fair Standard-Essential Patent Licensing Process for a Thriving Indian Economy* (available on SSRN), and we would welcome the opportunity to discuss it with the Commission.

On copyright and enforcement more generally, the EU should encourage India to implement its obligations under the WIPO Internet Treaties, to reconsider the proposed decriminalisation of provisions of the Patents Act and the Copyright Act, and to extend specialised intellectual property capacity beyond the major High Courts. Data localisation and in-country testing requirements should be narrowed so that they do not exclude services delivered from outside India, which is how most EU SMEs reach the Indian market.

Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).

The May 2026 *Bansal* judgment represents significant progress toward a more rigorous and evidence-based approach to SEP enforcement. The Delhi High Court Division Bench placed the burden on SEP holders to prove essentiality, infringement, and FRAND compliance rather than permitting those elements to be presumed from an SEP declaration. The Court also emphasised the importance of comparable licence evidence, recognised exhaustion protections for downstream manufacturers, and rejected automatically calculating royalties on the value of an entire end product where the patented technology resides in a component. These safeguards are particularly important for Indian SMEs, which often lack the resources and information necessary to challenge unsupported SEP assertions or excessive royalty demands.

Competition oversight has also moved, and although the Supreme Court's disposition of *CCI v. Ericsson* did not resolve CCI's jurisdiction on the merits, the Court expressly kept the legal questions open. The Supreme Court's subsequent decision to hear an appeal concerning the NCLAT's treatment of CCI jurisdiction creates another opportunity to clarify the complementary roles of patent and competition law in addressing SEP licensing conduct.

These judicial developments are promising but do not substitute for a comprehensive national SEP policy. As SEP licensing expands beyond telecommunications into connected vehicles, smart meters, IoT,

manufacturing, healthcare, and other standards-dependent sectors, India has an opportunity to provide greater certainty by ensuring that FRAND commitments are enforceable, competition authorities retain appropriate oversight of abusive licensing practices, and SMEs have meaningful access to standardised technologies. The chronology on the competition question is worth setting out precisely, because it has been reported in ways that overstate what has been decided. On 2 September 2025 the Supreme Court dismissed the Competition Commission's petition by a non-speaking order that set no precedent and expressly left the questions of law to be raised in an appropriate case; the National Company Law Appellate Tribunal nevertheless relied on the earlier Delhi High Court ruling on 30 October 2025 to hold that the Competition Act did not apply to conduct concerning a patented product; and on 2 February 2026 the Supreme Court stayed those parts of that ruling and reserved judgment on the jurisdictional question, so the position should be settled within the period the 2027 report will cover.

Name of the country/countries (in order of priority)
Türkiye
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
Draft amendments to Law No. 4054 on the Protection of Competition would establish an *ex ante* regulatory framework for digital platforms modelled on the EU's Digital Markets Act. The draft has been in consultation since 2022 and has not been enacted, but as circulated it would impose interoperability and access obligations on designated undertakings without any provision preserving the ability of curated application marketplaces to detect and remove infringing applications and listings. Platform-level curation is one of the few enforcement mechanisms available to a small developer at a cost it can bear, and obligations that override it would reduce the practical protection available to EU rights holders distributing software into the Turkish market. Enforcement provisions of Industrial Property Law No. 6769 and of Law No. 5846 on Intellectual and Artistic Works are also applied inconsistently to online infringement, which is treated as a lower priority than physical counterfeiting.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
Criminal and administrative enforcement against online infringement is slow, and penalties are frequently too low to deter infringers acting for commercial gain. Technical expertise for claims involving software, applications, and algorithms is concentrated in a small number of courts, and the cost and delay of proceedings makes enforcement uneconomic for an SME relative to the value at stake. Without a settled framework for intermediary liability, rights holders depend on the voluntary cooperation of marketplaces.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.

Türkiye remains one of the largest sources of goods infringing intellectual property rights detained at the EU border, accounting for 21.99 per cent of detained articles in 2024 and second only to China. The Commission's 2025 report on the protection and enforcement of intellectual property rights in third countries classifies Türkiye as a Priority 2 country on the basis of serious systemic problems, and the experience of ACT members is consistent with that assessment, particularly as regards counterfeit goods offered through online marketplaces and unlicensed distribution of software.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
That Türkiye has remained among the leading sources of detained articles through successive rounds of legislative reform suggests that the difficulty lies in administrative and judicial implementation rather than in the statutory framework itself.
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
Specific suggestions on how the identified problems could be addressed by the EU.
The modernisation of the EU–Türkiye Customs Union is the most direct route to addressing these problems, and intellectual property enforcement commitments should be treated as a core element of those negotiations rather than as a subsidiary chapter. The EU should also seek assurance that any digital platform regime adopted under Law No. 4054 preserves the ability of platforms to enforce intellectual property rights and should extend EU IPR SME Helpdesk coverage and enforcement training to online and software-related infringement.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).
Türkiye has continued to develop specialised intellectual property courts and to participate in EU technical cooperation, but ACT members have not seen a corresponding improvement in outcomes for online and software-related infringement over the last two years.

Name of the country/countries (in order of priority)
Indonesia
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
Law No. 65 of 2024, the third amendment to Patent Law No. 13 of 2016, replaced the previous local working obligation with a requirement under Articles 20 and 20A that every patent holder file an annual statement of patent implementation. The implementing regulation has not been issued and the law does not specify the consequences of failing to file, so patent holders carry an annual compliance obligation of uncertain scope and effect. Indonesia also classifies software and other digital products transmitted electronically

under heading 99.01 of its Harmonized Tariff Schedule, a structure introduced by Ministry of Finance Regulation 17/PMK.010/2018 and now governed by PMK 190/PMK.04/2022. The applicable import duty is set at zero, but the classification puts in place the customs machinery needed to impose duties on electronic transmissions and requires an import declaration together with import VAT and income tax withholding, which is a substantial administrative burden for a small developer selling into Indonesia.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
Indonesia has not established the specialised intellectual property unit within its National Police that would allow sustained action against organised counterfeiting and piracy, and enforcement outcomes remain difficult to predict. Local presence requirements and data localisation obligations for public sector data add to the cost of market entry for EU SMEs, and the 2019 E-Commerce Regulation continues to raise questions about restrictions on the data flows that cloud-delivered software depends on.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
The Commission's 2025 report classifies Indonesia as a Priority 3 country, and ACT members report persistent unlicensed use of software and mobile applications alongside limited administrative follow-through on complaints. Weak deterrence combined with uncertain patent compliance obligations discourages EU SMEs from committing resources to the market.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should use the negotiation and implementation of the EU–Indonesia Comprehensive Economic Partnership Agreement to secure an implementing regulation for Articles 20 and 20A that limits the annual statement to genuinely necessary information and confirms that a failure to file does not affect the validity or enforceability of a patent. The EU should also seek Indonesia's continued support for the WTO moratorium on customs duties on electronic transmissions, press for the establishment of a specialised police unit for intellectual property enforcement, and extend EU IPR SME Helpdesk support in the region to software and digital content.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).
Indonesia's accession to the Madrid Protocol in 2018 and the 2016 revision of its trademark law improved examination times and the criteria for protected marks, and the 2024 patent amendment removed the most

objectionable form of the local working requirement. Because the implementing regulations have not followed, these changes have not yet produced a measurable improvement in the position of EU SME rights holders.

Name of the country/countries (in order of priority)
Thailand
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
Under a Royal Decree on digital platform services, Thailand's Electronic Transactions Development Agency (ETDA) has developed a notification and supervision framework for digital platforms. The framework contains no provision preserving platform-level enforcement of intellectual property rights, and obligations constraining how platforms curate and remove listings would reduce the practical protection available to EU SME rights holders.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
Enforcement against online infringement depends heavily on periodic campaigns rather than sustained action, and penalties are frequently insufficient to deter infringers acting for commercial gain. Rights holders report difficulty securing timely removal of infringing material from local marketplaces and hosting providers.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
The Commission's 2025 report classifies Thailand as a Priority 3 country, and the principal concerns of ACT members are unlicensed software use, counterfeit applications distributed outside official channels, and the limited availability of effective remedies for small rights holders.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
ACT has engaged with ETDA and the TCCT (and other parts of the Thai government) on the need to preserve intellectual property enforcement functions within the platform framework.
Specific suggestions on how the identified problems could be addressed by the EU.

The EU should raise the same point in its bilateral intellectual property dialogue with Thailand and in the EU–Thailand free trade agreement negotiations and should support enforcement training and faster administrative mechanisms for the removal of infringing material.

Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).

Name of the country/countries (in order of priority)

Colombia

Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.

Article 590 of Colombia's General Procedural Code requires a court to assess the necessity, effectiveness and proportionality of a preliminary injunction, and that safeguard is now under institutional pressure. On 6 February 2025 the General Secretariat of the Andean Community, in an opinion published in Gaceta Oficial 5615, found Colombia in breach of the Andean regime on the basis that Articles 245 to 247 of Decision 486 exhaustively set out the requirements for precautionary measures and that national authorities may not add further conditions, giving Colombia 20 working days to correct the position. The opinion is a non-binding step at the pre-litigation stage of the Andean non-compliance procedure, but if it is followed it would move Colombia toward a quasi-automatic injunction standard that sits uneasily with the proportionality analysis the Court of Justice of the European Union set out in *Huawei v. ZTE*. Colombia's rules on technological protection measures also remain out of line with the commitments it has undertaken in the trade agreement between the EU and Colombia, Peru, and Ecuador.

Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.

Colombia bifurcates infringement and validity proceedings, which creates a risk that an injunction issues before the validity of the underlying patent has been examined. Enforcement against online piracy is hampered by weak coordination between agencies and by limited specialised knowledge among judges and police.

Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.

Colombia has become an important centre for audiovisual production and digital content in Latin America without a corresponding increase in enforcement capacity. Its patent system is also being used as a venue in cross-border standard-essential patent disputes: on 18 July 2024 the Superior Tribunal of Bogotá applied the Article 590 proportionality test in the Ericsson and Lenovo dispute and revoked a preliminary injunction

that the Superintendency of Industry and Commerce had granted, and it is that decision which the Andean Community Secretariat’s opinion calls into question.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
Those proceedings show a national court applying a proportionality standard consistent with international practice, and a regional body then challenging its authority to do so. For an SME implementing connectivity standards, the practical consequence is that market access in Colombia may turn on which of two competing standards a court considers itself bound to apply.
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should use the intellectual property machinery of the Trade Agreement with Colombia, Peru, and Ecuador to encourage Colombia to maintain the proportionality assessment required by Article 590 and to make the case within the Andean Community that Decision 486 does not preclude it. Alignment of the rules on technological protection measures with the Agreement should be pursued alongside support for specialised training for judges and police handling online infringement, and proposed copyright legislation that would restrict contractual freedom between international rights holders and local entities should be reconsidered.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).
The Superior Tribunal of Bogotá’s 2024 decision was a constructive development, as was the conclusion of the Communications Regulation Commission in its analysis of over-the-top services that there is no technical basis for imposing network usage charges on online platforms. The Andean Community Secretariat’s February 2025 opinion has since placed the injunction safeguard in doubt.

Name of the country/countries (in order of priority)
Russia
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent’s IP right.
Since 2022 Russia has adopted measures that reduce or remove the protection available to rights holders from countries it designates as unfriendly, a category that includes every EU Member State. These include the legalisation of parallel imports for listed categories of goods and provisions that have reduced, in some cases to nothing, the compensation payable to patent holders from those countries where use of an invention without the holder’s consent is authorised. Taken together, these amount to a deliberate withdrawal of protection rather than a failure of enforcement, which is consistent with the Commission’s own account in

its 2025 report of measures directed at businesses from so-called unfriendly nations and of the difficulty of assessing the position in conditions of reduced transparency.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
There is no realistic prospect at present of an EU rights holder obtaining an effective remedy in Russia. Unlicensed use of software is extensive and has been encouraged by the withdrawal of licensed products from the market, and the reduction in transparency of legislative and judicial developments makes it difficult even to assess the position accurately.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
Unlicensed use of software and digital content is widespread across both the public and private sectors, and ACT members that have withdrawn from the market treat infringement originating in Russia as unrecoverable.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should keep Russia within the scope of its monitoring notwithstanding that the Commission's 2025 report does not list it among the priority countries. That report explains the omission by reference to the measures Russia has taken against businesses from so-called unfriendly nations and to the difficulty of evaluating legislative developments and enforcement in conditions of reduced transparency, rather than by reference to any improvement in the protection available. Setting out that reasoning clearly in the 2027 report would prevent the absence of a listing from being read as a finding that the position has improved.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).
No development over the last two years has improved the position of EU rights holders in Russia.

Name of the country/countries (in order of priority)
Mexico

Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent’s IP right.
Mexico’s implementation of the WIPO Internet Treaties and of its commitments under the United States–Mexico–Canada Agreement strengthened the Federal Copyright Law and the Federal Criminal Code, including the notice and takedown mechanism in Article 114 Octies of the Federal Copyright Law and sanctions for circumventing technological protection measures. Those provisions were challenged on constitutional grounds, and the Plenary of the Supreme Court of Justice upheld them in May 2024 in acciones de inconstitucionalidad 217/2020 and 249/2020 by six votes to five, and the First Chamber rejected a further amparo on 9 July 2025, while a second amparo raising freedom of expression and treaty arguments remains undecided. The framework is therefore in force, but the narrowness of the margin and the outstanding challenge leave EU rights holders without full certainty that the mechanisms they rely on will remain available.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
Administrative and judicial enforcement capacity has not kept pace with the strengthened legal framework. Rights holders report that requests under Article 114 Octies are handled inconsistently and that criminal referrals for commercial-scale online infringement are rarely pursued to a conclusion.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
Unlicensed distribution of software and applications remains widespread, and enforcement effort is concentrated on physical counterfeiting rather than on digital infringement. For an SME developer, the cost of pursuing a claim in Mexico is frequently greater than the value that can be recovered.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should use the modernised EU–Mexico Global Agreement to support the continued application of Mexico’s copyright enforcement framework and to encourage predictable administration of the notice and takedown mechanism. Technical cooperation should be directed at building capacity within the Mexican Institute of Industrial Property and the specialised courts to handle software and digital content cases.

Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).
The resolution of the principal constitutional challenges in 2024 and 2025 in favour of the reformed framework is the most significant recent development and should be recognised as such. Whether it produces a practical benefit for rights holders will depend on whether enforcement capacity is built to match.

Name of the country/countries (in order of priority)
Canada
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
The notice and notice regime in sections 41.25 and 41.26 of Canada's Copyright Act requires an internet service provider to forward a notice of claimed infringement to a subscriber but does not require the removal of infringing material or the disabling of access to it. It therefore gives a rights holder no remedy against the material itself, and it compares unfavourably with the mechanisms available within the internal market under the Digital Services Act and Article 17 of the Directive on Copyright in the Digital Single Market.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
Because a notice produces no consequence beyond its forwarding, infringers acting for commercial gain face little practical deterrent and repeat infringement is common. SME rights holders, who cannot fund litigation against individual infringers, are left without a usable remedy. Blocking orders have been obtained through the courts in a small number of cases, but there is no administrative route to that relief.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
Canada is a significant market for EU digital content and software, and the absence of an effective remedy against intermediaries means that infringement originating in or accessible from Canada is not addressed at a scale matching the harm it causes.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
Specific suggestions on how the identified problems could be addressed by the EU.

The EU should raise the effectiveness of the notice and notice regime in its bilateral dialogue with Canada under the Comprehensive Economic and Trade Agreement and encourage the adoption of measures requiring intermediaries to act on well-founded notices together with a workable route to disabling access to structurally infringing services. Recognising that a full intermediary liability regime may not be achievable in the near term, the minimum that would make a practical difference is a notice and action procedure, together with a route to disabling access to structurally infringing services, that a small rights holder can use without bringing a full action on the merits.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).

Name of the country/countries (in order of priority)
South Africa
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
Proposed amendments to South Africa's copyright framework would introduce broad exceptions whose scope is not clearly bounded, and they have not been finalised. Until the position is settled, EU rights holders licensing digital content and software into South Africa cannot assess with confidence which uses will remain within their control.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
Enforcement against online infringement is limited both by capacity and by the absence of a workable remedy against intermediaries, and inventive technologies and creative works are readily accessible without authorisation across the region.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
South Africa's position as the principal digital market in Sub-Saharan Africa means that weaknesses in its framework have effects well beyond its own borders.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
The Competition Commission's market inquiry into online intermediation platforms produced remedies affecting how platforms operate. Any mandate imposed on platform operations should preserve the curation

functions that allow platforms to identify and remove infringing applications and listings, on which many developers operating in South Africa depend.
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should raise both the unresolved copyright reform and the intellectual property implications of the online intermediation platforms remedies in its dialogue with South Africa under the Economic Partnership Agreement and should support enforcement capacity building.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).

Name of the country/countries (in order of priority)
Vietnam
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
The amended Intellectual Property Law, Law No. 131/2025/QH15, was passed on 10 December 2025 and took effect on 1 April 2026. It defines intermediary service providers broadly and, through the new Article 198b, places obligations on platform operators to implement technical and organisational measures protecting intellectual property rights online. The conditions for the corresponding safe harbour and the procedure for notifying and removing infringing material are left to implementing decrees that have not been issued, so neither rights holders nor platform operators can yet determine what the regime requires of them. Cybersecurity Law No. 116/2025/QH15, passed on 10 December 2025 and effective 1 July 2026, imposes data localisation and local presence obligations on foreign enterprises processing data on Vietnamese users, and the Law on Digital Transformation adopted on 11 December 2025 takes effect on the same date.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
The volume of new obligations taking effect within a short period, combined with the absence of implementing guidance, produces a compliance environment that a small developer cannot navigate without local advice. Data localisation and local presence requirements are a direct barrier to cloud-delivered software.

Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
Unlicensed use of software remains common and administrative enforcement is inconsistent, so that the modernisation of the legal framework, welcome as it is, will make little practical difference to EU SME rights holders until the implementing decrees are issued.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should use the intellectual property provisions of the EU–Vietnam Free Trade Agreement to seek early publication of the implementing decrees under Article 198b, including a notification and removal procedure that a small rights holder can use without local representation, and to press for data localisation and local presence requirements to be narrowed so that they do not exclude cloud-delivered services.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).
The 2025 amendment of the Intellectual Property Law is a substantial modernisation that addresses online enforcement directly for the first time and deserves recognition, although its effect cannot be assessed until the implementing decrees are issued.

Name of the country/countries (in order of priority)
Switzerland
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
Swiss law provides only limited remedies against online infringement where the infringer operates from outside Switzerland or where the material is hosted by an intermediary that declines to act. There is no general administrative mechanism requiring intermediaries to disable access to structurally infringing services, which leaves rights holders dependent on civil proceedings that are uneconomic at SME scale.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.

Identifying infringers is difficult, and the practical inability to reach hosting providers means that the same infringing service can remain accessible for extended periods.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
Switzerland's significance as a hosting jurisdiction gives these gaps an effect well beyond its own market.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should raise the availability of effective remedies against intermediaries in its bilateral dialogue with Switzerland and encourage alignment with the enforcement standards applied within the internal market. Short of full alignment, the practical minimum is a notice and action procedure, together with a route to disabling access to structurally infringing services, that an SME rights holder can use without bringing a full action on the merits.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).
The 2022 revision of the Unfair Competition Act was a positive step for enforcement against practices affecting intellectual property rights, but it has not resolved the difficulty rights holders face in acting against online infringement.

Name of the country/countries (in order of priority)
United States
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
While the United States statutory framework is broadly consistent with international norms, ACT's concerns lie in two lines of administrative practice that have developed since 2025 and that bear directly on small implementers, including EU SMEs selling into the United States. The first is the narrowing of access to *inter partes* review before the Patent Trial and Appeal Board. The United States Patent and Trademark Office rescinded its 2022 guidance on discretionary denials on 28

February 2025 and replaced it in March 2025 with a bifurcated process in which discretionary questions are decided ahead of the merits, introducing further grounds for denial including a patent owner's 'settled expectations'. A proposed rule published on 17 October 2025 (90 Fed. Reg. 48,335) would require a petitioner to give a binding stipulation forgoing all novelty and obviousness grounds in every other forum and would bar institution in a range of additional circumstances, and a memorandum issued the same day moved all institution decisions to the Director, with routine decisions issued as summary notices carrying no reasoning. The Office's own published trial statistics record the effect: the institution rate fell from around 65 per cent in October 2024 to around 37 per cent by February 2026, a reduction of some 43 per cent, and denials have exceeded grants in almost every month since April 2025 (USPTO PTAB trial statistics). ACT considers this development unfortunate and has filed comments opposing the proposed rule on 2 December 2025 (comments), and testified before the House Judiciary Subcommittee on Courts, Intellectual Property, Artificial Intelligence and the Internet on 2 September 2026 (hearing record), to explain its views. As ACT set out in those comments, post-grant review at a median cost of around USD 500,000 is the only realistic route by which a small firm can test the validity of a weak patent asserted against it, since district court litigation costs several times as much and takes years longer, and roughly a quarter of petitioners are small entities. Restricting that route transfers leverage to the assertion of patents that would not have survived a proper examination. The second is the position that the Department of Justice and the Patent and Trademark Office have taken on remedies for standard-essential patents. Since June 2025 the Department has filed a series of statements of interest, joined by the Patent and Trademark Office from November 2025, arguing that injunctive relief should be broadly available and that entities which do not practise the patented technology should not be excluded from it. The Patent and Trademark Office also announced a Standard-Essential Patent Working Group on 29 December 2025. The DOJ and USPTO's posture is inconsistent with the fact that a patent holder that has voluntarily undertaken to license on fair, reasonable and non-discriminatory terms to all who implement a standard has by that undertaking accepted that money is an adequate remedy, and on a proper application of the equitable framework the Supreme Court set out in *eBay Inc. v. MercExchange, L.L.C.* an injunction should not issue against a licensee that is willing to take a licence on terms a court determines to be FRAND. Because the 2019 joint policy statement on remedies was withdrawn on 8 June 2022 and the 2021 draft replacement was never adopted, this position is being developed through filings in individual cases rather than through a consulted policy instrument, resulting in confusion and uncertainty.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
Exclusion orders remain available at the International Trade Commission without any settled rule on the effect of a FRAND commitment. In Investigation No. 337-TA-1380 the Commission asked the parties and the public in February 2025 whether a licensing commitment should preclude an exclusion order or operate instead as a defence or a public interest factor, and ACT filed comments on 30 January and 13 March 2025, but the investigation was terminated on settlement on 23 April 2025 and the question is still unanswered. An SME implementer therefore continues to face the potential of exclusion from the United States market on a patent whose holder has promised to license it to all comers.

There is also no federal requirement to disclose third-party litigation funding in patent cases. The International Trade Commission proposed a rule on 30 April 2026 (91 Fed. Reg. 23,190) that would require identification of funders holding approval rights over litigation or settlement decisions, though not production of the agreements themselves, and no final rule has issued. Anonymous funding allows assertion campaigns to be run against small companies without any means of establishing who stands behind them.

Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.

The most significant systemic development is the movement of standard-essential patent assertion into sectors that took no part in developing the standards concerned. Access Advance announced a Video Distribution Patent Pool on 16 January 2025 covering HEVC, VVC, AV1, and VP9 and directed at streaming providers and video distributors rather than at device manufacturers, published rates on 1 July 2025 that accrue from 1 January 2025 and run to a cap of USD 5.25 million a month, and estimates that between 100 and 250 companies worldwide require a licence. Nokia asserted video streaming patents against Amazon and against HP in 2023, both of which settled during 2024 and 2025, and filed against Paramount Skydance in Delaware and in the Rio de Janeiro state courts on 21 August 2025. Avanci extended its model from vehicles to smart meters and, on 4 March 2026, to Wi-Fi, and cellular patents were asserted against a payment terminal manufacturer at the beginning of 2026. Whether royalties may be charged on the distribution of content, as distinct from the manufacture of a device, has never been decided by a United States court.

This matters to EU SMEs because a developer that streams video, operates a connected meter, or ships a Wi-Fi enabled product now faces licensing demands from portfolios it had no part in assembling, calculated on revenue or subscriber measures rather than on the value of the patented technology in the product.

Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).

Roku's attempt to have a United States court determine a FRAND rate for a video codec pool was dismissed on 22 July 2025 in the District of Massachusetts, on the ground that the court lacked jurisdiction over a portfolio consisting mainly of foreign patents. ACT filed an amicus brief in the appeal on 27 October 2025 supporting neither party (brief), arguing that courts must be able to review the offers SEP holders make, and noting that some holders demand royalties many times the rates courts ultimately determine to be FRAND and that 38 per cent of SEP users surveyed reported licensing costs sufficient to make them leave or change their business. The appeal was dismissed on 5 February 2026 after the parties settled, so an implementer in the United States still has no reliable route to a determination of the price it must pay while remaining exposed to exclusion remedies.

The measure of damages raises a related problem, and in *Constellation Designs v. LG Electronics* (Fed. Cir. No. 24-1822) ACT and the Consumer Technology Association filed an amicus brief on 13 July 2026 supporting rehearing, on the ground that damages must be apportioned to the value of the patented contribution and that an award should not be left undifferentiated once claims have been invalidated. On 31 August 2026 the panel granted the petition in part and reissued a modified opinion removing the passage on damages that ACT and the Consumer Technology Association had asked it to strike. The point matters to any small implementer facing a portfolio claim, because a royalty calculated on the value of a finished

product rather than on the contribution of the patented feature bears no relation to what the technology is worth.
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
ACT filed comments with the Patent and Trademark Office opposing the proposed restrictions on inter partes review on 2 December 2025 (comments) and wrote to the Office of Information and Regulatory Affairs on 5 November 2025 seeking an economic analysis of the proposal (letter); filed public interest comments in International Trade Commission Investigation No. 337-TA-1380 on 30 January and 13 March 2025; filed an amicus brief before the Court of Appeals for the Federal Circuit on 27 October 2025 (brief); and testified before the House Judiciary Subcommittee on Courts, Intellectual Property, Artificial Intelligence and the Internet on 2 September 2026. ACT, with the Consumer Technology Association, also filed an amicus brief in *Constellation Designs v. LG Electronics* before the Court of Appeals for the Federal Circuit on 13 July 2026, with the outcome described above.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should raise the treatment of FRAND commitments in remedies proceedings, and the availability of an affordable post-grant route to test weak patents, in its bilateral intellectual property dialogue with the United States, since both bear directly on whether EU SMEs can sell standardised products into that market. The EU's ability to make that case, in the United States or anywhere else, depends on having a settled framework of its own. The proposal for a Regulation on standard-essential patents was withdrawn on 6 October 2025, and ACT supported the European Parliament's decision of 25 November 2025 to refer that withdrawal to the Court of Justice (ACT statement, 21 November 2025). Until the EU adopts a framework establishing that a FRAND commitment runs with the patent and binds successors, that royalties reflect the value of the patented invention rather than the value conferred by inclusion in a standard, and that injunctions against willing licensees are exceptional, its advocacy in third countries rests on principles it has not enacted at home.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).
In *Samsung Electronics v. Wilus*, decided in the Eastern District of Texas on 12 November 2025, the court held that United States law governs the FRAND obligations arising from commitments made to a standards body even where the portfolio includes foreign patents, confirming that the commitment is an enforceable contract rather than a statement of intent.

Name of the country/countries (in order of priority)
United Kingdom

Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
The Digital Markets, Competition and Consumers Act 2024 allows the Competition and Markets Authority to designate firms as having strategic market status and to impose conduct requirements on them. Google was designated in general search and search advertising on 10 October 2025, and Apple and Google were designated in respect of their mobile platforms on 22 October 2025. Conduct requirements on publisher terms, fair ranking and data portability were imposed on Google's search service in June 2026, commitments were accepted from Apple and Google in relation to their mobile platforms on 1 April 2026, and a consultation on steering requirements opened on 30 June 2026. The Act contains no provision preserving the ability of an application distribution platform to curate what it distributes for the purpose of enforcing intellectual property rights, and requirements that constrain curation would remove one of the few enforcement mechanisms available to a small developer at a cost it can bear. The Authority has so far proceeded cautiously, and ACT's concern is with the direction of the framework rather than with any requirement imposed to date.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
When the UK Intellectual Property Office consulted in July 2025 it put the cost of a contested standard-essential patent case at around GBP 31.5 million, which places a full determination beyond the reach of an SME on either side of a dispute. The Office has proposed a rate determination track in the Intellectual Property Enterprise Court for disputes about price alone, where infringement, validity and essentiality are not in issue, and that proposal would go a considerable way toward addressing the problem if it is taken forward.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
On the evidence of the last two years the United Kingdom is among the more balanced jurisdictions for an implementer of standardised technology, and ACT does not identify systemic weaknesses in the protection or enforcement of intellectual property rights there. What UK courts do that most others do not is determine the terms of a licence in a way that binds both parties, so that an implementer which undertakes to accept the terms the court sets obtains access to the market rather than facing only the prospect of exclusion. That approach, established in *Unwired Planet v. Huawei* [2020] UKSC 37, gives a small implementer the ability to rely on a price it can plan against.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
ACT does not identify weaknesses in the administrative mechanisms through which intellectual property is protected and enforced in the United Kingdom, and the concern recorded above arises from the digital markets regime rather than from the intellectual property system itself.

Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should treat UK practice as a reference point rather than as a problem and should use regulatory and judicial cooperation under the Trade and Cooperation Agreement to align approaches to the determination of licensing terms, to the transparency measures the UK Intellectual Property Office is developing, and to the resolution of disputes about price without full infringement proceedings. That comparison also bears on the EU's own position, because the proposal for a Regulation on standard-essential patents was withdrawn on 6 October 2025, and ACT supported the European Parliament's decision of 25 November 2025 to refer that withdrawal to the Court of Justice (ACT statement, 21 November 2025). Small European developers are now in the position that a determination of what they must pay for standardised technology is more readily obtained in London than anywhere within the internal market, and the Commission's advocacy in third countries would carry considerably more weight if it rested on a framework the EU had adopted for itself. ACT urges the Commission to bring forward a new standard-essential patent initiative.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).
UK courts have developed a body of case law over the last two years directed at preventing either side of a licensing dispute from using procedural leverage to obtain terms that a neutral determination would not produce. In *Panasonic v. Xiaomi* [2024] EWCA Civ 1143 and *Lenovo v. Ericsson* [2025] EWCA Civ 182 the Court of Appeal held that a willing licensor which had submitted to a UK determination would grant an interim licence pending that determination rather than pursue injunctions elsewhere to force a settlement. The principle has been applied even-handedly, since in *Samsung v. ZTE* [2025] EWCA Civ 1383 the Court of Appeal held that a preference for a particular forum is not in itself bad faith, and in *Acer v. Nokia* [2026] EWCA Civ 564 it held that an offer of an immediate global licence with the rate to be set by arbitration is a valid FRAND offer. The Supreme Court then held on 27 July 2026, in *Tesla v. InterDigital and Avanci* [2026] UKSC 27, that a FRAND obligation does not cease to apply because patent owners choose to license jointly through a pool or platform, which matters to the many SMEs that meet standardised technology through pool licences rather than through bilateral negotiation. The UK Intellectual Property Office launched a standard-essential patents resource hub in July 2024 and consulted between July and October 2025 on the transparency of standard-related patent information, a pre-action protocol, essentiality checking and the rate determination track.

Name of the country/countries (in order of priority)
Australia

Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
The Australian Competition and Consumer Commission concluded its five-year Digital Platform Services Inquiry with a final report in June 2025 containing 35 recommendations, among them an economy-wide prohibition on unfair trading practices and a power for the Commission to make mandatory codes of conduct, and the Treasury consulted separately on a new digital competition regime. None of the proposals contains a provision preserving the ability of software distribution platforms to enforce intellectual property rights, and obligations constraining platform curation would remove one of the few enforcement mechanisms available to SME developers at a cost they can bear.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
ACT participated in the inquiry, including a stakeholder hearing in 2022 and detailed comments on the September 2022 interim report, and remains concerned that intervention is being designed without an evidence base addressing its effect on intellectual property enforcement.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
Australia is following the regulatory models developed elsewhere without having examined how those models interact with enforcement of intellectual property rights at the point of distribution, which is where infringing applications are most efficiently identified and removed.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
ACT has engaged throughout the Commission's inquiry and the Treasury consultation on this point.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should raise the intellectual property consequences of the proposed regime in its bilateral dialogue with Australia and in the EU–Australia free trade agreement negotiations and encourage an explicit provision preserving platform-level enforcement of intellectual property rights.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).

Name of the country/countries (in order of priority)
Japan
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
The Act on Promotion of Competition for Specified Smartphone Software took full effect on 18 December 2025, following designations made in March 2025. Its design is narrower and more targeted than comparable regimes elsewhere, applying to a small number of named operators rather than to a broad class, and Articles 7 to 9 allow a designated operator to justify conduct that would otherwise be prohibited where the measure is necessary to protect security, privacy or young users. That structure is a more measured approach than an absolute prohibition, and ACT recognises it as such. The difficulty for our members is that the enumerated grounds do not extend expressly to measures necessary to enforce intellectual property rights, and distribution channels outside the designated stores are the principal route by which pirated and counterfeit applications reach users, so a developer cannot yet tell whether a platform will remain able to act on its behalf against infringing applications. Separately, and of greater concern, the intellectual property divisions of the Tokyo District Court issued guidelines in January 2026 on the conduct of standard-essential patent infringement proceedings, together with guidelines for a new standard-essential patent judicial mediation procedure that opened the following month and was amended during 2026 to allow a case to be referred without both parties agreeing. The guidelines require a defendant to produce evidence of its sales volumes and revenues and provide that a failure to cooperate in the court-led process may lead to it being treated as an unwilling licensee, while the obligation they place on the patent holder is to state a global royalty proposal and its basis in the complaint rather than to show that the offer was in fact fair, reasonable and non-discriminatory. They also direct the court toward settlement on a global portfolio rate, and they say nothing about licensing all who implement the standard or about apportioning a royalty to the value of the patented contribution rather than to the value of the finished product.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
Guidelines issued by the Japan Fair Trade Commission in July 2025 set out the scope of the obligations under the Smartphone Act but do not resolve how an operator should act where a measure taken to protect intellectual property would otherwise be prohibited, which leaves rights holders unable to predict what protection will remain available to them. On the patent side, the practical difficulty is that willingness to take a licence is now assessed substantially on a party's conduct within the court process rather than on the negotiating history, and an implementer that resists disclosing commercially sensitive sales data risks losing the protection that its willingness would otherwise give it. For a small firm without in-house patent counsel, that is a demanding standard to meet.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.

Japan otherwise maintains a strong framework for the protection of intellectual property rights, and ACT's concerns are confined to enforcement at the point of software distribution and to the direction of standard-essential patent adjudication.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
On 23 June 2025 the Tokyo District Court granted what is understood to be Japan's first injunction on a standard-essential patent subject to a FRAND commitment, in proceedings brought by Pantech against Google, and it did so on the basis of the implementer's conduct during the court-led settlement phase rather than its pre-litigation negotiating position, the court treating a refusal to disclose sales figures in that phase as decisive. An appeal is pending before the Intellectual Property High Court, and until it is decided the availability of injunctive relief against an implementer willing to take a licence on determined terms is unsettled in Japan.
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
ACT has engaged over several years with the Ministry of Internal Affairs and Communications, the Headquarters for Digital Market Competition and the Japan Fair Trade Commission on the need to preserve protection of intellectual property rights on platforms.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should encourage Japan, through the institutional framework of the Economic Partnership Agreement, to confirm that measures necessary to prevent the distribution of infringing applications are compatible with the Smartphone Act and should treat the more targeted design of that Act, including its justification grounds, as a useful reference point in its own right. The same dialogue should be used to monitor how the Tokyo District Court guidelines are applied and to encourage alignment with the principles on which there is broad international consensus, namely that a FRAND commitment runs with the patent and obliges the holder to license all who implement the standard, that royalties reflect the value of the patented invention rather than the value conferred by inclusion in a standard, that injunctive relief against a willing licensee is exceptional, that a determination of terms respects the territorial character of patent rights unless both parties agree otherwise, and that a holder may not require a licensee to take non-essential patents as a condition of access. Nothing in the guidelines as published gives effect to the first, second, or fifth of those principles, and the treatment of unwillingness places a burden on implementers that the consensus position does not support.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).
The Japan Patent Office and the Ministry of Economy, Trade and Industry issued guidance on standard-essential patent licensing negotiations in 2022, which was drafted in deliberately neutral terms and remains a reasonable statement of good practice. That agency guidance has not been revised since, while the courts have moved substantially in the opposite direction, and the gap between the two is where the risk to small implementers now sits.

Name of the country/countries (in order of priority)
Republic of Korea
Legal provisions (title, number of the legal instrument and the relevant articles) that the respondent considers to be in conflict with international norms and standards in the field of IP or that create problems with regard to the respondent's IP right.
Amendments to the Monopoly Regulation and Fair Trade Act took effect on 7 August 2024, and in September 2024 the Korea Fair Trade Commission chose to regulate platforms through the existing competition framework rather than through new legislation. A separate Online Platform Act addressing abuse of market dominance by platform operators is expected to be brought forward, together with amendments strengthening the system of fines. As with comparable regimes elsewhere, none of these instruments preserves the ability of platforms to curate applications and content for the purpose of enforcing intellectual property rights.
Practical challenges, limitations, restrictions or discrepancies (procedures, backlogs, deterrent effect of sanctions, lack of expertise, delays, corruption, lack of political will, lack of awareness, etc.) that negatively impact IP protection and enforcement.
The absence of a settled position means that rights holders cannot tell which enforcement measures a platform will still be permitted to apply, and a developer distributing into the Korean market has no basis on which to plan.
Systemic problems identified in the area of intellectual property in the country concerned, including information on the level of counterfeiting and piracy or the level of cooperation between enforcement authorities and rightholders.
Korea otherwise maintains a capable enforcement system, and the concern is confined to the interaction between platform regulation and enforcement of intellectual property rights.
Concrete examples illustrating the weaknesses and ineffectiveness of the administrative mechanisms in the area of IPR (i.e., IP offices, customs, police, judiciary, etc.).
Any action or measure taken by the respondent to address the identified problems and the outcome of such efforts.
ACT has engaged extensively with Korean authorities on this point and has also raised the compatibility of certain proposals with Article 16 of the General Agreement on Trade in Services.
Specific suggestions on how the identified problems could be addressed by the EU.
The EU should raise the intellectual property enforcement consequences of Korean platform regulation in the institutional framework of the EU–Korea Free Trade Agreement.
Progress made by the countries listed over the last 2 years (e.g. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, training programmes, cooperation with rightholders, etc.).