

Written Questions
from the Special 301 Subcommittee of the Trade Policy Staff Committee
in Docket No. USTR-2022-0016
Washington, D.C.

Responses from the Asia Video Industry Association

- 1. According to your submission, you state that China has amended its copyright laws and regulations to reflect international standards but note that “efficient and robust criminal enforcement measures are yet to be implemented to protect the very rights that the legislation claims to provide.” Do you have any specific recommendations for what sorts of specific measures most need to be implemented?**

Response: In order to be effective, legislation and regulation needs to be enforced through impactful and swift actions against all parties involved in the piracy ecosystem, to both dismantle the operations but also to act as a genuine deterrent. In order to reduce the export of ISDs to the markets there are a range of measures that could be employed including, but not limited to:

- a) Customs authorities to maintain an updated list of ISDs available in the market.
- b) Customs to check every ISD (including “Android media player”, “TV Box”, “Chromecast device”, and “IPTV box”) shipment during customs clearance and see if they match the list.
- c) Block the import and export of any identified ISDs.
- d) Manufacturers of ISDs should be required to provide clear, verified and up to date identity and contact information for themselves and any providers of apps that are pre-installed on their devices.
- e) Manufacturers who operate their own app stores should take steps to remove any apps reported to them as infringing legitimate IP rights.

- 2. For India, you say that your “members have observed significantly more camcording sources originating in India over the past 12 months than during previous years.” Which previous years are the baseline for the comparison, and how does the rise in the past twelve months compare to trends in other countries?**

Response: The member that provided this detail has confirmed that the previous years for the baseline comparison are 2018-2021. Based on their observations, India has seen the largest increase in camcords during that time period alongside France. In 2022 India had the second most camcords behind the US, which has been decreasing since 2018.

For India total identified camcords for all studios by year:

2018: 2

2019: 6

2020: 6

2021: 6

2022: 22

- 3. Your submission notes that “we understand that China-based pirate syndicates offer not only the devices and software required to drive the use of these illicit boxes but they also offer support services in the form of (i) hacking expertise that extracts the decryption codes to access legitimate content streams and (ii) network services that relay these codes around the world.” Please describe the sources of information that form the basis for this understanding.**

Response: This statement is based on anecdotal evidence observed by our members

- 4. On India, your submission on page 5 states “There is consensus that, with the exception of some much-needed provisions around technology protection measures, India has a robust copyright legislative regime in place, with content owners afforded adequate written legal protection.” Please elaborate on this statement considering the current scenario.**

Response: The general video content industry view is that robust legal frameworks are in place to protect copyright however enforcement action remains very limited. Until such time as the ministries work together to create a framework which aggressively tackles content piracy, legal provisions, as robust as they may be, are of little value.

- 5. Your submission notes the importance of “measuring the efficacy of enforcement and disruptive anti-piracy strategies.” Please explain more about your methodology; through what metrics do your surveys measure the impact of enforcement measures?**

Response: We use two measures. Firstly, historically we tracked the popularity of websites in countries across the region using Alexa ratings. This identified the 10,000 most popular sites in countries around the region on a monthly basis, including both legal and pirate movie and TV websites. By identifying the impact on traffic to these sites over time we can identify trends and impacts of enforcement actions, such as site blocking. Secondly, we run consumer surveys on an annual basis in eight countries around the region. Each survey asks questions of a minimum of 1,000 representative consumers per country. These surveys are focussed on consumer attitudes towards piracy, the measures taken to combat it, and the impact it has. Through them we can identify changes in consumer attitudes towards piracy, and enforcement efforts to combat it.

- 6. On Vietnam, your submission indicates that the Draft Decree to the Law on Intellectual Property requires 24-hour removal of content upon receipt of a request, and this requirement can be unduly harsh on providers of legally licensed content. Please elaborate on how the Draft Decree affects legally licensed providers.**

Response: The newly amended IP Law brings Vietnam’s IP regime more in line with international standards through making it illegal to copy a work in whole or in part (previously it as the whole work which would have needed to be copied) and removing the previous list of possible acts of infringement and substituting it with a much wider reference to “any acts violating moral and economic rights” that do not fall within limitations or exceptions. In addition, the IP Law amends and introduces some acts of infringement in relation to technological measures and rights management information employed by copyright and related rights owners to protect their works and related rights objects.

Most significantly, it enables copyright holders to actively and directly request infringers and intermediary service providers) to **take down** or remove infringing content in the digital environment without the order of an authority.

The concern our members have is that the draft implementing decree of the newly amended IP law imposes an immediate, 24-hour turnaround time to remove or block content upon receipt of request. We are concerned that due consideration may not be taken of whether the content might have been legally licensed from another source or in fact have been made available as a result of a fair use exception. The strict timing deadline may instead result in the inadvertent blocking of content which has been legally made available to users.