

Asia Video Industry Association
Submission to the Office of the US Trade Representative
January 30, 2023

Identification of Trading Partners under Section 182 of the Trade Act of 1974
(Special 301)

The Asia Video Industry Association (AVIA) is the trade association for the video industry and ecosystem in Asia Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. AVIA is the interlocutor for the industry with governments across the region, leads the fight against video piracy through its Coalition Against Piracy (CAP) and provides insight into the video industry through reports and conferences aimed to support a vibrant video industry. AVIA was founded in 1991 and currently represents about 90 companies, located in 17 Asian countries and regions, providing television programming and curated over-the-top content to over 700 million homes in Asia and Australasia. In addition to the multinational television networks and programmers, our members also represent leading corporations who are telecom companies, suppliers and manufacturers of cable, satellite and broadband video technology, related business service providers, and new media service providers.

US-owned member organisations include A&E Networks, Akamai, Amazon, Bloomberg Television, Brightcove, Dolby Laboratories, Endeavour Streaming, Intelsat, Invidi, Magnite, Motion Picture Association, National Basketball Association, NBCUniversal International, Netflix, Nielsen, Paramount, PubMatic, Sony Pictures Television Network, The Trade Desk, The Walt Disney Company, Warner Bros. Discovery, and White Bullet.

AVIA welcomes the opportunity again to provide information to the US Trade Representative, on the issue of protection of audio-visual intellectual property rights in various Asian markets. This market continues to make up a large and growing portion of US media companies' international revenues, even as the industry continues to evolve. Sales of video, whether delivered over traditional pay TV networks or via online "OTT" providers, in such a huge and diverse market continue to offer significant revenue opportunities to a wide array of US companies working in related industries.

For the past few years, AVIA has highlighted the continually growing challenge seen in the growth of the illicit streaming device (ISD) / application ecosystem and streaming piracy. This year's submission continues to build on that, highlighting the threat posed by ISDs while also addressing online streaming piracy websites and applications (or "apps").

Whilst we have seen some governments introduce legislation, or implement existing legislation, to tackle these threats, one of the handicaps to effective enforcement has been the fact that most enforcement regimes are currently not equipped to address piracy in instances where there is no physical product. With illicit IPTV services, identifying the product is even more challenging whilst presenting no single point of attack from a law enforcement perspective. In line with our previous reports which highlighted both industry concerns and successes, we have also included markets this year which have made notable advancements within their copyright regimes to tackle content piracy.

Measuring the efficacy of enforcement and disruptive anti-piracy strategies remains a key focus of AVIA's Coalition Against Piracy (CAP). CAP has now instituted an annual round of surveys undertaken by YouGov, a well-regarded international Internet-based market research and data analytics firm, across a range of Asian countries in an effort to benchmark the growing problem of ISDs, apps and streaming piracy, to assess consumer viewing habits and attitudes, and also to seek to measure the potential impact on the industry with an assessment of the threat to legal services.

The results of the surveys showed that the rolling blocking implemented by the Indonesian regulator Kominfo had a demonstrable effect on consumer attitudes to piracy. More than 50% of Indonesian consumers said they either no longer access pirate content, or rarely do as a direct result of sites being blocked. Encouragingly, more than 70% of Indonesian consumers said they now used legitimate free content, and more than a quarter said they had taken up a paid subscription service as a direct result of pirate streaming services being blocked by the authorities. This accords with CAP's internal data that uses third party providers to measure traffic data around the region and shows a marked drop in accessing pirate streaming sites in Indonesia in recent years.

CAP saw similar results in Malaysia where the governments have also stepped up their regulatory blocking measures in recent years. In Malaysia, we saw 65% of consumers using legitimate content and 32% subscribing to paid services. The results stand in contrast to Singapore, where the path to block pirate sites is through the courts which due to current in-built timelines and evidence requirements, doesn't allow for the efficiency of blocking as via the regulatory routes of Indonesia, Malaysia, and Vietnam. In Singapore, just under 50% of consumers were using legitimate free content services as a result of pirate sites being blocked, and 24% said they now subscribed to paid services, but 42% said the blocks had made no change to their viewing habits (c.f. only 13% in Vietnam, 16% in Indonesia and 24% in Malaysia).

It is also becoming increasingly clear that pirate sites are being used by criminals as gateways, or honeypots, to attract consumers who can then be infected by malware, viruses, or ransomware. In 2022, CAP released research¹ that clearly showed there is a significant nexus between piracy and malware infections, where site operators generate significant revenue from allowing malicious ads to be placed on their sites to willingly affect users. The infections can in turn be used to gain access to consumer PCs and devices, including all of the data held in storage as well as access to banking log details and other sensitive user information.

We warmly welcome the US government's continued attention to the issue of piracy and need for increased IP protection and enforcement within the Asia-Pacific region.

Following are AVIA's comments and views on the markets selected for this submission, on a market-by-market basis, in alphabetical order:

¹ "Time to Compromise: how cyber criminals use ads to compromise devices through piracy websites and apps" by Cyberstronomy.

China

China continues to be of concern given its position as the epicentre of the manufacture and export of both illegal streaming devices and software applications which enable access to pirated content. In addition, 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.

Despite China's State Council's 5-year Plan (2021-2025) for the increased creation and protection of intellectual property rights (IPRs) by accelerating legislation on IPRs in new fields and new forms of business, we have seen little enforcement action in China against audio-visual content piracy, Apps and these international ISD syndicates or exporters of boxes and services. Some boxes, such as those marketed under the EVPAD and SVI Cloud names, continue to be fitted with one-click access to dedicated, built-in "app stores" which allow pan-Asian download of the infringing apps.

While China has indeed reviewed and amended its copyright laws and regulations to increasingly reflect international standards and the obligations placed on it under its free-trade agreements, efficient and robust criminal enforcement measures are yet to be implemented to protect the very rights that the legislation claims to provide. Accordingly, AVIA's recommendation from our submission last year remains: we would like to see the US, in its dialogue with China, explore what legal reforms might be required to be adopted in order for the authorities to take a much more pro-active stance in the enforcement against the pirate syndicates and those with whom they continue to collaborate to facilitate the pirating of content.

Hong Kong

Preloaded ISDs (or ISDs preloaded with an internal app store allowing the consumer to download an illicit app with "one click") remain a major concern. Such devices, in particular the Unblock Tech, Boss, and EVPad brands, continue to be openly sold in large numbers at IT malls in Sham Shui Po and Wanchai as well as other locations around Hong Kong.

The high demand for piracy is met with easy access to ISDs and piracy streaming websites. Coupled with this ease of access, there currently remains negligible deterrence and expeditious sanctions for those supplying the illicit devices and content. This inaction, along with limited resources, has severely stymied Hong Kong Customs from taking effective enforcement action against retailers of such preloaded ISDs. As a result, there has been continued negligible enforcement action against ISD retailers in the past three years. We were encouraged to hear of the recent raids against a seller of ISDs in Sham Shui Po². However, as we continue to note in this annual report, the last substantial enforcement action was in May 2018 (Operation Trojan Horse) that saw a series of enforcement actions against four retailers

² <https://www.thestandard.com.hk/breaking-news/section/4/196176/Man-arrested-for-selling-program-that-plays-paid-TV-channels-for-free>

in Sham Shui Po and Wan Chai, however we have yet to see a conviction against any of these retailers.

We welcomed the recent initiative by Hong Kong to update their copyright legislation but were disappointed that none of our recommendations, (in particular, the introduction of a specific judicial site blocking mechanism (outside of the current power of the courts to order injunctions), which would have ensured that the new copyright framework was compiled in line with international best practices), had been taken into account. It was disappointing the legislation did not make it overtly clear that the courts could order site blocking in relation to copyright infringement.

The new Copyright Ordinance, gazetted in the Legislative Council in December 2022, is expected to be enacted in early 2023. As we have previously noted, however, it was based on the 2014 legislation that was previously presented to the Legislative Council, but which failed to make progress. Despite calls for the draft text to be updated to reflect technological changes and advancements from pirates, the Ordinance remained mostly unchanged from the 2014 language. Also, despite being raised by various stakeholders, the issue of extending copyright to 70 years from the existing 50 years from life of author was not considered in this iteration of legislation.

In our submission during the copyright legislation consultation process, AVIA noted that we were concerned that the language on ISDs and related apps needed to be updated to bring this legislation more in line with other jurisdictions in the region that face similar issues, as well as ensuring matching regulatory enforcement is included. Further, we had also suggested that the scope of enforcement efforts should be broadened outside of IP crimes to include other relevant and associated criminal activity such as fraud-related and money laundering offences. Singapore have recently adapted their legislation and introduced specific, technology neutral legislation to target the changing nature of the ISD ecosystem. Similarly, Malaysia has passed legislation that gives similar effect as the Singapore legislation. We had hoped to see the introduction of specific ISD legislation, as has been done in Singapore and Malaysia. As well as making prosecutions potentially easier, such legislation demonstrates the importance to Government and law enforcement of tackling the ISD problem, and this has been backed up by raids by law enforcement in both countries following the introduction of the legislation³. We now eagerly await the implementation of the new legislation and hope to see that it can be used effectively in tackling the ISD problem, and that site blocking can be successfully attained under current powers of the courts. Finally, and very importantly, AVIA hopes to see much more proactive support for rightsholders from law enforcement in this area.

We understand that the Intellectual Property Department anticipate commencing consultations on the next updates for the Copyright legislation in 2023. We would urge the US, in its dialogues with Hong Kong, to encourage them to consider starting early consultations to take into account the above points, enabling the next iteration of the Copyright Ordinance to be more fit for purpose and enable future enforcement action being taken on behalf of both rights holders and consumers.

³ www.straitstimes.com/ingapore/courts-crime/17-people-arrested-for-suspected-involvement-in-selling-illegal-streaming-devices and <https://www.thevibes.com/articles/news/74678/authorities-seize-rm400000-worth-of-android-boxes-in-johor-baru-raid>

India

The India video industry market has witnessed unparalleled growth in the last few years, driven by the production of content by both Indian and foreign channel suppliers. The market has benefitted from significant infrastructure expansion, a commitment to digital inclusion, the implementation of ease of doing business initiatives, and the relaxation of foreign investment restrictions.

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. However, while our members welcomed key provisions of the Cinematograph Bill, which criminalises illicit camcording in cinemas, camcording remains an issue and our members have observed significantly more camcording sources originating from India over the past 12 months than during previous years. India, like other markets, has ongoing challenges with the import, manufacture and sale of ISDs, including unauthorized set-top-boxes, that are preloaded with websites and apps designed to pirate content. These ISDs and apps represent a significant threat to the content industry.

It is therefore especially re-assuring that during a recent AVIA delegation visit to Delhi to meet with the three ministries which have oversight of the video industry (Ministry of Information and Broadcasting, Telecom Regulatory Authority of India, and Department of Telecom), there was overwhelming willingness and support for AVIA's suggestion that an Inter-Ministerial Committee be established to address and combat piracy through an effective framework, one which is in line with best international practices and which future-proofs any technological advances. This initiative would go a long way to ensure that piracy is not dealt with in silo by each Ministry under different rules and would create a more streamlined and effective method to combat piracy.

It is important to note that this idea of regulatory co-operation to combat piracy is still very much in its infancy and conversations are only just being initiated. We are confident that, through the collaboration with industry to understand best and most effective practices, expeditious infringement action procedures which offer deterrent-level sanctions, if fully supported by this inter-ministerial committee, will avoid the potential overlapping of regulation and abate the content piracy tide.

Indonesia

In 2022, Indonesia continued to lead the way for regulatory blocking of pirate sites in Asia-Pacific with demonstrable impact on both consumer attitudes to piracy as well as traffic to pirate sites. CAP's 2022 YouGov consumer surveys showed 52% of consumers access pirated content, and while this is still higher than desired, it is below the rates in Vietnam, Malaysia and the Philippines. CAP's internal data evidences a similar story with traffic to pirate

streaming sites decreasing by roughly 75% in the three years since Kominfo implemented its regulatory blocking program.

As noted in previous submissions, AVIA submits referrals of piracy-dedicated websites to Kominfo for consideration on behalf of the Video Coalition of Indonesia (VCI), a grouping of international companies and major local players in the content services market that was established in 2019 following the identification of an urgent need to address online video piracy. The members of VCI include: AVIA's CAP, APFI, APROFI, GPBSI, Emtek Group, MNC Group, Viva Group, Telkom Indonesia, Cinema 21 Group, CGV, Cinemaxx, iflix, Viu, GoPlay, Rewind, MolaTV and Catchplay.

In 2022, on average the VCI submitted two rounds of blocking requests per month to Kominfo, resulting in more than 1,000 sites being blocked. The number of sites referred increased greatly towards the end of the year with the FIFA World Cup and Kominfo responded in kind, accepting more than 700 requests in the fourth quarter with more than 500 of these being blocked during the World Cup.

The success of the blocking program in Indonesia saw a marked migration of pirate sites away from domains that can be blocked by normal DNS (Domain Name Server) blocking and towards IP address only sites, i.e. without a domain that can be blocked by DNS blocking. However, working in conjunction with Kominfo, VCI instituted a program whereby a limited number of IP addresses for pirate sites were referred monthly to Kominfo for blocking. To date this program has progressed smoothly.

However, there is still a need to increase criminal enforcement action against commercial scale digital piracy services, e.g., Indoxxi, LK21 (aka Dunia21 and Layarkaca21), Bioskopkeren, which continue to avoid site blocking orders by routinely changing domains or by operating via IP addresses. Additionally, IP addresses are also routed through reverse proxy services, so the existing IP blocking scheme with Kominfo is not sufficient -- thus there remains the need for effective criminal enforcement.

There is no doubt that Indonesia, in the past twelve months since AVIA's last submission to the USTR, has continued in its laudable efforts to combat piracy. While AVIA is confident that Indonesia will continue to maintain its high level of success in regulatory site blocking, we would recommend that the US Government encourage Kominfo to formalise the site-blocking procedures for rights holders in order to definitively address the risk that piracy poses to the content industry.

Malaysia

AVIA, on behalf of its members, continues to submit piracy website blocking requests using the one Ministry referral process established in 2019 as a direct result of the 2019 Digital Anti-Piracy Summit organised by the Malaysia Communications and Multimedia Commission (MCMC), AVIA's CAP, and ASTRO. This blocking process operates under the Ministry of Domestic Trade and Cost of Living (MDTCL) and was designed to have expedited timelines such that MDTCL could accept and review referrals and, if determined appropriate, direct ISPs

to block piracy websites within a designated timeframe. All ISPs must comply with the government blocking order within 48 hours.

Unfortunately, while the blocking procedures remain in play, 2022 saw a continuation of 2021's slower implementation by authorities and slow response to discuss concerns and issues with referrals. This is of real concern given CAP's 2022 YouGov survey, which showed Malaysia to have one of the highest rates of piracy, with 61% of consumers accessing pirated content. AVIA and CAP do however appreciate the willingness of the MDTCL to engage on the issues and we hope that 2023 sees a resumption in the efficiency and effectiveness of the regulatory blocking program in Malaysia sufficient to make a significant reduction in the high levels of consumer piracy.

We commend the Malaysian government for updating its legislation in March 2022 to factor in the shifting technological landscape and the introduction of targeted ISD legislation within the new Copyright (Amendment) Act. This has enabled more decisive intellectual property enforcement by content owners such as the recent action jointly conducted against a seller of ISDs by the Premier League and others in October 2022⁴. With the prevalence of ISDs as a source of increasing concern for rights holders in Malaysia and around the Asia Pacific region, AVIA welcomes the introduction of a criminal sanction as a penalty for the sale of ISDs. This is undoubtedly a positive step, which offers rights holders greater scope and confidence to take action against ISDs operators. We trust this will in turn lead to successful prosecutions and the passing of deterrent sentences.

AVIA recommends that the US Government acknowledge Malaysia's success in recent years in regulatory blocking and continue to urge Malaysia to act on blocking referrals in a timely manner so as not to inadvertently erode the success it has achieved thus far.

Pakistan

Pakistan has made efforts to improve intellectual property protection and enforcement. It has established intellectual property tribunals as well as the Intellectual Property Organization of Pakistan (IPO), amongst other positive endeavors.

There is more work to be done. Cable television piracy, such as the unauthorized broadcast of content, and digital content piracy, continues to be a top concern. We encourage clear and easy-to-access recourse processes for rightsholders, including foreign rightsholders. The legislative processes put in place should also be well-resourced so as to address infringement and deliver enforcement in a timely fashion. We are hopeful that there would be tangible results arising from the government's continued efforts to improve Pakistan's intellectual property regime – and urge the US government to keep IP at the forefront of its bilateral talks and capacity building efforts vis-à-vis Pakistan.

⁴ <https://www.thevibes.com/articles/news/74678/authorities-seize-rm400000-worth-of-android-boxes-in-johor-baru-raid>

Philippines

Philippines continues to have one of the highest levels of piracy across southeast Asia according to CAP's 2022 YouGov survey. This survey notes that 61% of users access premium content via piracy websites, ISDs or social media – this is equal to both Vietnam and Malaysia regionally as the highest users per capita accessing pirated content.

However, there are encouraging signs. In July 2022 Congressman Salceda introduced HB0799, a Revised IP Code. HB0799 provides scope for regulatory site blocking, though it is silent on the procedures by how such blocking could be implemented. CAP and our local member Globe hosted an online piracy seminar in Manila in September that was well attended and included both IPOPHL and Congressman Salceda. Subsequent to the seminar CAP and Globe are continuing to work with Congressman Salceda and are hopeful that HB0799 will be amended to provide clear procedures that will allow for an effective and efficient regulatory site blocking regime.

It is worth noting that the 2022 YouGov survey also showed that Philippine consumers are clearly aware of the negatives of piracy, with 91% of consumers responding they believed there are negative consequences, and 54% believing malware is the greatest risk from piracy. Furthermore, ISPs being ordered to block pirate sites was identified by Philippine consumers as the most effective measure to stop piracy.

IPOPHL should also continue to be commended for their proactive activity in promoting consumer education/engagement initiatives and consumer messaging as well as working with industry to raise IP theft concerns with other government departments and working on a voluntary site blocking initiative with ISPs, which is a positive step forward.

Singapore

It is now almost ten years since the implementation of Singapore's judicial site blocking regime. During that time, piracy, and in particular the technological means to provide and access pirated content online, has progressed considerably. In November 2021, Singapore enacted a new Copyright Act with a view to taking into account technological developments and future-proofing its copyright regime. This new act provides greater recognition to the creators of content, including the acknowledgment of a creator's default ownership of certain types of commissioned works, and simultaneously, also seeks to create new user exceptions for the benefit of society such as an education exception for use of freely available content by students at non-profit schools. Most significantly, it makes it illegal to sell illicit streaming devices and associated software applications that enable 'to pirated content. To the best of our knowledge, Singapore is one of the first countries in the world to enact such a provision – for that, it should be applauded. Consequent raids by officers from the Criminal Investigation Department⁵ on retail stores allegedly selling illegal streaming devices, have demonstrated Singapore's commitment to combatting intellectual property rights' infringement. In particular

⁵ <https://www.straitstimes.com/singapore/courts-crime/17-people-arrested-for-suspected-involvement-in-selling-illegal-streaming-devices>

we must commend the action taken by IPRB against errant ISD retailers in Sim Lim square, against 8 retail outlets resulting in the seizure of more than 2,500 ISDs and 17 arrests. Our members remain hopeful that prosecutions under the new legislation will follow.

Unfortunately, Singapore site blocking legislation needs to be revisited. The current process is not agile enough to address sites which focus on pirating live events as these sites often only become live during the broadcast of the live event, and then become dormant thereafter. There is also difficulty in addressing sites that can quickly move from one domain to another to circumvent a blocking order. There is therefore a need to consider enhancing the current process to significantly shorten the time it takes for rights holders to obtain site blocking order. 2022's FIFA World Cup highlighted the shortcomings of the current process where immediate action is required to block a live sports event, however many sports rights owners face this problem on a weekly basis. From commencement to completion it takes at best four to five months to obtain a site blocking order through the court and at least one month to identify and block any sites under the order that subsequently redirect or 'hop'. Additionally, it is increasingly cost prohibitive for most content owners to utilise the framework as it currently exists.

AVIA suggests that the US Government urge the Singapore government to review its current site blocking approach with a view to implement regulatory blocking procedures that would allow for more efficient and effective site blocking.

Taiwan

Taiwan continues to face similar challenges as other Asian markets with regard to online piracy. We believe more can be done, such as implementing an efficient and expedient site blocking regime, to tackle streaming piracy through illegal websites. YouGov research in January 2022, conducted on behalf of AVIA's CAP, found that 21% of online consumers access social media platforms to view pirated content, and 16% and 12% access pirated content via an ISD and streaming websites respectively. Amongst those using piracy services, 50% and 49 % use computers or mobile devices to view infringing content.

The Taiwan Information Network Center (TWNIC), the official referral entity under the NCC, has initiated an administrative site blocking mechanism Mutually Agreed Norms for Internet Intermediaries (MANII) to handle copyright infringement disputes between right owners and ISPs. However, the mechanism is not generally supported by the ISPs in Taiwan, with KBT being the only ISP participating in the mechanism. Also, the process for handling file complaints appears to be cumbersome and could take more than three months, which is not efficient and responsive enough for dealing with the cases.

AVIA proposes that the US government encourage the NCC to look at countries such as Indonesia, Malaysia and Italy for an efficient and effective approach in implementing administrative site blocking using a one-Ministry/one-stop-shop approach, which ensures site blocking requests are fast-tracked and streamlined, often with a 48-hour turnaround.

Thailand

Over the last three years, Thailand, in spite of a few notable enforcement actions by Department of Special Investigations, our members remain disappointed by the speed of enforcement efforts in other cases and indeed, the absence of deterrent convictions. The impact of a lack of prosecutions is exacerbated by the continued absence of an effective blocking regime.

Thailand continues to have an unhealthy appetite for pirated content and lacks agile and deterrent law enforcement. A 2022 YouGov study, commissioned by AVIA's CAP found that 39% of Thai online consumers access pirated content. Of those consumers engaged in piracy, Thailand continues to lead the way in South-East Asia of the number who have cancelled all or some of their subscriptions to legal pay TV services in the past 12 months.

Section 20 of the Computer Crimes Act (CCA) has been in force for over three years, and in that time around 1500 URLs have been ordered to be blocked by the courts. However, as a result from the court orders not explicitly requiring the ISPs to use DNS blocking, the outcome from such blocking orders has been particularly disappointing with almost all of the court blocking orders being ignored by the ISPs who cite various technical and procedural issues as to why they have failed to comply. While we understand that these blocking orders will be extended to redirected sites, we would urge the legislators to ensure that the court orders are drafted in a manner which requires DNS blocking at a minimum (which is now very widely used in other markets) so as to ensure that Section 20 of the CCA is a more effective tool against online piracy.

In August 2020, following months of industry representation, the DIP, the Ministry of Digital Economy and Society (MDES), and the National Broadcasting and Telecommunications Commission (NBTC) announced new website blocking provisions for sites which violate section 20(3) of the CCA. Under the new provisions:

- ISPs must immediately block the sites using “appropriate technical measures.”
- If a blocked site is subsequently redirected or ‘hops’ to a new domain, the same court order can apply to block the associated site.
- ISPs which fail to comply with the court order can now be fined under Section 27 of the CCA.

It was hoped that the MDES would re-issue the site blocking court orders previously ignored by ISPs. Unfortunately, such orders have yet to be re-issued and there is no indication that the 2020 August site blocking provisions have been actioned. We are encouraged by MDES senior staff's understanding of rights holders' concerns and hope that substantive action follows.

AVIA recommends that the US should urge the government to take a clear position to make the CCA site blocking provisions effective as soon as possible, ensuring that previous court orders and any new court orders/sanctions are complied with.

Vietnam

Although Vietnam has always had issues with more traditional forms of piracy, like many other markets, the growth in broadband services has led to more prevalent online video piracy. OTT piracy services are increasing, offering all content, domestic and foreign, for free or at a low cost. Even more concerning is the popularity of Vietnam based piracy services in territories outside of Vietnam such as motphimtv.com and motchill.net. In an AVIA-commissioned YouGov consumer survey carried out in 2022 the results showed that more than 60% of Vietnamese consumers admit to watching pirated content, a similar number to 2021. However, more positively, nearly 50% of consumers admitted that they had also stopped watching, or watched much less pirated content, as a result of site blocking. AVIA commends Vietnam for its efforts to introduce a Draft Decree (to the Law on Intellectual Property) which seeks to address the infringement of copyright on digital platforms, by making it easier to identify violations of IP rights and quantify the damage caused by such violations. Some concerns however remain. One of these, which is of particular significance for our members, is the proposed 24-hour turnaround time to remove or block content upon receipt of a request. All AVIA's members offer their end users a curated content service – all content appearing on these services has been IP-vetted and cleared, curated and carefully labelled for the appropriate target audience. These services offer no user-generated content. Our members' concern is that the Draft Decree may be so focused on ensuring speedy removal of content that this 24-hour requirement could prove to be unduly harsh in scenarios where closer scrutiny of the alleged infringing content would be prudent for example, in instances where the doctrine of fair use has been relied upon or where that same content has been legally licensed from another supplier.

While these steps to address copyright infringement are certainly very encouraging, piracy continues to be of huge concern with much of the delay in enforcement attributed to uncertainty about which government body has the appropriate oversight.

Most popular piracy websites targeting and accessed by Vietnamese are run by Vietnamese nationals based in Vietnam using offshore cloud services and proxies such as CloudFlare. It takes years for law enforcement agencies to apprehend operators of these websites.

In addition to piracy websites targeting and accessed by the Vietnamese public, Vietnam plays host to some of the most popular globally streaming piracy sites. Various Vietnamese operators have been responsible for some of the world's most popular piracy websites, such as Fmovies, Myflixer.to, Abyss.to, 2embed.to, Chiasenhac, which cause significant damage to both the local and international content markets and make Vietnam a piracy haven.

Furthermore, while the administrative site blocking process overseen by the Authority of Broadcasting and Electronic Information (ABEI) is in place, we understand that ABEI have suggested that their enforcement of IP rules is a public service reserved for businesses who pay tax in Vietnam. It is our hope that, with the introduction of the tax portal for the payment of tax by offshore companies without a local presence, this argument is not one which will gain further traction.

It is AVIA's view that Vietnam is still in need of an efficient, expedient and cost-effective site blocking protocol. The administrative site blocking process which falls under the auspices of ABEI, first became available in 2019. While few companies utilize the site blocking process, early data suggests that if it were available for a broader market segment and without cost, the blocking process could be as effective as we have seen in other territories across South East Asia. An industry meeting with the Director General of ABEI was convened at the end of 2020 in which it was agreed there would be consideration of amending current site blocking regulations to take into account the need to be expeditious and allow for dynamic blocking orders. There was also discussion regarding sanctions against ISPs that do not comply with blocking orders as well as establishing a Center for Copyright Protection under ABEI to support right holders in the fight against piracy.

AVIA urges the US, in its dialogues with Vietnam, to encourage criminal enforcement against Vietnamese operators of the most egregious piracy streaming websites and applications (including but not limited to Fmovies, Myflixer.to, Abyss.to, 2embed.to, Chiasenhac) as well as the aforementioned amendments to the site blocking regulations. The amended Criminal Code, which became effective on 1 January, 2018, criminalises online piracy websites, however, despite referrals from industry, there has been to date no concluded criminal case against copyright infringement. There have been occasional administrative sanctions applied against the operators of piracy websites, but this has resulted in small fines with little deterrent value. Despite initial encouraging indications from the Ministry of Public Security of their investigations into the operators of the notorious piracy site www.phimmoi.net⁶ this case has now been ongoing with little sign of any substantive progress. We recommend that the US dialogue should focus on Ministry of Public Security (enforcement side) as well as with ABEI (MIC), Copyright office of Vietnam (Ministry of Culture) and the State Bank of Vietnam (on the payment side).

⁶ See article in Vietnamese at https://congan.com.vn/vu-an/tphcm-khoi-to-vu-an-truy-tim-nhom-lap-website-phimmoinet-chieu-phim-lau_118507.html.