

Asia Video Industry Association Submission to the Office of the US Trade Representative September 30, 2019

2019 Out-of-Cycle Review of Notorious Markets under Section 182 of the Trade Act of 1974 (Special 301)

The Asia Video Industry Association (AVIA) is the non-profit trade association of the international video industry in the Asia-Pacific region. It is dedicated to the promotion of multi-channel television via cable, satellite, broadband and wireless video networks across the Asia-Pacific region. Previously known as CASBAA (the Cable and Satellite Broadcasting Association of Asia), our Association has about 90 member companies operating and investing in 17 different Asian and Australasian markets, providing television programming and curated over-the-top video content to over 600 million homes. 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, Bloomberg Television, Brightcove, Discovery Networks Asia-Pacific, Dolby, HBO Asia, Intelsat, National Basketball Association, NBCUniversal International, Netflix, S&P Global Markets, SpaceX, Sony Pictures Television International, Star TV, The Walt Disney Company, Turner International Asia Pacific, WarnerMedia LLC, Verimatrix, and Viacom International Media Networks.

AVIA welcomes the opportunity to provide information to the US Trade Representative, as we have on many previous occasions, on the issue of protection of pay TV intellectual property rights in various Asian markets.

The first part of this submission is aimed at providing the USTR with an update on the legal status and activities of the blatant and notorious Singapore physical marketplace for sales of Illicit Streaming Devices, Sim Lim Square.

Sim Lim Square, located at 1 Rochor Canal Road, Singapore 188504, is a shopping mall housing individual shops and stores selling electronic devices of many types. It is also SE Asia's largest and most active physical market for illicit streaming devices (ISDs), a claim supported by YouGov research which indicates Singapore has one of the highest percentages of off-line purchases of ISDs. Site surveys over the past four years have documented a large number of sales outlets making open sales of devices which incorporate software ("apps") designed to facilitate theft of copyrighted television programming via multinational streaming networks based outside Singapore.



Sim Lim Square is a strata managed building; thus the current building management company claim to have no legal responsibility or liability for the actions of the retail outlets. It is unclear at this stage whether the current retail outlets identified own or lease the premises in which they trade.

Copyright infringement facilitation activities at Sim Lim Square have enjoyed a strong growth trend in recent years – a market survey in January 2016 recorded 10 sales outlets openly selling ISDs while a site visit in early September 2019 found 20-25 such shops. This growth trend is mirrored at the retail end – surveys of consumers conducted for AVIA's Coalition Against Piracy (CAP) by the YouGov consumer research agency found in November 2018 that 15% of online consumers admitted to using a TV box which can be used to stream pirated television and video content, and when a follow-up survey was taken in April 2019, the number of consumers reporting such activities rose to 17%. It should be noted as well, that of the consumers who purchased a TV box for free streaming, 25% asserted that they cancelled their subscription to legitimate Singapore-based and international online video services as a direct consequence of owning an ISD.

The sales at Sim Lim Square which facilitate copyright infringement are no secret; they have been documented in numerous open media reports, including for example this one by a local newspaper: https://www.youtube.com/watch?v=ZDlcJCw1Jb0.

That report nicely summarizes the situation, in video form. In the two years since that video was made, the situation has not changed significantly. Cases brought against physical ISD vendors, designed to clearly establish that their activities are illegal under current Singapore copyright laws, continue to wend their way through the courts. Piracy device retailers have reacted to those cases by simply including an overt verbal disclaimer that they do not pre-load apps or sell boxes that infringe copyrighted content whilst simultaneously covertly giving consumers access to the necessary infringing apps.

A major step forward came in January of this year, when the Singapore Ministry of Law announced that it would propose legislative changes to facilitate copyright enforcement against retailers, manufacturers, importers and distributors of ISDs/infringing apps. The Ministry said its policy position was "not to allow commercial gains derived from enabling access to content from unauthorized sources."

We applaud the government's positive intentions, and we have urged that the process of introducing the new legislation be accelerated in light of the continued growth of the ISD market. We believe that a strong legislative prohibition would have a markedly positive effect on reducing the illegitimate activities at Sim Lim Square. We note that in making its statement, the Ministry has tacitly acknowledged the activities in Sim Lim Square are illegal, however it has perhaps inadvertently provided the sellers with an excuse to continue selling under current legislation and to an extent 'make hay while the sun shines'. We therefore encourage the government to move forthrightly, and we are hopeful that the law can be strengthened quickly and effectively, even if that means pulling out and fast-tracking the relevant ISD provisions of the draft. However, no text of proposed legislative changes has yet been made available, and pending concrete outcomes to the litigation, the Sim Lim Square situation seems to be evolving



in a negative direction, with ever-more sales outlets pushing the devices. Thus it continues to plague rights owners.

The second market we would highlight for inclusion is a selection of online Ad Networks. A <u>study</u> commissioned by the <u>Trustworthy Accountability Group</u>* and carried out by Ernst & Young in 2017 revealed that the top 672 piracy sites in the United States generated \$111 million per year. This included \$36 million from premium advertisers and \$75 million from non-premium advertisers who were placing ads related to unregulated or illegal products (including counterfeit pharmaceuticals). The report concluded that this figure could have been twice as much without the premium advertiser's anti-piracy efforts to ensure that ads of mainstream brands are not placed on piracy websites.

Recent 2019 studies in Malaysia and Thailand commissioned by AVIA and undertaken by TAG accredited DAAP Veri-Site, have found that 94% (Malaysia) and 92% (Thailand) of the top 50 most egregious piracy sites are financially reliant upon advertising networks. Furthermore, in Malaysia 37% of the advertising found on top 50 piracy sites were defined as "high risk" adverts (unregulated or illegal products) and in Thailand 78% of the advertising found was found to be "high risk" adverts.

Advertising networks, by nature of the way it operates, allows the relevant ad agencies to bid on in real time on the ads being served to the end user. By extending the idea of the market place concept, but where Ad Networks are the means by which piracy sites receive financial remunerations, it can be argued that Ad Networks who place unregulated or illegal products on piracy sites are a critical component within the piracy ecosystem. Restricting advertising from appearing on piracy websites will have an immediate disruptive impact on the piracy ecosystem.

As such AVIA would like to recommend that Ad Networks which actively pursue business on piracy sites should be included on the USTR notorious markets list. Specific details of each of the following Ad Networks are included in the appendix but the list of the Ad Networks we propose including are:

<u>Propeller Ads Ltd.</u>, incorporated in 2011, is a display and mobile advertising company based in Cyprus. It claims to provide comprehensive and industry leading ad-serving and optimization technologies for online marketers and web publishers. This ad network has been found to continually placing ads related to unregulated products on piracy sites.

<u>Steepto</u>, an ad network Belize based digital ad platform owned by Bedigital Corporation. This ad network claims to offer advertising services for premium publishers and advertisers but has been found to continually place ads related to fake news and unregulated products on piracy sites.

<u>Adskeeper</u>, incorporated in 2013, is a digital ad platform based on real-time bidding principle, where the impact of your adverts depends on the bid you set per click. International Digital advertising agency LLC and Hardware solutions limited (collectively referred as 'Adskeeper') is the operating entities of Adskeeper and based in Georgia and Hong Kong, respectively. This

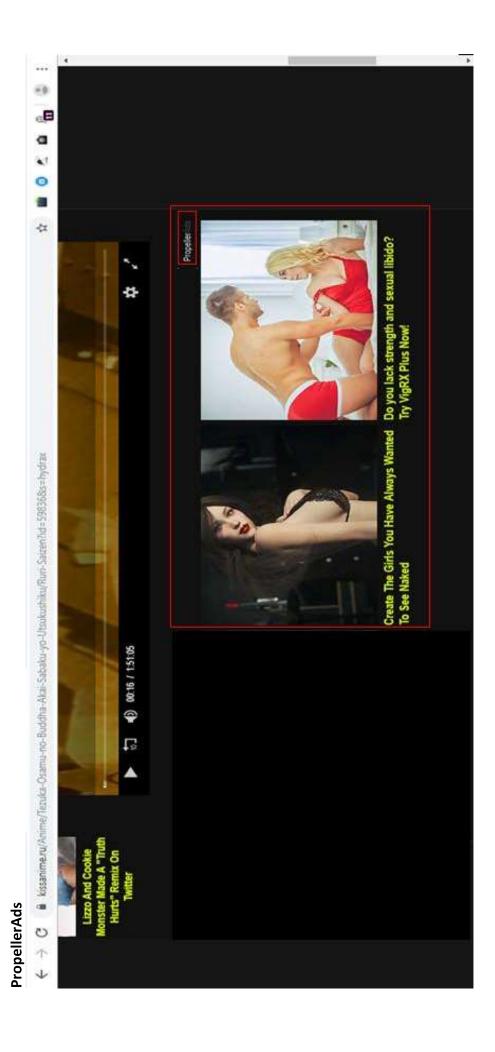


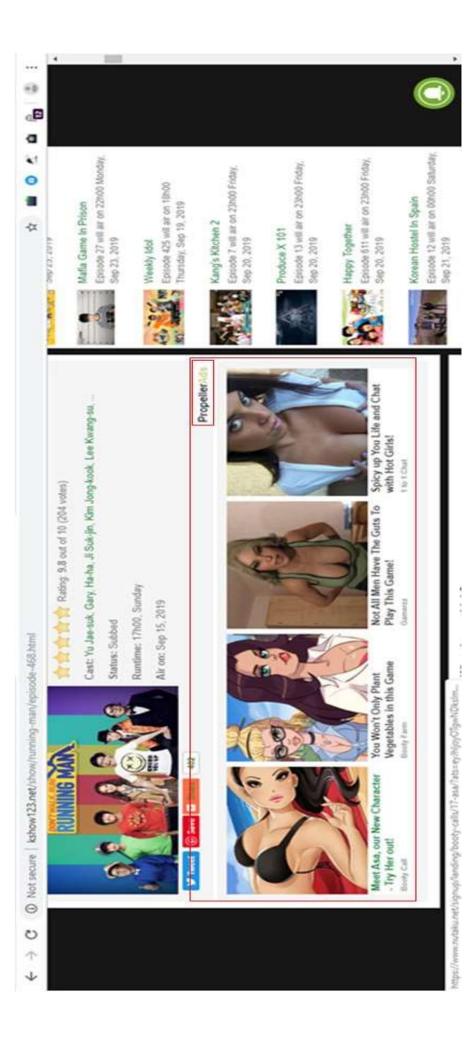
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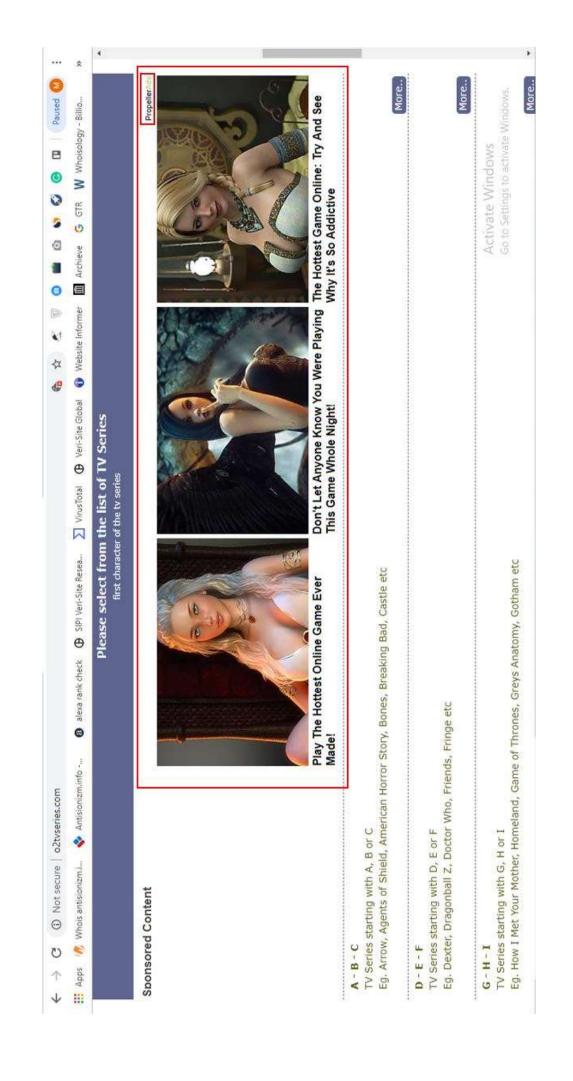
<u>Yengo Pte Ltd.</u>, incorporated in 2012, is a marketing and advertising company based in Singapore. It claims to provide online-services for traffic generation and business promotion. This ad network has been found to continually place ads related to fake news and unregulated products on piracy.

*TAG was created by the American Association of Advertising Agencies (4A's), Association of National Advertisers (ANA), and Interactive Advertising Bureau (IAB) and works collaboratively with companies throughout the digital ad supply chain.

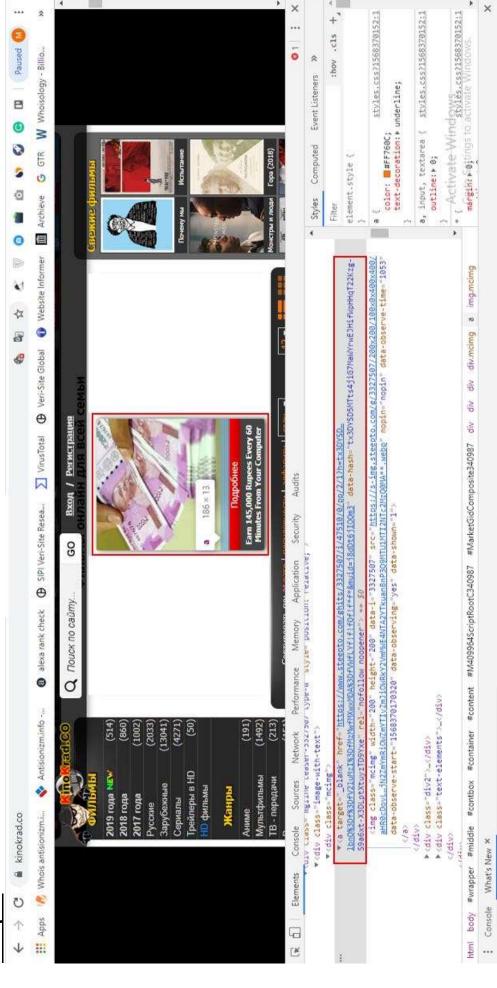
APPENDIX 1 FOLLOWS

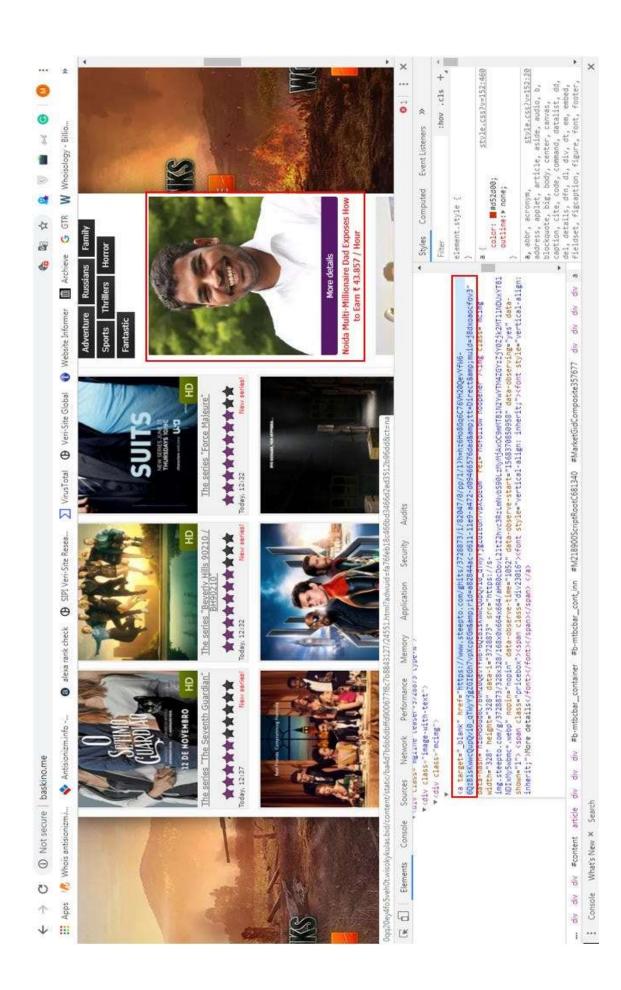


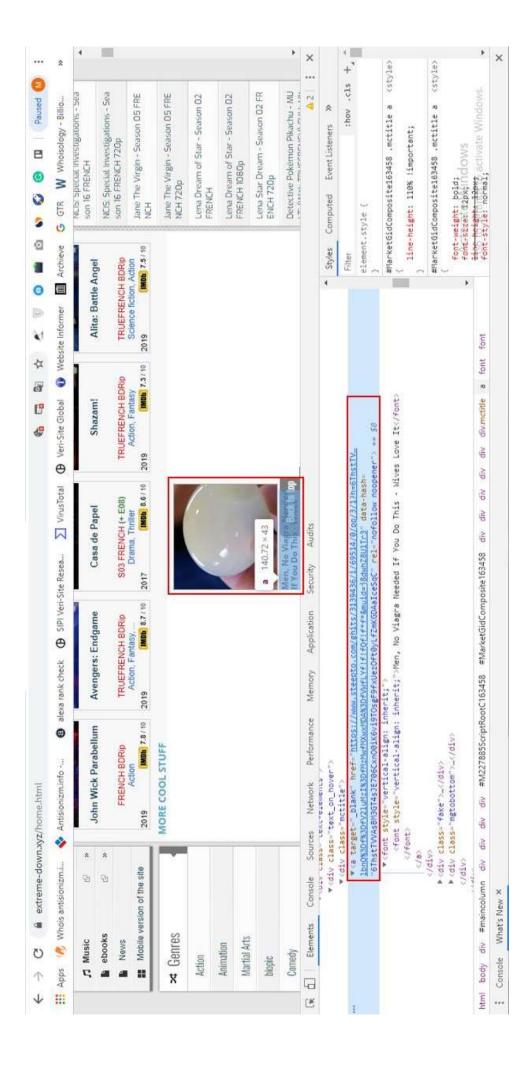


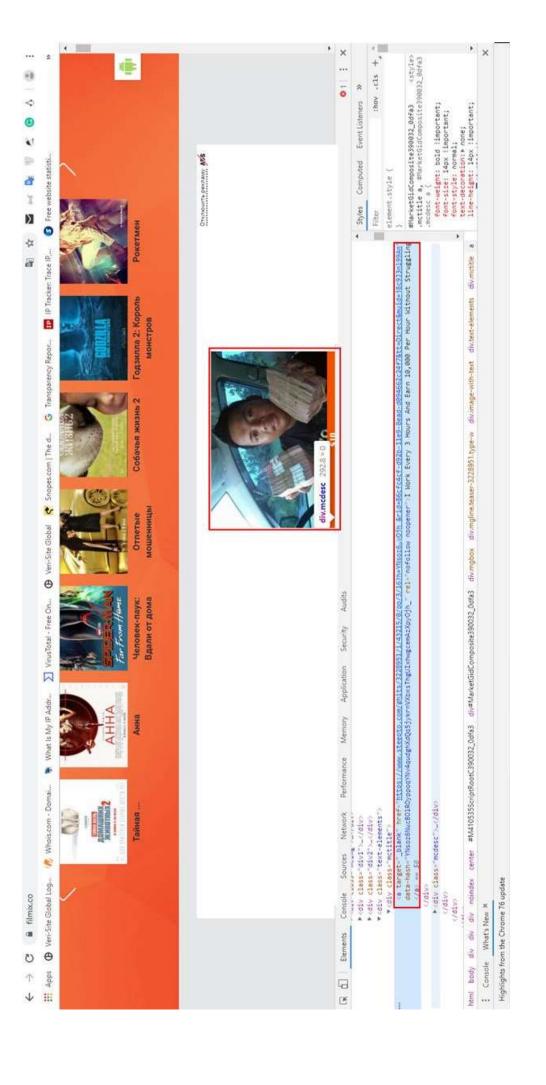


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