

Asia Video Industry Association
Submission to the Office of the US Trade Representative
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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 80 companies, located in 17 Asian countries and regions, providing television programming, and curated Over-The-Top (OTT) 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, The Walt Disney Company, Dolby Laboratories, Invidi, Magnite, Motion Picture Association, National Basketball Association, NBCUniversal International, Netflix, Paramount, PubMatic, Sony Pictures Television Network, 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 pay TV 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 arising from new ways in which providers of pirated content leverage technology to distribute pirated content. Whilst the Illicit Streaming Devices (ISDs) / application ecosystem and streaming piracy remain a problem, we are seeing more operators who provide piracy as a service offering which facilitates the ease of setting up a piracy website.

In line with our previous reports which highlighted both industry concerns and successes, we have also included markets this year which have made advancements within their copyright regimes to tackle content piracy.

Measuring the efficacy of enforcement and disruptive anti-piracy strategies remain a key focus of AVIA's Coalition Against Piracy (CAP). In an effort to benchmark the growing problem of ISDs, apps and streaming piracy, in 2019 CAP began commissioning YouGov, a

leading market research company, to conduct ad hoc surveys that assessed consumer viewing habits and attitudes in some countries. In 2022, CAP moved to commission these surveys at the same time across a range of Asian countries¹. These surveys seek to measure the potential impact on the industry and assess the threat to legal services.

The results of the 2023 surveys showed that while piracy rates remain stable in many countries in the Asia-Pacific region, we saw disturbing increases in piracy rates in Thailand and Taiwan. Notably, neither of these countries have effective nor efficient procedures that allow rights holders to seek orders quickly, be they judicial or regulatory, that would allow for the blocking of pirate sites.

For those countries that are implementing site blocking effectively, the surveys show that there continues to be demonstrable effects in behavioral change with 62% of consumers in Indonesia who tried to access pirate sites and 64% in Malaysia, indicating that they have changed their viewing habits as a result of pirate sites being blocked. Both these countries have long-running, effective, and efficient regulatory blocking regimes. Singapore, one of the first countries in the region to allow rights holders to protect their content via judicial site blocking measures, has the lowest percentage of consumer piracy in the region, with only 39% of consumers pirating. This is notable as it has been almost ten years since this measure has been in place. However, there remain issues with the time and cost involved with obtaining site blocking orders in Singapore.

Encouragingly, the surveys show that regular site blocking not only stops consumers from accessing pirated content online, but also drives them towards legitimate sources, with an average of 20% of consumers who tried to access pirate sites instead of subscribing to paid services and an average of over 40% accessing legitimate free content services as a result of pirate sites being blocked. Furthermore, almost 50% of consumers around the region have stated that they would subscribe to legitimate paid online services if the content they wanted to watch was not available via a pirated source.

Awareness of the risks associated with online piracy also continues to grow, with at least 80% of consumers in every market surveyed around the region unequivocally believing that piracy has negative consequences. Consumers are aware that the perceived damage from accessing pirated content varies from creating a negative impact on the creative industries to increasing the risk of malware infection on personal computers and devices.

In addition to consumers accessing pirated content via pirate streaming sites, apps or ISDs, we note that social media and messaging platforms are also a concern as they continue to provide access to pirated content and are one of the main sources of doing so. CAP is working with major platforms across the region to address this issue. Encouragingly, the survey also shows huge unmet potential as more than 60% of consumers across the region said they would subscribe to legitimate services if there was no pirated content available on social media and messaging platforms.

¹ The countries that were surveyed by YouGov for CAP in 2023 are Hong Kong, Indonesia, Malaysia, Philippines, Singapore, Taiwan, Thailand, and Vietnam.

We warmly welcome the US government's continued attention to the issue of piracy and need for increased IP protection 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:

Cambodia

While AVIA has made no comments in recent years on piracy in Cambodia, it has come to our attention that piracy is a real and growing issue. In addition to the sale of piracy devices to end consumers, a lax approach to enforcement can be seen in the proliferation of piracy services in the business to business market for audio-visual services. For example, AVIA is aware of a number of cable operators that supply pirated television channels, including beIN, US content, and other local and international content, to the hotel market and serviced apartments for guests to watch channels within their rooms and other public areas. Weak enforcement laws in the country make it very difficult for rights owners to prevent this, and makes it difficult for legitimate licensed B2B operators to enter the market.

For all reasons stated above, AVIA urges the US in its dialogue with Cambodia, to encourage criminal enforcement against the abovementioned suppliers of piracy content in Cambodia.

China

China continues to be of concern given its position as the epicentre of the manufacture, export, and distribution of both ISDs and pirate IPTV apps, mostly Android-based, which enable access to pirated live and recorded premium content. In addition, we understand that China-based companies such as Zhuhai Gotech (a.k.a. MKTECH) continue to offer not only the devices and software required to drive the use of these ISDs and pirate IPTV apps, 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. Moreover, circumvention video encoder companies such as Shenzhen Mine Technology (a.k.a. Oupree Technology) continue to provide hardware and software updates that undermine detection of watermarks deployed by copyright owners.

Despite China's State Council's 5-year Plan (2021-2025) for the increased creation and protection of intellectual property rights (IPRs) there continues to be lack of enforcement action in China against 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 against Asian and global content owners.

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 in the past few years 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

Hong Kong is to be congratulated for the successful passage of the new Copyright Ordinance which came into operation on 1 May, 2023. The most immediate impact of the new Ordinance was the removal of many ISDs from being openly sold in large numbers in retail shops at IT malls in Sham Shui Po and Wanchai as well as other locations around Hong Kong. The raids on these retail shops by the Hong Kong Customs indicated that the Ordinance had contributed to the conduct of a successful enforcement operation by the authorities. In April, one of the most notorious ISDs, Unblock Tech, publicly announced that they would cease selling their ISDs in Hong Kong (and Macau), and they suggested that their customers buy EVPad or SVI ISDs instead. Market intelligence suggests that neither of these ISDs are available openly, although they can still be purchased at some retailers. However, all ISDs, including Unblock Tech, remain freely available online.

We also note that despite the success noted above, we remain disappointed to find that none of our recommendations, (in particular, the introduction of a judicial site blocking provision, ideally one which is technology neutral and gives the courts flexibility to address piracy issues as they evolve, such as s97A of the United Kingdom's Copyright, Designs & Patents Act), which would have ensured that the new copyright framework was in line with international best practices, had been taken into account in the new Copyright Ordinance. As we have previously noted, the Ordinance was based on the 2014 legislation that was 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 address advancements from pirates, the Ordinance remained mostly unchanged from the 2014 language. Equally disappointing, although 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 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. As noted above, we also recommended that Hong Kong carefully consider the introduction of either a judicial or regulatory site blocking program. Within the Asia Pacific region, both Singapore and Australia currently have a judicial site blocking process providing due process and effectively blocking websites hosted outside the territory, though in Singapore's case as noted, there have been some efficiency and effectiveness issues, while the number of countries that have regulatory blocking procedures continue to grow. It has become an important tool in minimising the opportunity for piracy and, provided the mechanism is implemented appropriately subject to clearly identified safeguards, it could have a significant impact when targeting pirate apps and services.

We understand that the Intellectual Property Department anticipates commencing consultations on the next updates for the Copyright legislation. We would urge the US, in its dialogues with Hong Kong, to encourage them to consider starting early consultations taking into account the above points, to enable 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.

India

The India video industry market continues to see unparalleled growth, 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 among AVIA members 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 2 years than during previous years. The Cinematograph Bill amendments will only be meaningful if it is seriously enforced by police officials in all Indian states. India, like other markets, has ongoing challenges with the import, manufacture and sale of ISDs, including unauthorised 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.

Despite assurances in 2023 that there was willingness and support by the three relevant ministries which have oversight of the video industry (the Ministry of Information and Broadcasting (MIB), the Telecom Regulatory Authority of India (TRAI), and the Department of Telecom (DoT)) for an Inter-Ministerial Committee, or similar, to be established to address and combat piracy through an effective framework, we have seen no significant attempts to move this agenda forward.

Whilst we recognise the concept of regulatory co-operation to combat piracy and conversations are only just being initiated, there have been numerous pieces of legislation in 2023 which could have included measures to begin tackling this issue. Most notably, the pre-consultation by the TRAI on a National Broadcast Policy and the current consultation by MIB on a Broadcasting Services (Regulation) Bill both missed prime opportunities to include measures to combat piracy and the unauthorised distribution of copyright content. The health of the broadcasting and content production industries, and achievement of the economic benefits sought through the globalisation of Indian content, will depend on whether the carriage and distribution systems for media content can be made sufficiently leakproof to guard against unauthorised distribution. Creating systems that impede and reduce piracy should be a top-level goal of policy relating to the broadcasting industry and merits a prominent place in any legislation that aims to deliver a comprehensive National Broadcasting Policy.

Finally, enforcement – in particular a nationally coordinated enforcement approach or mechanism – remains the most crucial element to ensuring that there is protection of intellectual property in India. Inability to tackle content piracy and a lack of respect with regard to intellectual property rights continue work against the intent of the government to make India

the content hub of the world, and we urge the US government to continue to raise this agenda item.

Indonesia

Indonesia continued to lead the way in 2023 for regulatory blocking of pirate sites in Asia-Pacific in terms of the number of sites blocked and how quickly they are blocked with demonstrable impact on both consumer attitudes to piracy as well as traffic to pirate sites. As noted in previous submissions, AVIA has historically submitted referrals of piracy-dedicated websites to, the telecommunications regulator, 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 2023, the VCI maintained its regular program of referring sites to Kominfo with more than 1,400 sites referred in total. As noted last year, the success of the blocking program in Indonesia saw a marked migration of pirate sites away from domains that can be blocked by normal Domain Name Server (DNS) 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 trial program whereby a number of IP addresses for pirate sites were referred monthly to Kominfo for blocking. That trial was a success, and in 2023, half of the 1,400 sites referred to Kominfo were for IP blocking. While Indonesia's Intellectual Property Office (IPO) also has site blocking procedures, historically they were cumbersome. However, in 2023 the IPO implemented new fast-tracking procedures and it is hoped that these will function well.

Another positive development in 2023 in Indonesia is the formation of the Indonesian Video Streaming Association (AVISI). The mission of AVISI is to grow the OTT industry in Indonesia and they work closely with the government to do so, as well as other industry bodies such as AVIA, with whom they entered a MOU in 2023. AVISI has been behind a number of criminal actions against pirate operators in Indonesia in 2023. 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, Malaysia's leading digital streaming company. This blocking process operates under the Ministry of Domestic Trade and Costs of Living (MDTCL) and was designed to have expedited timelines such that the MDTCA 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. After a slowdown in processing referrals in 2021 and 2022, we are pleased to note that AVIA has referred close to 250 sites for blocking.

We commend the Malaysian government for updating its legislation 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 2022. However, the MDTCL should ensure that raids are followed by cases, moving swiftly to prosecution, as has been seen recently through alternative law enforcement agencies in Malaysia. Delays to prosecutions send a damaging message to the market about the likelihood of criminal sentences for infringers. 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 commend Malaysia for their success in recent years in regulatory blocking, and continue to urge Malaysia to ensure that the success it has achieved thus far is not inadvertently eroded as a result of delayed or slow responses by the Government to referrals.

Myanmar

In Myanmar, local and international content from major international broadcasting players are both ransacked by piracy operators. Over these last few years, we have seen internet piracy through internationally popular piracy venues and specialised local language sites, as well as the growth of pirated content consumed via social media.

Legal content on authorised TV channels and official digital platforms are redistributed by pirates on their illicit online platforms, especially on social media platforms, notably Telegram, which is very popular in Myanmar. In addition to this rising trend, some local TV channels broadcast both local and international content without authorisation, thus infringing copyright.

There have been recent legislative changes to combat piracy in Myanmar.² However, despite this body of laws, enforcement remains weak or absent, and prosecution is rare. Piracy operators carry on with their activity in all impunity. Law enforcement organisations and the Government Authority are currently facing resource constraints, including limited budgets, technological tools, and trained personnel, hindering their ability to effectively combat piracy. Similarly, there is a lack of government support even though existing copyright law has been enacted. There has been minimal collaboration among government bodies such as, the Digital Protect and Development Committee (DPDC), the Myanmar Motion Picture Organisation

² The primary legislation is the recent and effective Literary and Artistic Copyright Law 2019 of Myanmar, which was enacted on 24th May 2019, and came into effect on 31st October 2023, as per Notification No. 218/2023 dated 18th October 2023, thereby repealing the Myanmar Copyright Act of 1914. The newly effective Copyright law (Literary and Artistic Copyright Law 2019) protects original works and grants exclusive rights to the creators. This law outlines penalties for copyright infringement, including fines and imprisonment.

(MMPO), and local associations like the Myanmar Intellectual Property Proprietors Association (MIPPA). There is also a need to increase consumer awareness and provide stronger enforcement measures by the authorities due to the current situation happening in Myanmar.

For all reasons stated above, AVIA would like to add for the first time Myanmar to its submission. Indeed, while there are laudable efforts made to draft laws to protect content, substantial efforts need to be made in Myanmar to enforce intellectual property laws and protect the local economy, as well as safeguard much needed jobs related to the local audiovisual industry.

Pakistan

Although Pakistan has made efforts to improve intellectual property protection and enforcement, there is more work to be done. Cable television piracy, such as the unauthorised broadcast of content, and digital content piracy, continues to be a top concern.

That said, Pakistan has established intellectual property tribunals as well as the Intellectual Property Organization of Pakistan (IPO), amongst other positive endeavours, and we would encourage that these be properly resourced, to address infringement and deliver enforcement in a timely fashion. We are hopeful that there will 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.

Philippines

The Philippines is to be commended for continuing the efforts begun in 2022 to enact site blocking legislation that would allow rights holders to make referrals via the Philippines Intellectual Property Office. May 2023 saw the conclusion of the rapid passage of Representative Joey S. Salceda's HB 7028, known locally as the Online Site Blocking Act, that provides for regulatory blocking through the lower house. Senators Jinggoy Estrada and Ramon "Bong" Revilla introduced mirror legislation in the Senate shortly after the passage of Representative Salceda's Online Site Blocking Act. Encouragingly, President Ferdinand Marcos Jr. stated that he will include the Act in his list of priority legislation and that he would see what he could do to move the bill forward. With this level of support, AVIA is hopeful that the legislation will be enacted by mid-2024.

Separate to the legislative moves, Intellectual Property Office of the Philippines (IPOP/PHL) should also be applauded for their proactive activity in pushing for a voluntary site blocking MOU agreement between industry and some local ISPs. The MOU was signed towards the end of 2023 and is expected to come into play in early 2024.

It is worth noting that the 2023 YouGov survey also showed that Philippine consumers are clearly aware of the efficiency of site blocking, with it being selected as the most popular solution to stopping piracy. Continuing the trend identified in 2022, there remains high awareness of the negative consequences of online piracy, with 90% of Philippine consumers

believing there are negative consequences – with illicit profiteering and malware identified as the greatest risks.

Singapore

As noted last year, Singapore’s 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 content owners to obtain site blocking order, which from start to finish can take more than six months. 2022’s FIFA World Cup highlighted the shortcomings of the current process where immediate action was required to block a live sports event.

AVIA suggests that the US Government urge the Singapore government to either enhance its current judicial procedures or 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. The YouGov research in December 2023 conducted on behalf of AVIA’s CAP, found that 47% of Taiwanese consumers watch pirate content, indicating an increase of 10% as compared to 2022. According to the data, social media was found to be the main form of accessing pirate content with 32% of consumers using such platforms to do so. Further to this, 17% accessed pirated content via ISDs and 13% accessed such content via streaming and torrent sites.

The Taiwan Information Network Center (TWNIC), the official referral entity under the National Communications Commission (NCC), has initiated an administrative site blocking mechanism through 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 the CNS 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 such cases.

AVIA proposes that the US government encourage the NCC to look at countries such as Indonesia, Malaysia, and Korea 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 four years, Thailand has made some progress on enforcement activities against operators of piracy services that use Thailand as a base for their activities. Both the

Department of Special Investigations (DSI) and the Economic Crime Suppression Division (ECD) have made attempts to be proactive in denouncing copyright and content infringements, but we note the substantive actions of earlier years have slowed down. However, difficulties in inter-agency collaboration can pose challenges to effective enforcement. In early 2022, Thailand enacted a new Copyright Act that creates a notice-and-takedown system, defines liability for service providers, and creates additional remedies for the circumvention of technological protection measures.

In 2023, the Department of Intellectual Property (DIP) organised a series of public education seminars and conferences. These proactive measures were conducted to enhance public understanding of IP rights and potentially serve as a deterrent for future infringements. Furthermore, the Director-General of the DIP made an announcement in November 2023 that it is attempting to coordinate with Facebook and Instagram to manage IP infringement more efficiently, as YouGov data points towards an ongoing consumption of pirated content via such social media platforms. Despite attempts to combat piracy through increased awareness and collaboration between public and private sectors, pirated content continues to be rampant.

In 2022, we were encouraged by the cooperative work of the DSI, DIP and other agencies, which we commended. However, in 2023, enforcement has slowed down resulting in a higher incidence of piracy as compared to the year before.

As a result, Thailand continues to have an unhealthy appetite for pirated content. In the 2023 YouGov study, it was found that 53% of Thai online consumers access pirated content, indicating an increase of 14% from the year before. Of those consumers engaged in piracy, Thailand continues to lead the way in Southeast Asia of the number who have cancelled all or some of their subscriptions to legal pay TV services in the past 12 months.

In the first 11 months of 2023, under Section 20 of the Computer Crimes Act (CCA), the courts ordered around 88 URLs to be blocked due to copyright infringement³. However, as a result from the court orders not explicitly requiring the ISPs to use more effective blocking mechanisms, the outcome from such blocking orders has been particularly disappointing with almost all court blocking orders being ignored by the ISPs who cite various technical and procedural issues as to why they have failed to comply. In our experience, URL blocking is inefficient and ineffective as the pirate website will continue to remain active.

While we understand that these blocking orders will be extended to redirected sites, we would like to urge legislators to ensure that court orders are drafted in a manner which requires DNS blocking at a minimum (which is now very widely used in other markets) to ensure that Section 20 of the CCA and site blocking are a more effective tool against online piracy. We are also aware that it was the intention of legislators that the Copyright Bill complements the CCA with its takedown procedures which offer rightsholders the opportunity to approach ISPs directly. However, challenges continue to remain in addressing evolving infringement patterns and clarifying burden of proof to execute effective and consistent site blocking enforcement.

In 2023, AVIA hosted an anti-piracy panel, including the DIP and Economic Crimes Suppression Division, at the AVIA Thailand-in-View event, to highlight concerns around

³ <https://www.bangkokpost.com/business/general/2697809>

piracy to a wide audience. AVIA and CAP liaised with the MDES Permanent Secretary regarding the progress of CAP member site blocking applications and were encouraged by the understanding shown towards the concerns of rights holders. That said, given the efforts made on the part of AVIA and its members to reach out to the relevant authorities, we hope that substantive action and effective site blocking enforcement follows.

AVIA recommends that the US urge the Thai 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 are complied with.

Vietnam

Although Vietnam has always had issues with more traditional forms of piracy, like many other markets, the recent years have seen 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 globally such as fmovies, motphimtv.com and motchill.net.

In 2023, AVIA's YouGov survey showed that around 58% of Vietnamese consumers admitted to watching pirated content, a slight decrease from 61% in 2022. However, more positively, there is a blocking regime in place, but it can be more expansive and information about the procedures involved should be more transparent. The 11th edition of the US Chamber International IP Index also notes that one of the key areas of weakness in Vietnam continues to be existing gaps in copyright protection, including a lack of measures to address online infringement, but at the same time, the Index also recognised Vietnam's efforts to coordinate IP enforcement, indicating some improvement.

Most popular piracy websites targeting and accessed by Vietnamese consumers are run by locals based in the country using offshore cloud services and proxies such as CloudFlare. However, law enforcement agencies have not been effective in apprehending operators of these websites. Additionally, we understand that the Authority of Broadcasting and Electronic Information (ABEI) said that their enforcement of IP rules is a public service reserved for businesses who pay tax in Vietnam. Those foreign companies whose products are pirated need to localise and pay tax in Vietnam in order for ABEI to process their complaints about piracy in Vietnam.

Although there is an attempt for inter-agency collaboration in the fight against online piracy by the Ministry of Information and Communications, the Ministry of Culture, Sports and Tourism, and the Ministry of Public Security to establish a specialised unit to tackle copyright issues, it remains to be seen how effective this unit will be at tackling present enforcement issues given recent regulatory changes.

In 2023, Vietnam amended the Intellectual Property (IP) Law to promote cooperative action against online piracy and provide intermediaries with defined responsibilities related to copyright infringement. Decree No. 17/2023/ND-CP⁴ detailed some articles and enforcement measures of the 2022 IP Law, providing long-awaited, necessary guidance for the

⁴ <https://vietanlaw.com/decreed-no-17-2023-nd-cp-elaborating-the-law-on-intellectual-property-regarding-copyrights-and-related-rights/>

implementation of this Law by listing the process to work with ISPs to take down infringing content per each entity's request. This decree, which took effect on 26th April 2023, makes it clear that ISPs are only liable for direct compensation if there is an infringement or if they act as a secondary source of distributing digital information obtained by copyright infringement. However, this has to be determined by judgment through a court or a competent state agency or the IP holder.

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 as well as enforcement of 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. Whilst initially encouraged by the announcement from the Ministry of Public Security of their investigations into the operators of notorious piracy site, www.phimmoi.net, unfortunately, over a year later, the case has not reached the trial stage yet⁵. We also hope that enforcement efforts will continue against the Phimmoi copycat sites that have sprung up since the original site came down. We recommend that the US dialogue should focus on the 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).

⁵ 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