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Economic Cooperation**

UNITED STATES
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Report on Results of Survey Questionnaire on Domestic Treatment of Illicit Streaming Devices by APEC Economies

Intellectual Property Experts Group

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Introduction

In March 2020, during the 50th Meeting of the Intellectual Property Rights Experts Group (IPEG) of the Asia-Pacific Economic Cooperation (APEC) held in Putrajaya, Malaysia, the United States presented a proposal to survey Member Economies (MEs) on the domestic treatment of illicit streaming devices (ISDs) in order to create a baseline of information on how such devices were treated legally in the APEC region.

The United States, joined by project proposal co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, subsequently circulated a Concept Note to Conduct a Survey on the Treatment of ISDs Under Domestic Law. The Concept Note was deemed endorsed by IPEG on 8 April 2020, following its circulation by email, and was assigned APEC Project No. IPEG 01 2020S.

The United States also circulated a draft of a proposed survey questionnaire to all IPEG Member Economies and solicited comments on its wording. After receiving suggested revisions and responding to inquiries from several Member Economies, the revised questionnaire was finalized in response to received comments.

On 20 April 2020, the APEC Secretariat circulated the survey questionnaire to all IPEG Member Economies, with an initial requested response deadline of 29 May 2020. Due to the ongoing pandemic, and at the request of several economies, the submission deadline was extended on several subsequent occasions to: 10 June, 19 June, 15 July, 14 August, and 24 August 2020. On 21 September 2020, the United States received the final submission from Member Economies, resulting in a final tally of 21 completed questionnaires, which is a 100 percent response rate.

Acting on behalf of the United States, the United States Patent and Trademark Office (USPTO) collated and analyzed the responses and made a presentation on the preliminary results of the survey questionnaire at the 51st Meeting of the IPEG on 8 October 2020. The USPTO subsequently drafted this summary report.

Background

Globally, consumers are increasingly relying on Internet Protocol Television (IPTV) technology to access audiovisual entertainment content.¹ Consistent with global trends, subscriptions to legitimate subscription streaming services, such as those operated by Amazon, Apple TV, CBS/Viacom, Crunchyroll, Disney, ESPN, HBO, Hulu, iFlix, NBCUniversal, Netflix, Quibi, Spotify, and Vudu, have increased exponentially.² Unsurprisingly, given the easy access to streaming technology, consumers have also been increasingly turning to illegitimate sources for their entertainment content. In 2020, this technological accessibility, combined with the COVID-19 pandemic, spurred exponential growth in both legitimate and illegitimate services.³

An ISD is a device or application that allows consumers to stream unlicensed content from an illegal streaming server. Such devices and applications are appealing to some consumers because they are easy to purchase and use and they provide access to entertainment content on either a free or extremely minimal cost basis.

While copyright laws may address the underlying content infringement that takes place, the use of ISDs is extremely damaging to the creative industry and rights holders. When combined with the content aggregation business model of streaming services, ISD usage undermines the innovation and intellectual property rights implicated, substantially leeches from financial and capital investment outlays, and drains the commercial viability of legitimate streaming services.

In addition, many consumers do not realize that ISDs may also pose serious cybersecurity threats by becoming an unrecognized vector for hacking and cyber-intrusions. This happens when the illicit apps preinstalled on ISDs contain destructive or privacy-violating malware that enable cyber hackers and other bad actors to access the home networks of consumers.⁴

As the internet of things (IOT) continues to expand, the proliferation of connected devices in the consumer, enterprise, healthcare, and transportation sectors, when combined with certain internal organizational network vulnerabilities, may result in security blind spots that cybercriminals can exploit to launch attacks to compromise IOT devices. Threats to personal, industrial, and public security may be created by numerous connected devices, such as smart security cameras and webcams, fax machines, smart phones and TVs, smart light bulbs, routers, printers, coffee machines and other kitchen appliances, smart speakers, smart home devices (e.g., smart thermostats), and even internet-connected gasoline/petrol station pumps.⁵

Therefore, the issue of the domestic treatment and legal handling of ISDs is both timely and a pressing concern for content creators, owners, and rights holders. This report presents the results of the survey questionnaire.

1 Liam Sigaud, "[Illicit streaming devices are more popular than ever, and hackers are taking note](#)," Hill (18 May 2019).

2 Julia Alexander, "[The entire world is streaming more than ever—and it's straining the internet](#)," Verge (27 March 2020).

3 "[The Exponential Growth of The Global OTT Streaming Market Due to COVID-19](#)," InPlayer.

4 "[Fishing in the Piracy Stream: How the Dark Web of Entertainment is Exposing Consumers to Harm](#)," Digital Citizens Alliance (April 2019), at 3-5, 8, 14, 17-19.

5 Rudra Srinivas, "[10 IoT Security Incidents That Make You Feel Less Secure](#)," CISO MAG (10 January 2020).

Methodology

In April 2020, the APEC Secretariat, on behalf of the United States, circulated a survey questionnaire to all APEC economies.

The questionnaire was designed to obtain information about the domestic treatment of ISDs in APEC economies and included both quantitative and qualitative questions, with the former intended to facilitate the collection of data for analysis and the latter intended to assist in identifying enforcement challenges and opportunities to address the issue in possible future discussions within IPEG.

The questionnaire consisted of 16 questions, providing for direct “YES” or “NO” answers, as well as opportunities for economies to provide explanations of responses and/or elaborate on answers, or to provide examples or descriptions of specific actions undertaken by an economy.

Highlights of Findings

The major highlights of the results gleaned from the survey responses are:

- A substantial number of respondents (15) stated that they believe that the use of ISDs, and the economic harm it causes to broadcasters and content owners, is problematic, and only two reported that ISDs are not viewed or seen as a problem in their economy.
- Nearly all economies (20) reported that they had either civil or criminal statutes or laws in place to address the issue of ISDs, and most have at least one additional approach in place to combat ISDs, such as judicial decisions or voluntary industry practices.
- A majority of respondents (15) believe that the current legal framework in their economy suffices to investigate and/or take action against the sale or distribution of ISDs, and that the current civil damages and/or penalties in their economies are sufficient to deter the sale or distribution of ISDs.
- Eleven economies reported conducting some type of enforcement action taken against ISDs during the past 12 months, with most such actions being law enforcement or regulatory agency investigations into either the sale or the advertising/offering for sale of ISDs.
- Eleven economies reported having worked with foreign law enforcement agencies in their investigations.
- Less than half of the respondents (10) reported having used non-legal approaches, such as public consumer awareness campaigns, online educational materials, or public or social media advertising to educate consumers about the risks of using ISDs.

Survey Results

1. Severity of the Problem of ISDs

Respondents were asked to assess the scale of the problem of ISDs and the economic harm they are causing to broadcasters and content owners in their economies.

The majority of survey respondents (70.0%) believe that the use of ISDs and the economic harm they are causing to broadcasters and content owners in their economies are at least minor problems.

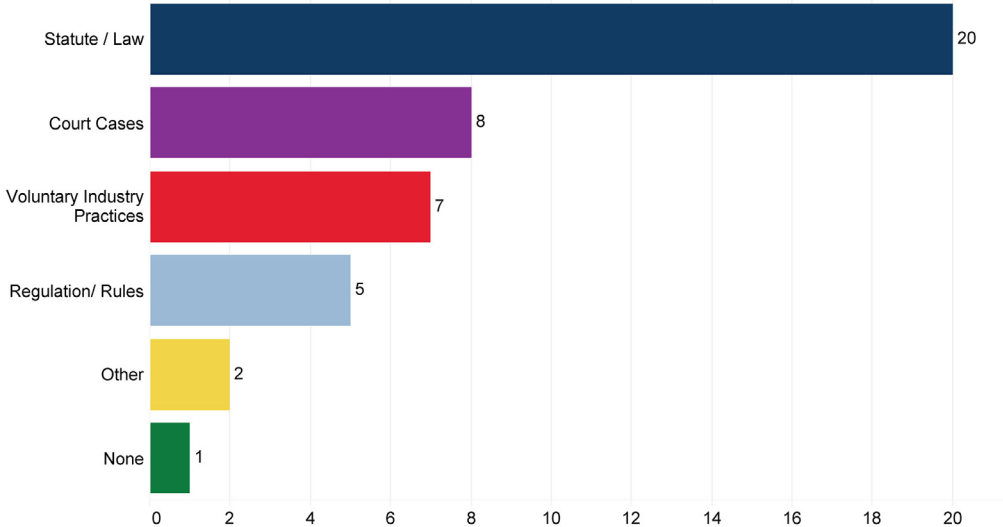
Specifically, 30.0% of respondents stated that ISDs are a minor problem, and 40.0% stated that they are a serious problem. Two respondents (10.5%) stated that ISDs and the economic harm they are causing to broadcasters and content owners in their economies are not problematic. No respondents indicated that the problems are “very serious.”

Four respondents (People’s Republic of China; Hong Kong, China; Japan; and Viet Nam) provided explanatory answers in the alternative. China indicated that it has not yet conducted an investigation or collected statistics regarding this question. Japan similarly indicated that the government has not yet undertaken a comprehensive investigation of this matter but reported that the Content Overseas Distribution Association (CODA) estimates the damage caused by ISDs to be serious. Hong Kong, China, indicated that the problem of ISDs has posed challenges to rights owners and IP law enforcement agencies around the world. Viet Nam stated that it does not have data to assess the scale of the problem of ISDs.

2. Approaches to Address ISDs

As shown in Figure 1, almost every respondent indicated it has approaches in place to address ISDs: 95.2% of respondents stated they have statutes or laws relating to ISDs, 23.8% have regulations or rules, 38.1% reported civil and/or criminal court cases involving ISDs, 33.3% reported voluntary industry practices, and 9.5% identified other approaches used to address ISDs. Only 4.8% indicated that there were no approaches in place.

Figure 1: Approaches in place in the economy to deal with illicit streaming devices (ISDs)



3. Sufficiency of Legal Framework to Efficiently Combat ISDs

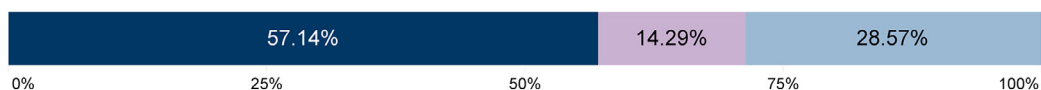
Respondents were asked if any feature in their current legal framework has been identified as needing revision to facilitate a more efficient investigation and/or action against the sale or distribution of ISDs.

Figure 2: Additional survey questions

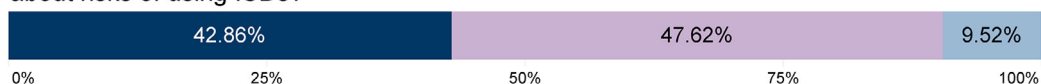
If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?



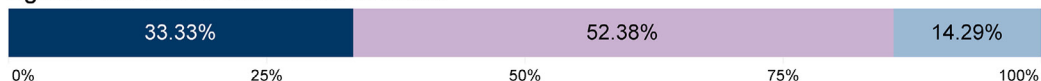
Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?



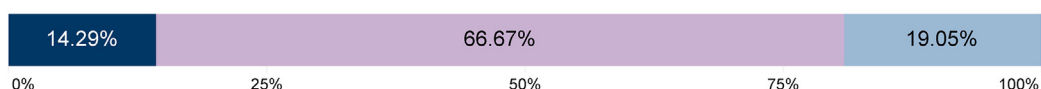
Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?



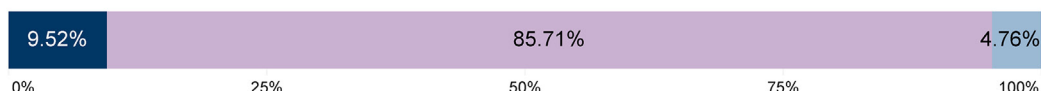
Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?



Does your economy maintain a database in which such enforcement actions are tracked?



Have you conducted or commissioned any studies, surveys, or reports on ISDs?



■ Yes ■ No ■ No Response

As shown in Figure 2, a majority (52.4%) of respondents expressed that no features in the current legal framework in their economies have been identified as needing revision to facilitate a more efficient investigation and/or action against the sale or distribution of ISDs.

Six MEs (33.0%) (Chile, Japan, Malaysia, Papua New Guinea, the Philippines, and the United States) reported that a feature(s) in the current legal framework of their economies has been identified as requiring revision to address ISDs.

Several of those MEs identified pending or proposed legislation to address this issue:

- Chile stated that rather than focusing on fighting the ISD technology itself, there is a proposed amendment that focuses on the act of illegally uploading, providing, and sharing copyrighted works. In addition, Chile stated that it is considering the necessity and possibility of reforming Chilean Intellectual Property (IP) law to better protect broadcasters from infringement that occurs through the use of ISDs.
- Japan indicated that there was pending legislation (Copyright Amendment Bill) scheduled to come into force on 1 October 2020, that defines “‘a website or an application regarded as especially leading the public to infringing contents’ or ‘a website or an application regarded as mainly used for exploitation of the infringing contents by the public’” as a leech site or a leech application. Japan further indicated that this amendment could be an enforcement mechanism to combat ISDs.
- Papua New Guinea (PNG) stated that its current copyright act does not specifically criminalize the sale or distribution of ISDs or identify these acts as requiring civil sanctions. It also indicated that it is planning to join the WIPO Internet Treaties soon and is currently updating its Copyright Act to be compliant with the treaties. Finally, PNG believes these undertakings will provide specific approaches for addressing the sale and distribution of ISDs.
- The Philippines stated that the current legal framework does not include a clear provision relating to jurisdiction of IP enforcement agencies over ISDs and that there is proposed legislation to amend the Optical Media Act to include clear provisions regarding jurisdiction over acts of piracy, including the use of ISDs.
- The United States pointed to the “streaming loophole” wherein, under current law, illicit streaming is only punishable as a misdemeanor, while illicit downloading or reproduction is punishable as a felony. The United States explained that, because streaming is now more prevalent, this discrepancy leaves the creative content industry at risk. It indicated that the consensus among law enforcement and IP agencies in the federal government is that existing criminal copyright law should be revised to provide stronger deterrent penalties for illicit streaming.⁶

Three MEs (China, New Zealand, and Peru) did not answer this question. However, they provided explanatory information.

- China did not provide a response but stated that it is now effectively fighting ISDs in accordance with its existing laws and regulations. China also indicated that it is amending its copyright law, and the amendments will be more conducive to taking action against ISDs.
- New Zealand indicated that its copyright act is under review, including liability and enforcement provisions, and clarified that no decision has been made yet as to whether the sale or distribution of ISDs will be addressed in the review process.

6 On 27 December 2020, President Trump signed the bipartisan COVID-19 relief and government funding bill, which incorporated legislation designed to increase criminal penalties for illicit streaming of copyright-protected content by including the language of a separate bipartisan bill, the Protecting Lawful Streaming Act, that amends Title 18 of the United States Code to make it a felony (rather than just a misdemeanor) to unlawfully stream copyright-protected content online for profit, with penalties of up to 10 years of imprisonment.

- Peru stated that the Ministry of Transport and Communications is required to analyze whether to include IPTV equipment in the list of restricted goods for importation.

4. Sufficiency of Civil Damages/Penalties to Deter Sale/Distribution of ISDs

Respondents were asked if the current civil damages and/or penalties provided for in their economies are viewed as being sufficient to deter the sale or distribution of ISDs. As shown in Figure 2, most respondents (57.1%) reported that civil damages and/or penalties provided for in their economies are sufficient to deter the sale or distribution of ISDs.

Two respondents (Peru, Philippines) do not view the current civil damages and/or penalties provided for in their economies as being sufficient to deter the sale or distribution of ISDs. Specifically, the Philippines stated that the statutory fines and other issuances from the Optical Media Board (OMB) are insufficient to deter sale or distribution of ISDs but indicated that the prison sentences provided under the relevant statutes are viewed as sufficient deterrents. Peru explained that despite the availability of civil damages/penalties, the supply of ISD equipment has not decreased.

Six MEs (Canada, China, Japan, Malaysia, New Zealand, and Thailand) did not answer this question. Several of those economies provided explanatory information in lieu of a response. Japan and New Zealand indicated that they had not yet considered the sufficiency of current civil damages. Canada indicated that stakeholder views vary on whether civil damages and penalties are sufficient. China stated that it is amending its copyright laws to increase compensation and penalties to curb the sale and distribution of ISDs.

5. Investigations and Enforcement Actions

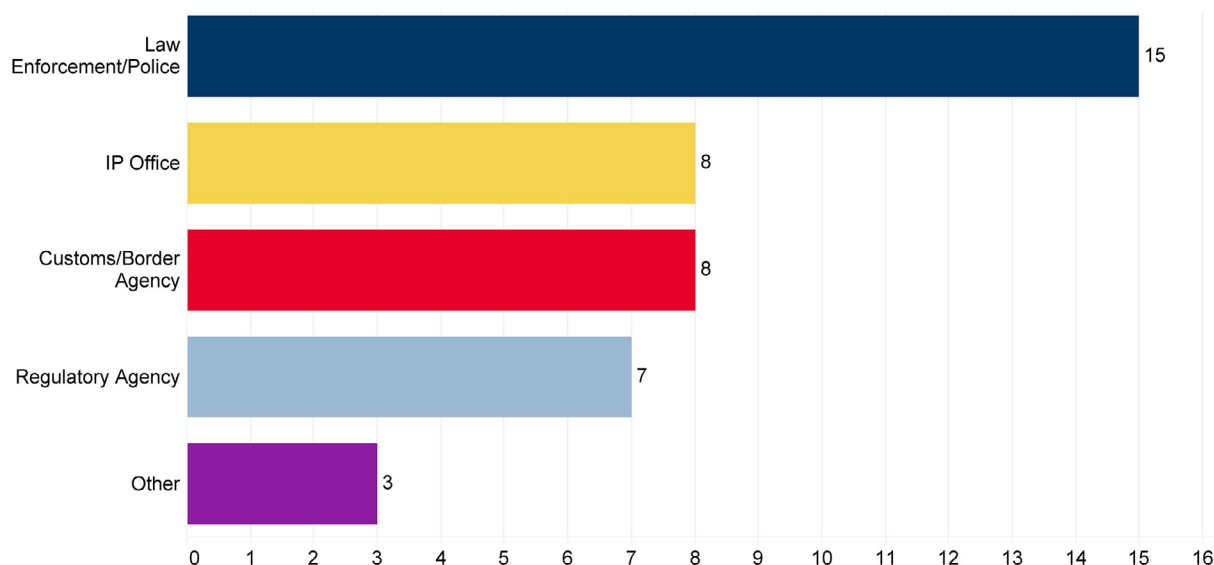
Respondents were asked to identify the primary agency (or agencies) responsible for conducting investigations into or enforcement actions against ISDs. All participants identified at least one agency in their responses. The majority of respondents (55.0%) identified multiple agencies that are primarily responsible for conducting investigations into or enforcement actions against ISDs.

A. Agencies Responsible for Conducting ISD-Related Investigations and Enforcement Actions

As shown in Figure 3, the agency most commonly identified as primarily responsible for conducting investigations into or enforcement actions against ISDs was law enforcement/police, with 71.4% of respondents selecting this response option. Further, 38.1% of respondents indicated that the IP Office has a primary role in conducting investigations into or enforcement actions against ISDs, while an additional 38.1% of respondents identified customs/border agencies as serving that role, and 33.3% of respondents reported that regulatory agencies are primarily responsible for those activities. 14.3% identified other agencies that were responsible for conducting investigations into or enforcement actions against ISDs.⁷

⁷ Respondents were able to choose more than one agency as having this “primary responsibility.” The resulting statistics indicate that some respondents selected multiple agencies. This overlap between agencies implies that, in some economies and in some circumstances, there is a sharing of the legal authority and responsibilities, or that agency partnerships are involved, in investigatory or enforcement actions taken.

Figure 3: Agency responsible for conducting investigations into or enforcement actions against ISDs



While Mexico did not select the “Other” response, it provided additional information in its response, indicating that the Office of the Attorney General of the Republic, through the Specialized Unit for the Investigation of Crimes Against Copyright and Industrial Property, is empowered to carry out investigations and issue sanctions.

Two respondents (Thailand, Viet Nam) identified other agencies primarily responsible for conducting investigations into or enforcement actions against ISDs. For example, Viet Nam indicated that Chairpersons of People’s Committees, as well as information and communication inspectorate agencies, and culture, sports, and tourism inspectorate agencies have a primary role in conducting investigations into or enforcement actions against ISDs.

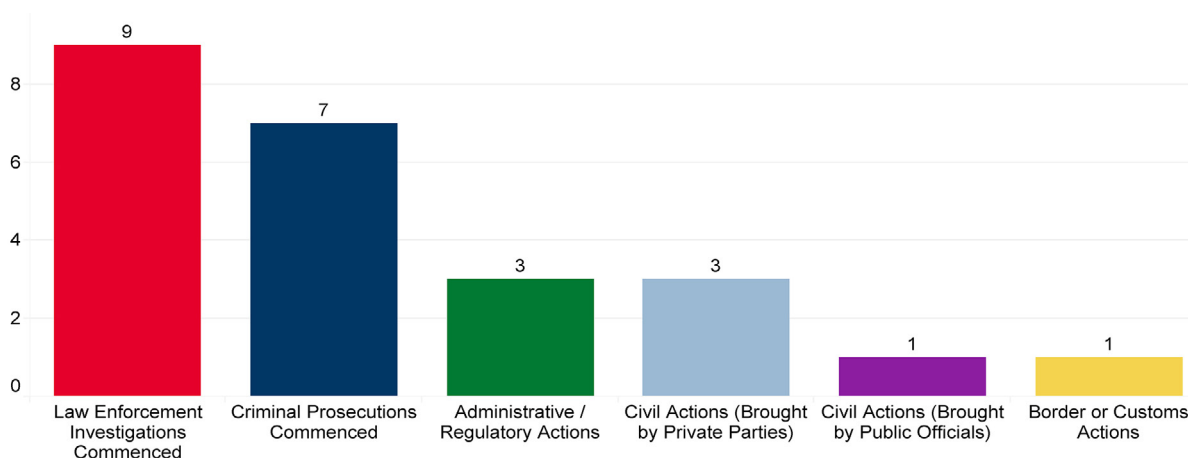
- Some respondents provided information on whether investigations or actions are instituted ex-officio or via a complaint by the rights holder.
- Some respondents (Brunei Darussalam and Russia) indicated that their agencies would generally only initiate investigations or enforcement actions upon receipt of a complaint by the copyright owner.
- Japan reported that Customs initiates enforcement actions based on applications from rights holders as well as ex-officio.
- New Zealand stated that, to the extent the sale and distribution of ISDs infringes copyright, the onus is on the rights holder to investigate and enforce its rights. However, to the extent the sale and distribution of ISDs is a criminal offense, Police, Customs, and the IP Office have powers to investigate and prosecute those offenses.
- Peru reported that in the administrative sphere, the onus is on the aggrieved party to make a complaint to the National Institute for the Defense of Competition and Protection of Intellectual Property.

The United States discussed one challenge to enforcement in its response: It remains difficult to seize streaming devices at the border because not all indications of whether a device is illicit are readily apparent.

B. Enforcement Actions Taken in the Past 12 Months

As shown in Figure 4, in response to whether any enforcement actions against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs had been taken in the past 12-month period, 66.7% of respondents indicated that more than one type of enforcement action had been taken. Of those respondents that indicated enforcement actions had been taken in the past 12 months, 42.9% indicated that law enforcement investigations had commenced, 33.3% stated that criminal prosecutions had commenced, 14.3% indicated that administrative or regulatory actions had been taken, and 4.8% stated that borders or customs actions had been taken. 14.3% of respondents indicated that civil actions relating to ISDs were brought by private parties, and 4.8% of respondents stated that civil actions relating to ISDs were brought by public officials.⁸

Figure 4: Enforcement actions taken against ISDs



The most common type of enforcement action taken was the commencement of law enforcement investigations. Hong Kong, China reported the highest number of law enforcement investigations commenced (23) and stated that the investigations were conducted with assistance from the industry and copyright owners. Chinese Taipei reported the second highest number of law enforcement investigations commenced (13) and stated that it uncovered 19 suspects in its investigations, as well as many illegal websites, and that the National Police Agency (NPA) and the Ministry of the Interior (MOI) have handed over these cases to the District Prosecutors' Offices for investigation.

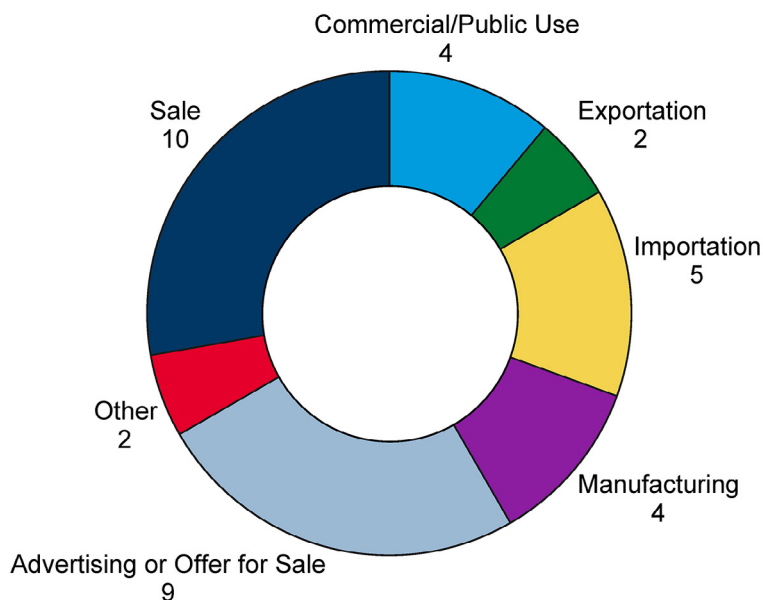
The second most common law enforcement action taken was criminal prosecutions. Thailand reported the highest number of criminal prosecutions and stated that the Office of the National Broadcasting and Telecommunications Commission, in cooperation with the Royal Thai Police, brought legal actions against unauthorized sellers or installers of TV boxes. Thailand further indicated that 205 devices were seized in these actions.

C. Type of Activities Against Which Action Has Been Taken

Respondents were asked to identify the type of activities against which enforcement action(s) has been taken against ISDs.

⁸ In some economies and circumstances, there is a sharing of the legal authority and responsibilities, or agency partnerships are involved, in investigatory or enforcement actions taken.

Figure 5: Type(s) of Enforcement Activity Taken



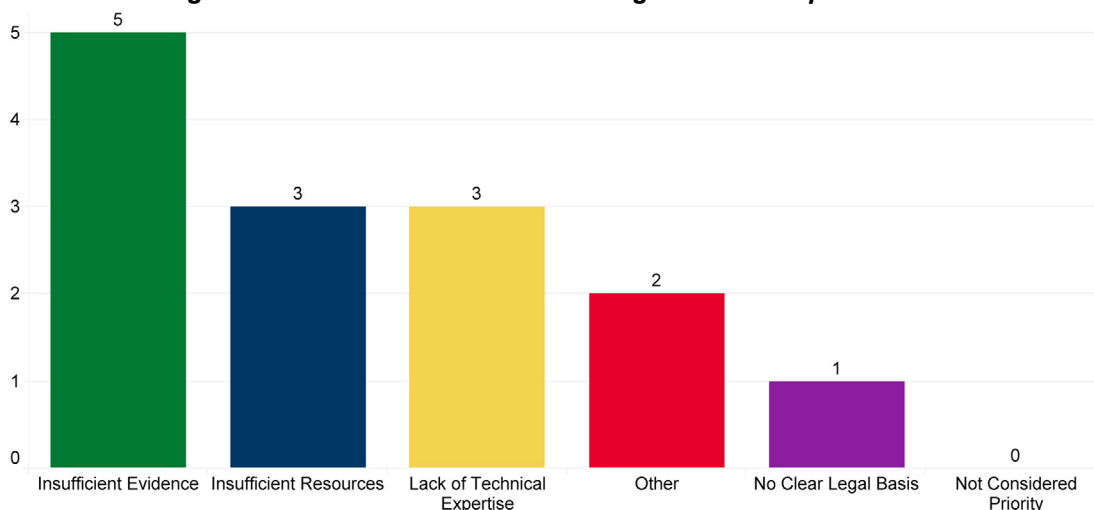
As shown in Figure 5, the most common type of activity against which action has been taken was the sale of ISDs (47.6% of respondents). 42.9% of respondents reported taking action against the advertising or offer for sale of ISDs, 23.8% stated that they have taken action against importation, 19.0% have taken action against commercial or public use, and 19.0% of respondents reported that they have taken action against manufacturing activities. The least common activity reported was actions against exportation, with 9.5% of respondents (Canada and China) selecting this response.

Finally, 9.5% of respondents identified other activities against which enforcement actions have been carried out. For example, Thailand indicated that action was taken against the unauthorized installation of ISDs.

D. Cases Investigated but Not Pursued

Respondents were asked to identify the most common reasons why a case was not pursued if any cases were investigated but not ultimately pursued. Nine MEs (Brunei Darussalam; Hong Kong, China; Indonesia; Republic of Korea (Korea); Malaysia; Mexico; Philippines; Chinese Taipei; and Viet Nam) responded to this question.

Figure 6: Reasons a case was investigated but not pursued



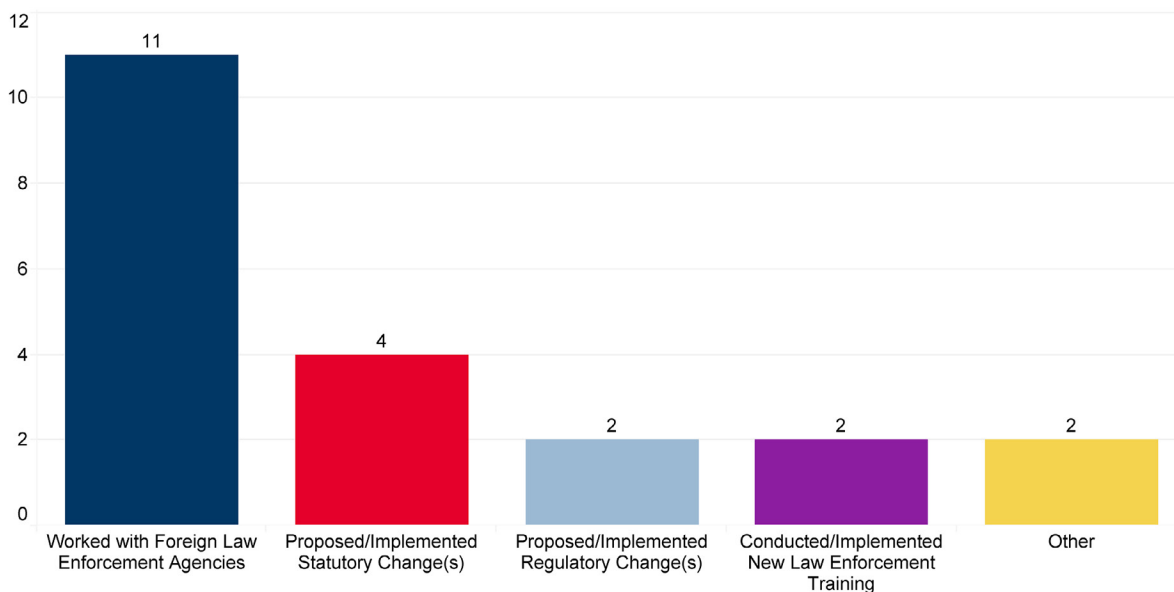
As shown in Figure 6, respondents most frequently identified “insufficient evidence” as a common obstacle to pursuing cases involving ISDs, with 23.8% of participants selecting this response. 14.3% of respondents pointed to insufficient resources, 14.3% of respondents reported a lack of technical expertise, and 4.8% of respondents identified a lack of a clear legal basis. No respondents indicated that a common reason cases were not pursued is that they are not viewed as a priority.

Two respondents (9.5%) reported that cases were not pursued for other reasons. For example, Mexico reported that a common reason a case was not pursued was that the applicant (rights holder) discontinued the legal process. Chinese Taipei reported that cases were not pursued for other reasons but indicated that it does not have any statistical data related to ISD cases.

E. Investigating and Prosecuting ISDs Connected to Illegal Streaming Servers Located Overseas

Respondents were asked whether they investigate or prosecute ISDs differently when ISDs are located overseas or outside their jurisdiction and if so, to identify the approaches that have been taken. As shown in Figure 2, 61.9% of respondents (Brunei Darussalam; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Mexico; Philippines; Chinese Taipei; United States; and Viet Nam) reported that this factor impacts investigation or prosecution strategies.

Figure 7: Approaches taken to address ISDs connected to servers located overseas or outside of jurisdiction



As shown in Figure 7, the most common approach taken to address ISDs connected to servers located overseas or outside of national jurisdiction was working with foreign law enforcement agencies. 52.4% of survey respondents (91.7% of those that responded positively to the survey question) have used this strategy. 19.0% of respondents proposed or implemented statutory changes, 9.5% have proposed or implemented regulatory changes, and 9.5% have conducted or implemented new law enforcement training. 9.5% indicated that other approaches were used.

Two MEs (Chinese Taipei and the United States) provided additional information on approaches taken to investigate or prosecute ISDs when illegal streaming servers are located overseas. Chinese Taipei indicated that when there is an international aspect to investigations relating to ISDs, typically

those cases involve issues within the United States' or China's jurisdiction. Chinese Taipei stated that it has entered into an MOU on IPR enforcement with the United States and a Cross-Straight Agreement on IPR Protection and Cooperation with China that facilitate the provision of relevant information to those economies when requesting assistance with investigations. The United States reported that through its Attaché Offices, Homeland Security Investigations (HSI) has worked with foreign law enforcement partners to investigate criminal organizations that facilitated piracy, to include illicit streaming devices and/or services.

Of those MEs that responded negatively, one respondent (Canada) provided additional explanatory information, reporting that it is not aware of any cases where the location of illegal streaming servers connected to ISDs presented an issue in an investigation or prosecution. Canada pointed to two court cases, *Bell Media Inc. v. GoldTV.Biz* (2019 FC 1432) and *Google Inc. v. Equustek Solutions Inc.* (2017 SCC 34), where the court issued website blocking and website delisting orders (respectively) that would prevent access to servers irrespective of whether the servers are located in Canada or abroad.

F. Use of Databases to Track ISD Enforcement Actions

Respondents were asked if they maintain a database in which enforcement actions are tracked (see Figure 2: Additional Survey Questions).

Most respondents (66.7%) reported that they do not maintain a database to track enforcement actions involving ISDs. Three respondents (Hong Kong, China; Thailand; United States) stated that they track enforcement actions, while 19.0% of respondents did not provide an answer to the question.

- Hong Kong, China, reported that the Customs and Excise Department (C & ED) maintains a database on past investigations and intelligence related to IP rights, but that this database is not available to the public to avoid prejudice in conducting law enforcement actions.
- Thailand indicated that the Office of the National Broadcasting and Telecommunications Commission maintains a database concerning ISDs and that the information in it, upon request and on a case-by-case basis, may be released to interested parties.
- The United States indicated that while it does not maintain a single, comprehensive database of all enforcement actions, individual investigative agencies maintain databases of IP-related enforcement actions. Specifically, within the Department of Homeland Security, HSI maintains an internal case management system, and Customs and Border Protection (CBP) uses a database to track seizure actions undertaken based on an underlying violation of 17 USC § 1201. Neither of these databases is made available to the public, nor are they accessible by local and state law enforcement.

Several MEs reported that they do not maintain a database but provided additional information about how enforcement actions are tracked:

- Chile reported that it did not maintain a database but also indicated that while it does not have a unified specific database relating to ISD enforcement actions, when judicial authorities issue orders on enforcement actions, they are aggregated into a publicly accessible file.
- Similarly, Canada expressed that while it does not maintain a centralized database of enforcement actions, each relevant federal department or agency maintains its own separate database that is shared internally and externally as needed. Canada also noted that enforcement actions rendered by the Federal Court, the Federal Court of Appeal, the Supreme Court of Canada, and some provincial courts are publicly available and that, as for criminal matters, all police forces maintain a database of investigations.

G. Studies, Surveys, and Reports on ISDs

Respondents were asked whether they have conducted any studies, surveys, or reports on ISDs (see Figure 2: Additional Survey Questions).

The majority of survey respondents (85.7%) reported that they have not conducted or commissioned any studies, surveys, or reports on ISDs. Only two respondents (Canada and Mexico) indicated they have conducted or commissioned studies, surveys, or reports.

Canada reported that it commissioned a study in 2018 titled “STUDY OF ONLINE CONSUMPTION OF COPYRIGHTED CONTENT: ATTITUDES TOWARD AND PREVALENCE OF COPYRIGHT INFRINGEMENT IN CANADA,”⁹ and as part of that study surveyed Canadians on the use of ISDs. Canada also commissioned a study in 2016 titled “EXAMINATION OF THE ‘FOLLOW-THE-MONEY’ APPROACH TO COPYRIGHT PIRACY REDUCTION.”¹⁰

In its response, Mexico indicated that it had conducted a national survey that examined the prevalence of music and television piracy, among other areas.

Two respondents (China and New Zealand) did not respond to this question.

H. Non-legal Approaches to ISDs

Respondents were asked whether they use any non-legal approaches to combat the use of ISDs and to provide examples, citations, or links if so (see Figure 2: Additional Survey Questions).

A number of respondents (42.9%) indicated that they have used non-legal approaches such as public awareness campaigns, online educational materials, and public or social media ads to educate consumers about the risks of using ISDs in order to combat the use of ISDs. MEs that reported having utilized non-legal approaches to combat use of ISDs include: Canada; China; Hong Kong, China; Indonesia; Mexico; Peru; Philippines; Chinese Taipei; Thailand; United States. However, 47.6% of respondents reported that they have not used any non-legal approaches to combat ISDs; two respondents did not provide a response.

Examples of non-legal approaches identified by respondents include the following:

- Canada conducted a survey (“Attitudes and Prevalence of Copyright Infringement in Canada”) to help build awareness, as well to develop online educational tools.
- Hong Kong, China, reported that it has implemented a number of public outreach and educational programs to enhance public awareness of and respect for IP rights. These include, for example: a program where youngsters pledge not to engage in internet piracy activities, a school visit program to increase awareness of IP rights and promote anti-piracy messages, and an ambassador program that recruits law students to promote anti-piracy and anti-counterfeiting behaviors to young people.
- The use of educational materials was noted by Mexico in its use of educational videos to combat ISD use, and the United States has used audio recordings, online consumer advisories, and discussion forums to warn consumers about the risk of ISDs and to combat the use of ISDs.

9 Kantar TNS, “[Final Report: Study of Online Consumption of Copyrighted Content: Attitudes Toward and Prevalence of Copyright Infringement in Canada](#),” for Innovation, Science and Economic Development Canada, Government of Canada (30 March 2018).

10 Circum Network Inc. for Canadian Heritage, “[Final Report: Examination of the ‘follow-the-money’ approach to copyright piracy reduction](#),” for Canadian Heritage, Government of Canada (14 April 2016).

- The Philippines reported that the OMB holds an annual Anti-Media Piracy Summit each year and that the 2019 summit included a discussion of ISDs. The Philippines also indicated that the Intellectual Property Office of the Philippines (IPOPHL) promotes legal streaming through its social media account and on its website.
- Chinese Taipei has used educational advocacy as a tool to combat the use of ISDs.
- Thailand highlighted its use of public outreach programs to educate technical shops, entrepreneurs, and the public about ISDs, and noted that in 2019, it conducted 205 public outreach projects in Bangkok and provincial areas.
- The United States reported that the National Intellectual Property Rights Coordination Center and the Office of the Intellectual Property Rights Enforcement Coordinator have hosted several industry outreach events over the past few years that have provided forums for the discussion of concerns and experiences related to illicit streaming and ISDs. The United States also stated that the Federal Trade Commission (FTC), on its website, warns consumers about the risks associated with using ISDs.

Conclusion

The proposed project and implemented survey questionnaire received broad support across the membership and resulted in an exceptionally high response rate among MEs. The issue of the availability of ISDs in the marketplace has been identified as a current and growing threat to content producers, distributors, and others.

Further, in the accompanying comments to their questionnaire responses, several MEs suggested that addressing challenges raised by such devices could be both a potential policy issue for future discussion and a timely operational law enforcement issue for training and capacity building in the region. As such, this issue warrants further discussion within APEC, and IPEG in particular.

Finally, based on the exponential growth of streaming services witnessed globally during the past year, in combination with the greater use of and reliance on technological platforms to receive entertainment and informational services, it is anticipated that the issue of ISDs will continue to present a challenge for policymakers and law enforcement going forward.

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Appendix 1: Proposal by the United States (March 10, 2020)

Proposal to Conduct Survey on the Treatment of Illicit Streaming Devices (ISDs) Under Domestic Law in APEC Economies – Submitted by the United States of America

Proposal

The United States would like to take this opportunity to propose conducting a survey of APEC economies on their domestic treatment of, and approaches to, illicit streaming devices (ISDs) under either national laws or regulations.

Intended Use

Survey results would be used to establish a baseline of information on how such devices are dealt with in the APEC region, with the goal of informing additional IPEG work or activities addressing the issue, including the possible adoption of a best practices document or conducting focused workshops or seminars to build capacity of relevant official agencies and law enforcement authorities.

Background

The manufacture and sale of media boxes or ISDs has reflected the growth of broadband Internet penetration and is a growing trend globally with more and more consumers getting their television and other content from streaming services.

In the APEC region, according to a survey conducted in late 2018 to early 2019, by the Asia Video Industry Association Coalition Against Piracy, the usage of ISDs is increasing and that the percentages of consumers now using ISDs in the following economies are as follows: Thailand (45%); Philippines (28%); Malaysia (25%); Singapore (15%). In addition, the survey found that the percentages of consumers who purchased an ISD and then cancelled their legal pay TV subscriptions were: Thailand (69%); Malaysia (60%); Singapore (28%); and the Philippines (18%).¹¹

While legitimate streaming platforms, such as HOOQ, Roku, and Apple TV exist that only allow licensed content to be streamed through their devices, ISDs continue to appeal to a certain segment of the market.

Some examples of the growing issue in the APEC region:

- In 2017, Canadian cable broadcasters and content companies filed suit against the operator of a website that provided a library of software add-ons that enabled video streaming on Android set-top boxes, alleging copyright piracy and sought injunctive relief to enjoin the sale of the devices. While the defendants appealed the granting of a preliminary injunction, the Federal Appeal Court of Montreal denied the appeal,¹² and the injunction remained in effect until the case was final.¹³ In an interesting feature of the court's order granting the preliminary injunction, the plaintiffs were allowed to amend their request for a preliminary injunction to add additional defendants as they discovered them.

11 Thomas, Jason. "Illicit Streaming Devices a Growing Concern." The ASEAN Post, 25 Feb. 2019, <https://theaseanpost.com/article/illlicit-streaming-devices-growing-concern>.

12 PI Order issued 1 June 2016, and appeal order issued March 2017.

13 Court's decision and judgment was final in February 2018. See Financial Post at: <https://business.financialpost.com/telecom/bell-rogers-quebecor-advance-in-piracy-lawsuit-against-the-operator-of-a-montreal-website>

- In Shenzhen, China, police raided a factory where ISDs were being loaded with infringing apps that facilitated pirating of content owned by ABS-CBN, the Philippine media and entertainment network.¹⁴ The two owners and operators of the factory were arrested along with two senior programmers. This was the culmination of an eight-month investigation initiated by ABS-CBN into the sales and distribution of the “Filstream” brand of ISD which was marketed and sold around the world before the factory was closed down permanently by Chinese authorities.
- In late 2017, the District Court of Hong Kong sentenced three individuals to imprisonment for selling and distributing the “Maige Box” ISD.¹⁵ The Court found that the individuals were guilty of “providing a circumvention device or service” and “conspiracy to defraud.” This represented the first time that those charges had been successfully applied in a criminal prosecution of an online piracy case in Hong Kong. This case began in 2014, when the Hong Kong Customs raided four residences, a warehouse, and an electronics retail outlet, arresting nine persons and seizing 38 ISDs. The pirated content belonged to Hong Kong media companies and international concerns such as; PCCW, TVB, BBC, HBO, and the NBA among many others. Based on this decision to utilize the charge of “conspiracy to defraud” content companies can now proceed more confidently against other ISD sellers and distributors and not have to rely on the Hong Kong copyright law.
- In Singapore, four media content companies filed a civil action against two Singaporean companies and their directors for infringement offenses contained in the Singapore Copyright Act. The plaintiffs included two local television operators, Singtel and StarHub, and international media companies, Fox Networks and the Premier League. The plaintiffs worked with the Coalition Against Piracy (CAP) an anti-piracy effort by the Asia Video Industry Association, formerly Cable and Satellite Broadcast Association of Asia (CASBAA). In the court’s final decision, following guilty pleas by the defendants, one of the corporate defendants was ordered to pay a fine of S\$160,800 and its director was sentenced to 12 weeks imprisonment and fined S\$5,400.¹⁶
- In the United States, the first enforcement efforts against sellers and distributors of ISDs came through civil litigation by foreign content creators and a US licensed distributor targeting sales of the ISDs to foreign expats looking for content in their native languages, primarily Korean, Mandarin Chinese, and Cantonese Chinese,¹⁷ with cases initially filed in California by Munhwa and the Korean Broadcast System (KBS), and a subsequent case filed by CCTV. Since the defendants in both cases, Create New Technology and TVPad, did not appear in the litigation, default judgments and permanent injunctions were entered against them prohibiting the sale of the TVPad devices.¹⁸ More recently, US-based content creators have begun to sue sellers and distributors of ISDs.¹⁹

14 Asian Journal, 2 March 2017.

15 Broadband TV News, 28 December 2017, Robert Briel.

16 See: <https://www.mirandah.com/pressroom/item/singapores-agc-appeals-against-potentially-excessive-sentences-for-sale-of-android-tv-boxes/>

17 DISH TV v TVPad cases; *China Central Television et al. v. Create New Technology HK Limited et al. (TVPad)*, No. CV 15-01869 (C.D. Cal. filed 13 March 2015).

18 In the KBS case, damages of US\$65 million were awarded and in the CCTV case, damages of US\$345 million were awarded.

19 *Netflix Studios, LLC et al. v. Dragon Media Inc. et al. (Dragon Box)*, No. 2:18-cv-00230 (C.D. Cal. filed 10 January 2018) and *Universal City Studios Productions LLLP. v. TickBox TV LLC. (TickBox)*, No. 2:17-cv-07496 (C.D. Cal. filed 13 January 2018).

The above examples illustrate that content creators and copyright owners and their licensed distributors are taking innovative approaches to combat the spread of these Internet based ISDs. However, with the increasing sale of smart televisions around the world that can connect directly to the Internet, this form of copyright piracy may be supplanted with unscrupulous television manufacturers incorporating infringing apps directly into the software of their sets.

Survey Design and Report

In order to gain a clearer sense of the legal and regulatory enforcement landscape regarding ISDs in the APEC region, a survey would be prepared and distributed to collect information on the legal, statutory, or regulatory approaches currently in place or being considered in APEC economies dealing with ISDs.

The proposed survey would seek to identify both the current law of the responding Member Economies and any pending legislation or proposed legal initiatives that Member Economies might identify. A subsequent report would summarize and present the results submitted by the responding Member Economies in tabular format.

Methodology

The following methodology is proposed to be used in the preparation of a report:

1. The report would summarize the questions asked in the survey;
2. The report would identify those Member Economies that responded;
3. The report would describe the approaches taken by the responding Member Economies; and
4. The report would contain any examples provided by Member Economies of recent legal actions or approaches taken, both successful and unsuccessful, in dealing with ISDs.

Conclusion

The United States believes the issue of legal handling of ISDs is both timely and a pressing concern for content creators, owners, and right holders. Obtaining more detailed information as to the approaches being taken by APEC economies in dealing with this technological threat to copyright would be a solid and important step in understanding the scope and legal landscape of this issue, with the goal of advancing future policy discussions within IPEG.

Appendix 2: Concept Note

APEC Self-Funded Project Proposal Coversheet

Submit through APEC Secretariat Program Director. Ensure that the proposal is no longer than 3 pages.

Project Title:	Survey on the Treatment of ISDs Under Domestic Law
Project Number (Assigned by Secretariat):	
Committee / WG / Sub-fora / Task-force:	Intellectual Property Rights Experts' Group (IPEG)
Proposing APEC economy:	United States
Co-sponsoring economies (if any):	Japan; Mexico; Peru; Chinese Taipei Thailand
Date approved by fora:	
Expected start date:	1 April 2020
Completion date:	30 September 2020
Project summary: (Describe the project in under 150 words . Your summary should include the project topic, goals, planned activities, timing and location. You must provide more details information by answering the questions on the next page). (Summary <u>must be</u> no longer than the box provided. Cover sheet <u>must fit</u> on one page)	<p>The United States will conduct a survey on treatment of, and approaches to, illicit streaming devices (ISDs) under domestic laws or regulations, with results used to establish a baseline of information on how such devices are dealt with in the APEC region and inform future IPEG work, including possible adoption of a best practices document or building capacity of relevant officials.</p> <p>The survey would capture information on the domestic legal framework and identify any pending legislation or regulatory initiatives. The methodology used would: 1) summarize the questions posed; 2) identify respondents; 3) describe approaches taken by respondents; and 4) contain examples provided by respondents of recent legal actions in dealing with ISDs. The United States will present a summary report at the 2020 SOM3 IPEG meeting.</p> <p>The United States believes the legal handling of ISDs is timely and a pressing concern for content creators, owners, right holders, and law enforcement.</p>
Total cost of project (USD):	US\$9,000

Project Overseer Information and Declaration:

Name: Sung Chang; Peter N. Fowler

Title: Director for Innovation and Intellectual Property; Senior Counsel for Enforcement, Office of Policy and International Affairs

Organization: Office of the United States Trade Representative; United States Patent and Trademark Office

As Project Overseer and on behalf of the proposing APEC economy, I will ensure that all Project outputs (Project reports, proceedings, slides, presentations, CDs, etc.), will comply with the APEC Publications, APEC Logo and Copyrights Guidelines before being published. I will also ensure that the project will comply with the Guidelines on Managing Cooperation with Non-

Members (the guidelines are at: <http://www.apec.org/About-Us/About-APEC/Policies-and-Procedures.aspx>). I am aware that I am solely responsible for project fund management in relation to fully self-funded projects.

Name of Project Overseer

Name of Fora Chair/Lead Shepherd

Date: March 30, 2020

Self-Funded Project Synopsis

1. Relevance – Benefits to region: What problem does the project seek to address? Does it have sustained benefits for more than one economy?

A survey of member economies on the treatment of ISDs under domestic law will provide baseline information of the various ways such devices are regulated and treated legally throughout the APEC region, thereby providing a basis for the development of future approaches that can be utilized to deal with this transnational issue.

Relevance – Capacity Building: How will the project build the capacity of APEC members (refer to capacity building goals, objectives and principles at Appendix K of the Guidebook).

A survey will provide basic informational background by which future capacity-building activities, such as seminars, workshops or other training activities, can be informed.

2. Objectives: State the key objectives of the project.

Survey results would be used to establish a baseline of information on how such devices are dealt with in the APEC region, with the goal of informing additional IPEG work or activities addressing the issue, including the possible adoption of a best practices document or conducting focused workshops or seminars to build capacity of relevant official agencies and law enforcement authorities.

3. Alignment – APEC: Describe specific APEC priorities, goals, strategies and/ or statements that the project supports, and explain how the project will contribute to their achievement.

A survey will assist in and support implementation of the APEC Anti-Counterfeiting and Piracy Initiative, as well as the general exchange of information concerning IPR measures and policies.

Alignment – Forum: How does the project align with your forum's work plan/ strategic plan?

A survey would align with the IPEG work on anti-counterfeiting and anti-piracy of intellectual property, specifically as to copyright protected content.

4. Methodology: How do you plan to implement the project? Briefly address the following:

- **Work plan: Project timelines, dates of key activities and deliverable outputs.**

We would anticipate circulating a proposed survey by April 1, 2020, with a two-month period of time for Member economies to respond, then presenting the survey results in the form of a Summary Report at the SOM III IPEG meeting in August 2020.

- **Beneficiaries**: Selection criteria for participants, beneficiary profiles (e.g. participants, end users, policy makers, researchers/ analysts, gender) and how they will be engaged.

Beneficiaries of the survey results will be IP offices, policy-makers, law enforcement agencies, and legal practitioners.

- **Evaluation**: Indicators developed to measure progress, project outcomes and impacts/ successes. Where possible provide indicators which could assess impacts on women.

Indicators may include the number of survey respondents, comprehensiveness of information provided, and examples provided of approaches in the domestic legal treatment of ISDs.

- **Linkages**: Information on other APEC and non-APEC stakeholders and how they will be engaged. If and how this proposal builds on (but does not duplicate) the work of other projects. How will this activity promote cross fora collaboration?

The survey results may be of interest to other IP-focused organizations and associations, as well as academics and law enforcement-oriented agencies.

Appendix 3: Survey Questionnaire

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: _____

Contact Information: Name: _____

Position/Title: _____

Office/Agency: _____

Email: _____

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem _____ Serious problem _____ Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)? check one or more:

Statute/Law: _____

Provide citation(s):

Regulation/Rules: _____

Provide citation(s):

Court Case(s): _____

Provide citation(s):

Voluntary Industry Practices: _____

Provide citation(s):

Other: _____

Provide citation(s):

None: _____

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES _____ NO _____

If YES, please describe any currently proposed actions to address this issue:

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES _____ NO _____

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: _____

Customs/Border Agency: _____

Regulatory Agency: _____

IP Office: _____

Other: _____

If you checked any of the above, please provide further information or specifics:

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: _____

Border or Customs Actions: _____

Civil Actions (brought by private parties): _____

Civil Actions (brought by public officials): _____

Law Enforcement Investigations Commenced: _____

Criminal Prosecutions Commenced: _____

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: _____
Advertising or Offer for Sale: _____ Commercial/Public Use: _____ Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____
Insufficient evidence: _____ Lack of technical expertise: _____
Not considered priority: _____ Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES _____ NO _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____
Proposed/implemented regulatory change(s) _____
Conducted/implemented new law enforcement training: _____
Worked with foreign law enforcement agencies: _____

Other _____

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES _____ NO _____

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES: _____ NO: _____

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES: _____ NO: _____

If YES, please provide citations, examples, or links to such materials:

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

Appendix 4: Individual Economy Responses

A. Australia

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: Australia

Contact Information: Name: Emma Shadbolt

Position/Title: Director – Copyright Reform & Policy section

Office/Agency: Department of Infrastructure, Transport, Regional Development, Communications

Email: copyright@communications.gov.au

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem Serious problem _____ Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: [Copyright Act 1968](#)

Provide citation(s):

Australia provides appropriate sanctions, in line with our international obligations, to address access to copyright infringing material and prevent the circumvention of technology protection measures (TPM), as well as the alteration and removal of electronic rights management information (ERMI). This includes a number of civil liability and criminal offence provisions, which are targeted at infringements on a commercial scale.

See Part V—Remedies and offences

- Division 2—Actions by owner of copyright (civil actions by copyright owners)
 - Sections 115 and 116: sets out general provisions for infringement including for electronic commercial infringement
 - Section 115A: Australia’s website blocking regime provides a mechanism to prevent the distribution of infringing content to ISDs, through court ordered injunctions
- Division 2A—Actions in relation to technological protection measures and electronic rights management information
- Division 5—Offences and summary proceedings (criminal actions)
 - Subdivision B – Substantial infringement on a commercial scale
 - Subdivision C – Infringing copies
 - Subdivision E – Technological protection measures
 - Subdivision F – Electronic rights management information
 - Subdivision H – Extra court orders
- Division 7—Seizure of imported copies of copyright material

Regulation/Rules: _____

Provide citation(s):

Court Case(s):

1. Injunction sought under section 115A of the Copyright Act (website blocking scheme) to prevent access to applications which allow illegal streaming.
2. Infringement of the right of an overseas broadcaster to communicate to the public their broadcasts due to a company streaming those broadcasts to ISD in Australia.

Provide citation(s):

1. [Television Broadcasts Limited v Telstra Corporation Limited \[2018\] FCA 1434](#)
2. [Connect TV Pty Ltd v All Rounder Pty Ltd \(No 5\) \[2016\] FCA 338](#)

Voluntary Industry Practices:

We are aware of at least two investigations led by rights holder coalitions which resulted in successful shutdowns of Australian operations.

Provide citation(s):

2017:

<https://www.alliance4creativity.com/news/ace-casbaas-coalition-piracy-close-australian-illicit-streaming-device-operation/>

2020:

<https://www.alliance4creativity.com/news/ace-scores-another-victory-over-australian-based-iptv-piracy-outfit/>

Other: _____

Provide citation(s):

None: _____

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

N/A

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

We are not aware of significant stakeholder concerns regarding Australia’s legal framework in relation to ISDs.

If YES, please describe any currently proposed actions to address this issue:

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

We are not aware of significant stakeholder concerns regarding Australia's legal framework in relation to ISDs.

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: Australian Federal Police

Customs/Border Agency: Australian Border Force

Regulatory Agency: N/A

IP Office: N/A

Other: _____

If you checked any of the above, please provide further information or specifics:

The Australian Federal Police (AFP) is responsible for conducting criminal investigations into serious and organized crime, which can include intellectual property (IP) offences relating to the organisers, major importers and/or wholesalers of infringing IP products. The AFP works with other law enforcement agencies to investigate IP crime and wherever possible ascertain links to organised crime. More information is available on [the AFP website](#).

Import provisions under the [Copyright Act 1968](#) allow the Australian Border Force (ABF), under certain circumstances, to seize goods that infringe copyright. These provisions give rise to Australia's Notice of Objection Scheme. More information on the scheme is on [the ABF website](#).

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

We are not aware of actions / investigations other than those noted in answers to question 2.

Administrative/Regulatory Actions: _____

Border or Customs Actions: _____

Civil Actions (brought by private parties): _____

Civil Actions (brought by public officials): _____

Law Enforcement Investigations Commenced: _____

Criminal Prosecutions Commenced: _____

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: _____
Advertising or Offer for Sale: _____ Commercial/Public Use: _____ Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

N/A

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____
Insufficient evidence: _____ Lack of technical expertise: _____
Not considered priority: _____ Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES _____ NO X _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____
Proposed/implemented regulatory change(s) _____
Conducted/implemented new law enforcement training: _____
Worked with foreign law enforcement agencies: _____
Other: _____

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

No.

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

No.

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

No.

If YES, please provide citations, examples, or links to such materials:

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

N/A

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

B. Brunei Darussalam

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: Brunei Darussalam Intellectual Property Office

Contact Information: Name: Amiriah Ali

Position/Title: Legal Officer

Office/Agency: Brunei Intellectual Property Office (BrulPO)

Email: amiriah.ali@agc.gov.bn

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem Minor problem Serious problem Very serious

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law:

Copyright Order, 1999

Copyright (Amendment) Order 2013

Provide citation(s):

Section 203

Section 203A

Regulation:

Provide citation(s):

Court Case:

Provide citation(s):

Voluntary Industry Practices:

Provide citation(s):

Other:

Provide citation(s):

None:

Q3: If the answer to Q2 above is "NONE", are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is "YES", please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your company that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

NO

If YES, please describe any currently proposed actions to address this issue:

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES NO

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: YES

Customs/Border Agency: NO

Regulatory Agency: YES

IP Office: NO

Other: _____

If you checked any of the above, please provide further information or specifics:

Usually they will only conduct upon complain by the copyright owner

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: NIL

Border or Customs Actions: NIL

Civil Actions (brought by private parties): NIL

Civil Actions (brought by public officials): NIL

Law Enforcement Investigations Commenced NIL

Criminal Prosecutions Commenced NIL

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: X Exportation: Manufacturing: X Sale:
Advertising or Offer for Sale: X Commercial/Public Use: X Other:

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

- Infringed goods were detained.
- Police report was lodged.
- Police conducted investigation.
- Referral to the Deputy Public Prosecutor

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: Insufficient resources: X
Insufficient evidence: X Lack of technical expertise: X
Not considered priority: Other:

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): to propose statutory changes

Proposed/implemented regulatory change(s): to propose regulatory changes

Conducted/implemented new law enforcement training:

Worked with foreign law enforcement agencies: to work with foreign law enforcement agencies

Other:

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

NO

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

NO

If YES, please provide information about or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

NO

If YES, please provide citations, examples, or links to such materials:

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Lack of awareness amongst users

Lack of awareness amongst the enforcement officials as well as the regulatory officials

Submission:

Please send the completed survey response by no later than 29 May 2020.

Thank you for your response.

C. Canada

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: Canada

Contact Information: Name: Nicholas Gordon

Position/Title: Acting Deputy Director

Office/Agency: Global Affairs Canada, Intellectual Property Trade

Email: Nicholas.Gordon@International.gc.ca

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem _____ Serious problem X Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: X

Provide citation(s):

In Canadian law, the issues associated with ISDs are addressed under two laws: the *Copyright Act* and the *Radiocommunications Act*.

- *Applicable sections of Canada's Copyright Act* are:
 - Sections 2.4 3(1)(f); s. 21; s. 27; s. 34(1); s. 41 and 41.1; s. 42(1), (2) and (2.1) <https://laws-lois.justice.gc.ca/eng/acts/C-42/index.html>
- As per s. 27 (2.3) of Canada's Copyright Act, "It is an infringement of copyright for a person, by means of the Internet or another digital network, to provide a service primarily for the purpose of enabling acts of copyright infringement if an actual infringement of copyright occurs by means of the Internet or another digital network as a result of the use of that service." Accordingly, a website that offers links to infringing content online or via ISDs could be liable for copyright infringement.
- *Applicable sections of the Radiocommunications Act* are:
 - Sections. 9, 10, 18

Regulation/Rules: _____

Provide citation(s):

Court Case(s): X

Provide citation(s):

- Bell Canada v 1326030 Ontario Inc, 2016 FC 612
https://www.smartbiggar.ca/_Archives/files/Order%20%28June%201%202016%29.pdf
- Bell Canada v. Red Rhino Entertainment Inc.
<https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/454456/index.do>
- Bell Canada v. Vincent Wesley dba MtlFreeTV.com, 2018 FC 66
<https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/306285/index.do>
- Allarco Alberta statement of claim
<https://www.scribd.com/document/444780786/Allarco-Alberta-statement-of-claim-OCR-pdf>
- Bell Canada v. Lackman <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/306460/index.do?r=AAAAAQALMjAxOCBGQ0EgNDIB>
- Bell Media Inc. v. GoldTV.Biz
<https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/424753/index.do>

- Google Inc. v. Equustek Solutions Inc.
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do>

Voluntary Industry Practices: X

Provide citation(s):

Canadian broadcasters have collaborated to raise awareness among industry stakeholders of how ISDs work. For example, Rogers Communications holds “piracy labs” to demonstrate how infringing technologies work and to support civil actions against alleged providers of ISD services and pirate IPTV services. Given the high level of

integration of the North-American market, many of the same voluntary industry practices adopted in the United States also extend to Canada (e.g. Google’s sweeping of Google Play apps that have Kodi add-ons that give access to infringing sites; Trusted Partner Network in the entertainment industry; Trustworthy Accountability Group (TAG) in the advertising industry)

Other: X

Provide citation(s):

In an attempt to deter access to online infringing content and promote legal consumption of content in Canada, Industry players created public websites where Canadians could find out where to legally stream shows and live sporting events. These websites helped develop Canada’s market for legitimate content. While many of these websites are no longer available, one still operates for the francophone market in Canada (<https://aimetoncinema.ca/>). Other similar websites not necessarily involving industry participation have since appeared for the Canadian market: <https://www.justwatch.com/ca/>; <https://watchincanada.ca/>).

In 2018, the *Study of Online Consumption of Copyrighted Content: Attitudes Toward and Prevalence of Copyright*, commissioned by Innovation, Science and Economic Development Canada, was published. It aimed to gather impartial data on digital copyright infringement, including the use of ISDs, to better understand the prevalence of consumption of infringing content and the drivers behind this behaviour.

None: _____

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES _____ NO X

In 2019, the House of Commons Standing Committee on Industry, Science and Technology, with support from the House of Commons Standing Committee on Canadian Heritage, completed a statutorily required review of Canada's *Copyright Act*. While no recommendations from the review dealt specifically with the sale and distribution of ISDs, as part of the review process, some stakeholders provided submissions to the Committee recommending stronger civil and criminal tools in the Copyright Act to combat piracy, including to prevent the sale and use of ISDs. (e.g., Rogers Communications' Brief: <https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10268870/br-external/RogersCommunicationsInc-e.pdf>)

The Reports from both Committees and stakeholder submissions are available online:

- <https://www.ourcommons.ca/Committees/en/INDU/StudyActivity?studyActivityId=9897131>
- <https://www.ourcommons.ca/Committees/en/CHPC/StudyActivity?studyActivityId=10045359>).

Of note, following those reports, the Federal Court of Canada, in *Bell Media Inc. v. GoldTV. Biz* (2019 FC 1432), issued the first website blocking order in Canada, requiring ISPs to block access to a number of websites providing infringing content (<https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/424753/index.do>). This decision clarified that injunctive website blocking is available as a remedy against copyright infringement in Canada. It should be noted that the injunction in *GoldTV* ordered the blocking of websites that are accessed either via the Internet or via ISDs. This case is currently under appeal.

If YES, please describe any currently proposed actions to address this issue:

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES _____ NO _____

NOTE: Stakeholders views vary on whether or not the current civil damages and penalties are sufficient to deter the sale or distribution of ISDs. In the recent Parliamentary review of the *Copyright Act*, two of Canada's largest communications companies, Rogers Communications and Bell Canada made submissions citing direct

negative implications of ISDs and piracy ([Rogers Communications](#); [BCE](#)). As part of the same review, submissions from civil society indicated that the current civil damages and/or penalties are sufficient to deter the sale or distribution of ISDs (e.g. [Public Interest Advocacy Centre](#)).

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: _____ X _____

Customs/Border Agency: _____

Regulatory Agency: _____

IP Office: _____

Other: _____

If you checked any of the above, please provide further information or specifics:

The Royal Canadian Mounted Police (RCMP) is a federal police force able to investigate intellectual property rights (IPR) crime, while local police forces at the provincial and municipal level, such as the Ontario Provincial Police, are also capable and undertake IPR crime-related investigations.

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: _____

Border or Customs Actions: _____

Civil Actions (brought by private parties): At least 7

Civil Actions (brought by public officials): _____

Law Enforcement Investigations Commenced: 0 RCMP; Provincial/Municipal
N/A

Criminal Prosecutions Commenced: _____

Note: While RCMP – Federal Policing has not taken any enforcement actions regarding ISDs in the past 12 months, this is not to say that no enforcement actions were taken in Canada. It is possible that other police of jurisdiction, such as the OPP or the SQ, or any municipal police force, could have taken enforcement actions with respect to ISDs, but the RCMP would not have access to that data.

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ X _____ Exportation: _____ X _____ Manufacturing: _____ X _____ Sale: _____ X _____

Advertising or Offer for Sale: Commercial/Public Use: Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

Civil Actions (brought by private parties):*

One legal action in particular ([Bell Canada et al v 1326030 Ontario Inc. dba ITVBox.net et al, 2016 FC 612](#)) has led to a nation-wide interlocutory injunction against, among other things, the “configuring, advertising, offering for sale or selling [...] manufacturing, importing, distributing” of “pre-loaded” ISDs. Links to this case and other most relevant cases are provided above in Q2. Please note that some of those actions were started before the last 12 months, but they are included because they are still active (e.g. rolling injunctions until merits of the case are heard, or are being appealed).

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____
Insufficient evidence: _____ Lack of technical expertise: _____
Not considered priority: _____ Other: N/A

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES _____ NO

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____
Proposed/implemented regulatory change(s) _____
Conducted/implemented new law enforcement training: _____
Worked with foreign law enforcement agencies: _____
Other:

Note: We are not aware of a case where the location of the illegal streaming servers connected to ISDs were an issue in an investigation or prosecution. The Federal Court of Canada, in *Bell Media Inc. v. GoldTV.Biz* (2019 FC 1432), issued the first website blocking order in Canada, requiring ISPs to block access to a number of websites providing infringing content (<https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/424753/index.do>). This decision clarified that website blocking is available as a remedy against copyright infringement in Canada. Furthermore, the injunction in GoldTV specified the blocking of websites that are accessed both via the Internet or via ISDs, and irrespective of whether the illegal streaming servers are located in Canada or outside Canada’s borders.

Furthermore, in an important decision in 2017, the Supreme Court of Canada, in *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, (<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do>), ordered Google to delist a website that sold infringing products from all search results in Canada and around the world. Like website blocking, delisting of websites offering illegal streaming content from global search results can also prevent access to servers located outside Canada.

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES _____ NO X

Monitoring of the marketplace to assess the extent of consumption of infringing content online in Canada, via ISDs or otherwise, is one of the priorities of Innovation, Science and Economic Development Canada and Canadian Heritage, the two federal departments responsible for copyright policy. While no centralized database of enforcement actions is maintained, each implicated federal department or agency monitors the marketplace and enforcement actions and maintains their own database. This information is shared internally and externally as needed, including through international benchmarking activities such as this one.

Enforcement actions in Canadian courts are public, and decisions rendered by the Federal Court, the Federal Court of Appeal, the Supreme Court of Canada, and some provincial courts are publicly available. In addition, there are a number of other sources available to the public to stay informed of litigation developments. ([IPPractice](#); [Canadian Legal Information Institute](#)).

Criminally, all police forces in Canada would maintain a database of investigations. However, the RCMP is but one of those police forces, and it would not necessarily have access to the databases of other police forces. Further, the databases would not be accessible either through one point of access or to the public.

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES X NO _____

If YES, please provide information or a link to such documents:

In 2018 Canada commissioned a study entitled “Online Consumption of Copyrighted Content: Attitudes Toward and Prevalence of Copyright Infringement in Canada”. As part of that study, a survey of Canadians was conducted, including on the use of ISDs. The final report and a summary infographic are available here: <http://www.ic.gc.ca/eic/site/112.nsf/eng/07650.html>.

In 2016, Canada commissioned a study entitled “Examination of the “follow-the-money” approach to copyright piracy reduction”. That study looked into streaming servers such as linking sites and streaming host sites. The final report is available here:

<https://www.canada.ca/en/canadian-heritage/services/copyright-policy-publications/follow-money-piracy.html>.

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES NO

If YES, please provide citations, examples, or links to such materials:

One of the reasons for conducting the survey of Canadians as part of the aforementioned study on Attitudes Toward and Prevalence of Copyright Infringement in Canada was to help build awareness and seek additional information to build online education tools.

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

On the issue more broadly of online piracy, Canada would note that in 2019, the House of Commons Standing Committee on Industry, Science and Technology completed a statutorily required review of Canada’s Copyright Act. As part of the review process, some stakeholders provided submissions (e.g. Rogers Communications’ Brief: <https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10268870/br-external/RogersCommunicationsInc-e.pdf>) to the Committee recommending stronger civil and criminal tools in the Copyright Act to combat piracy, including to prevent the sale and use of ISDs and introduce a website blocking regime in Canada. Ultimately, the Committee recommended that the Government of Canada “consider evaluating tools to provide injunctive relief in a court of law for deliberate online copyright infringement and that paramount importance be given to net neutrality in dealing with impacts on the form and function of Internet in the application of copyright law.” (Recommendation 27). The Committee’s report and stakeholder submissions are available here: <https://www.ourcommons.ca/Committees/en/INDU/StudyActivity?studyActivityId=9897131>

To support this parliamentary review, the House of Commons Standing Committee on Canadian Heritage also released a report regarding the Copyright Act, focusing on remuneration models for artists and creative industries. That Committee recommended that in response to illegal streaming “the Government of Canada increase its efforts to combat piracy and enforce copyright.” (Recommendation 6: https://www.ourcommons.ca/Committees/en/CHPC/StudyActivity?studyActivityId=1004_5359).

Of note, following those reports, the Federal Court of Canada, in *Bell Media Inc. v. GoldTV. Biz* (2019 FC 1432), issued the first website blocking order in Canada, requiring ISPs to block access to a number of websites providing infringing content (<https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/424753/index.do>). This decision clarified that injunctive website blocking is available as a remedy against copyright infringement in Canada. It should

be noted that the injunction in GoldTV specified the blocking of websites that are accessed either via the Internet or via ISDs. This decision is currently being appealed by one of the ISPs. The Government of Canada is monitoring the appeal and developments in the marketplace to ensure that the system is functioning effectively to prevent the use of ISDs and the consumption of infringing content online.

Criminally, RCMP – Federal Policing priorities include: National Security, Transnational Serious and Organized Crime, and Cybercrime. As such, the targeting and investigation of the possession, sale, distribution, use, etc. of ISDs has not emerged as a serious threat to the safety and security of Canadians and the Canadian economy at this time.

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

D. Chile

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

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Information:

Name of Economy: Chile

Contact Information: Name: Sebastián Molina Necul.

Position/Title: Head of the Intellectual Property Division.

Office/Agency: Undersecretariat of International Economic Relations.

Email: smolina@subrei.gob.cl.

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem _____ Serious problem X Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: **X**

Provide citation(s):

In the Chilean legal system, there are two laws that address the problems and harms caused by ISDs. The first one is the Chilean Intellectual Property Law (Law N° 17.336), which protects the rights of authors, performers and broadcaster against any illegal unauthorized use (uncovered by a limitation or exception), including reproduction on a commercial scale or piracy, and provides remedies of administrative, civil and criminal nature; this legislation can be considered as of general application to Copyright breaches. The second one is the Chilean General Telecommunications Law (Law N° 18.168), which sanctions the unauthorized distribution or commercialization of content carrying signals of television service providers, the importation, distribution or commercialization of devices or applications destined to decode such signals, and the supply of services for the installation of the aforementioned devices or applications; this legislation can be considered as of specific application to ISDs infringements.

Regulation/Rules: **Non applicable.**

Provide citation(s): **Non applicable.**

Court Case(s): **X**

Provide citation(s):

In the enforcement of laws N° 17.336 and N° 18.168, several police operatives and court cases have been initiated and completed. The Chilean Police of Investigations and the Prosecution Office have performed hundreds of raids in commercial premises and seized thousands of ISDs in them, handing over those responsible to the judicial authorities.

Voluntary Industry Practices: **X**

Provide citation(s):

Several of the principal and most important television and content service providers, such as VTR, Telefónica, DIRECTV, Turner Broadcasting Systems Latin America, TELECINE, HBO Latin America, Fox International Channels Latin America, ESPN, Discovery and CDF, have created the Alliance Against the Paid Television Piracy with the objective of confront Free to Air Piracy (a form of piracy that is achieved through ISDs) in Latin American countries. Among others, the Alliance conducts investigations, educates and raise awareness in the public, instructs government and judicial authorities, and promotes administrative and judicial action.

Other: Non applicable.

Provide citation(s): Non applicable.

None: No applicable.

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

Non applicable.

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Non applicable.

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES X NO

If YES, please describe any currently proposed actions to address this issue:

In the context of the discussions regarding the adoption of a novel international treaty for the protection of broadcaster and their content carrying signals in the cyberspace advanced inside the Standing Committee on Copyright and Related Rights (SCCR) of the World Intellectual Property Organization (WIPO), Chilean competent agencies in copyright and related rights subjects are examining and pondering the necessity and possibility of reforming the Chilean Intellectual Property Law to better protect broadcasters against infringements committed through the Internet, which includes ISDs.

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES X NO

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: X

Customs/Border Agency:

Regulatory Agency: _____

IP Office: _____

Other: _____

If you checked any of the above, please provide further information or specifics:

In the Chilean enforcement system, the agencies primarily responsible for conducting investigations and implementing measures concerning ISDs are the Police of Investigations and the Prosecution Office. The first agency has an especial brigade to investigate Intellectual Property infractions (Crimes Against Intellectual Property Brigade) and the second agency prosecutes the infractions.

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: _____

Border or Customs Actions: _____

Civil Actions (brought by private parties): _____

Civil Actions (brought by public officials): _____

Law Enforcement Investigations Commenced: 12

Criminal Prosecutions Commenced: 12

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: X

Advertising or Offer for Sale: X Commercial/Public Use: _____ Other: Distribution

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

Last year, the Police of Investigations performed 12 enforcement actions in 11 stores and 1 commercial cellar, seizing 1.396 ISDs. The aforementioned places advertised, distributed and sold ISDs to the public, providing them unauthorized access to content protected by Copyright and Related Rights through websites which generated revenue for the infringers by means of advertising and publicity.

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No information currently available.

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES _____ NO

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____

Proposed/implemented regulatory change(s) _____

Conducted/implemented new law enforcement training: _____

Worked with foreign law enforcement agencies: _____

Other:

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES _____ NO

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Although Chile does not have a specific and unified database regarding enforcement measures about ISDs, enforcement actions ordered by judicial authorities at the request of the Prosecution Office or the rightsholder are aggregated into a file or document case which is publicly accessible in the Judicial Power website.

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES _____ NO

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES _____ NO

If YES, please provide citations, examples, or links to such materials:

Although the Chilean competent authorities in copyright and related rights subjects have not used non-regulatory approaches to confront ISDs, several of the principal and most important television and content service providers have. Such approaches include collaboration initiatives with the academia and the public sector.

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

E. China

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: China

Contact Information: Name: Wang Xi

Position/Title: deputy director

Office/Agency: MOFCOM

Email: wangxi@mofcom.gov.cn

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

N.A. [Note:] China has not done any particular investigation or statistics regarding this question, so we are not in a position to make any judgment on the seriousness of ISDs on the basis of individual cases and abstract impressions. China takes IP protection including

copyright protection seriously. We hope to have further discussions regarding this issue and get to know the best practices in this area.

Not a problem_____ Minor problem_____ Serious problem_____ Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law:

Criminal Law Of The People's Republic of China ; Copyright Law of The People's Republic of China; The Supreme People's Court's Provisions on Several Issues of the Application of Law in the Trial of Civil Disputes Concerning the Infringement of the Right of Dissemination over Information Network (FASHI[2012]20)

Provide citation(s):

Criminal Law of The People's Republic of China

Article 217 Whoever, for the purpose of reaping profits, has committed one of the following acts of copyright infringement and gains a fairly large amount of illicit income, or when there are other serious circumstances, is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, and may in addition or exclusively be sentenced to a fine; when the amount of the illicit income is huge or when there are other particularly serious circumstances, he is to be sentenced to not less than three years and not more than seven years of fixed-term imprisonment and a fine:

1. copy and distribute written, musical, movie, televised, and video works; computer software; and other works without the permission of their copyrighters;
2. publish books whose copyrights are exclusively owned by others;
3. duplicate and distribute audiovisual works without the permission of their producers;
4. produce and sell artistic works bearing fake signatures of others.

Article 225 Whoever, in violation of the state stipulations, has one of the following illegal business acts, which disrupts the market order and when the circumstances are serious, is to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, and may in addition or exclusively be sentenced to a fine not less than 100 percent and not more than 500 percent of his illegal income and, where the circumstances are particularly serious, be sentenced to not less than five years of fixed-term imprisonment and a fine not less than 100 percent and not more than 500 percent of his illegal income or the confiscation of his property:(1) engage in the monopoly business or monopolized commodities stipulated in laws and administrative regulations, or other commodities whose purchase and sale are controlled, without permission;(2) purchase and sell import-export licenses, certificates of origin, and operation permits or approved documents stipulated by other laws and administrative regulations;(3) illegally operating the business of securities, futures or insurance, or illegally engaging in fund payment and settlement business, without the approval of the relevant

competent departments of the state;(4) conduct other illegal business activities that seriously disrupt the market order.

Article 287 (II): Whoever, while obviously aware that any other person is committing a crime by using an information network, provides Internet access, server custody, network storage, communication transmission or any other technical support, or provides advertising, payment settlement or any other assistance for the crime shall, if the circumstances are serious, be sentenced to imprisonment of not more than three years or criminal detention in addition to a fine or be sentenced to a fine only.

Where an entity commits any crime as provided for in the preceding paragraph, the entity shall be sentenced to a fine, and its directly responsible person in charge and other directly liable persons shall be punished in accordance with the provisions of paragraph 1. Whoever commits any other crime while committing a crime as mentioned in the preceding two paragraphs shall be convicted and punished according to the provisions on the crime with the heavier penalty.

[Note]: Besides, infringement by using information network ,may also violate article 213- 220 of *Criminal Law of The People's Republic of China*.

Copyright Law of The People's Republic of China

Article 48(1), Article 48(6)

He who commits any of the following acts of infringement shall bear the civil liability for such remedies as ceasing the infringements, eliminating the effects of the act, making a public apology or paying compensation for damages, depending on the circumstances; where he damages public interests at the same time, the copyright administration department may order him to cease the act of tort, may confiscate his illegal gains, confiscate and sabotage the reproductions of infringement, and impose a fine on him; if the case is serious, the copyright administration department may also confiscate the materials, instruments and equipment, etc. mainly used to make the reproductions of infringement; where his act has constituted a crime, he shall be investigated for criminal liabilities in accordance with the law:(1) without the permission from the copyright owner, reproducing, distributing, performing, projecting, broadcasting, compiling, disseminating to the public through information network his works, except where otherwise provided in this Law; ...

(6) without the permission from the copyright owner or obligee related to the copyright, intentionally avoiding or sabotaging the technical measures taken by the obligee on his works, sound recordings or video recordings, etc. to protect the copyright or the rights related to the copyright, except where otherwise provided in laws or administrative regulations.

[Note]: China is currently revising the *Copyright law*. By increasing the amount of statutory compensation for infringement, applying punitive damages and increasing the amount of administrative penalties, China will comprehensively increase compensation and penalties to curb sale and distribution of illicit streaming devices. *Copyright law amendment (draft)* enhances the upper limit of punitive damages from 500,000 Yuan to 5million Yuan. SPC is also working on judicial interpretations concerning punitive damages.

In addition, the current law stipulates more comprehensive and systematic provisions on determining copyright infringement concerning the act of sabotaging technical measures. Sabotaging technical measures are stipulated in article 48(6) of *Copyright law*, while definitions of technical measures and control are stipulated in *Regulations on the protection of the right of dissemination over information network*, which only regulates the right of dissemination over information work. *Copyright law amendment(draft)* added Article 48 “To protect copyright and copyright related rights, rights holders may take technical measures. Without permission, no organization or individual shall intentionally avoid or sabotage the technical measures, manufacture, import or provide relevant devices or components to the public for the purpose of avoiding or sabotaging the technical measures, or provide services for others to avoid or sabotage the technical measures. However, exceptions may be avoided in accordance with the provisions of laws and administrative regulations.” The Amendment provides a more comprehensive and systematic regulation of technical measures and can be more comprehensively applied to the infringement of illicit streaming devices.

The Supreme People’s Court’s Provisions on Several Issues of the Application of Law in the Trial of Civil Disputes Concerning the Infringement of the Right of Dissemination over Information Network (FASHI[2012]20)

Provide citation(s):

Article 2 The term “information network” in the Provisions includes computer Internet, radio and television network, fixed communication network, mobile communication network and other information networks with computers, televisions, landlines, mobile phones and other electronic equipment as terminals, and local area network open to the public.

Article 3 Unless otherwise stipulated by laws and administrative regulations, the people’s court shall determine that the works, performances, audio and video recordings provided by network users and network service providers through the information network that enjoy the right of dissemination over information network constitute an act of infringement. By uploading to a network server, setting up shared files or using file sharing software, etc., works, performances, audio recordings and video recordings are placed on the information network, so that the public can download, browse or obtain them in other ways at a time and place selected by individuals, the people’s court shall determine that it has performed the provision provided in the preceding paragraph.

Regulation/Rules:

SPC, SPP, MPS, SARFT(NRTA’s predecessor) jointly issued the “Notice on Severely Cracking Down on Illegal and Criminal Activities of Illegal TV Network Receiving Equipment in accordance with the Law” (XINGUANGDIANFA[2015]229)

Provide citation(s):

Whoever, engaged in producing and selling of illegal TV network receiving equipment (including software), providing download services for illegal radio and television receiving software, providing link services for illegal radio and television program channels, and other profit-making activities, disrupting the market order, and personal illegal business amount is more than 50,000 Yuan or the illegal income amount is more than 10,000 Yuan, the illegal business amount of the unit is more than 500,000 Yuan or the amount of illegal income is

more than 100,000 Yuan, criminal responsibility shall be investigated in accordance with the crime of illegal business.

Court Case(s): N.A.

Provide citation(s):

Voluntary Industry Practices: N.A.

Provide citation(s):

Other: N.A.

Provide citation(s):

None: _____

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

N.A.

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

N.A.

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

N. A. [Note]: China is now effectively fighting ISDs infringement in accordance with the existing laws and regulations. Meanwhile, China is amending *the Copyright Law* in accordance with the development of relevant situations (For details, please see answer to Q2). The Amended *Copyright Law* will be more conducive to taking actions against ISDs.

If YES, please describe any currently proposed actions to address this issue:

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

N.A. [Note]: Considering the relevant technologies and ways of infringement regarding ISDs keep on changing, China is now amending *Copyright Law* to increase strength of fighting

against infringement (For details, please see answer to Q2). Later we will make evaluation on the effect of amendment. Beside civil damages, China also deter the sale or distribution of ISDs through *Criminal Law* (For details, please see answer to Q2).

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: _____

Customs/Border Agency: _____

Regulatory Agency: _____

IP Office: _____ X _____

Other: _____

If you checked any of the above, please provide further information or specifics:

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

[Note]: please see answer to Q10.

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

N.A.

Importation: X Exportation: X Manufacturing: X Sale: X

Advertising or Offer for Sale: X Commercial/Public Use: X Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

The Chinese government attaches great importance to cracking down on piracy through streaming media software and hardware, and has taken interagency joint law enforcement actions to crack down on illicit streaming devices. From May to November 2019, NCAC, CAC, MIIT and SPC jointly launched the JIANWANG 2019 Social Action to carry out particular governance for streaming media and other fields. The special action focuses on works related to media, music, audio recordings and variety shows, cracks down severely on illegal dissemination of other people's works over illegal streaming hardware such as IPTV, OTT and various intelligent terminals, cracks down severely on illegal dissemination of other people's works over various streaming media software and aggregation software, cracks down severely on selling various cracked and jailbroken OTT products through e-commerce platforms. During

the special action, various localities organized and carried out special market inspections of IPTV hardware and software equipment, removed a number of illicit streaming devices, and investigated and dealt with a number of cases of infringement and piracy using streaming media software and hardware. For example, Nanjing City, Jiangsu Province, investigated and punished HANJUTV app infringement case and imposed an administrative penalty of 840,000 Yuan; Shanghai City investigated and punished RENRENSHIPIN app infringement case and imposed an administrative penalty of 250,000 Yuan; Fuzhou City, Fujian Province investigated and punished DILIDILI infringement case and imposed an administrative penalty of 250,000 Yuan; Putian City, Fujian Province investigated and prosecuted the 3.09 case of pirating film and television works and arrested 2 suspects.

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

N.A.

No clear legal basis: _____ Insufficient resources: _____
 Insufficient evidence: _____ Lack of technical expertise: _____
 Not considered priority: _____ Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES NO _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____
 Proposed/implemented regulatory change(s) _____
 Conducted/implemented new law enforcement training: _____
 Worked with foreign law enforcement agencies:

Other: China is willing to strengthen international cooperation with the other economies to meet the challenge brought by ISDs together. China would like to suggest that: 1. enforcement agencies of the economies further increase communication and cooperation, promptly notify, share and respond to requests for co-investigation of cybercrime cases submitted by other law enforcement agencies. 2. economies where streaming media server is located intensify investigation and punishment. 3. industries make their own efforts in advancing IP protection. Economies could actively inform and guide relevant streaming media service providers through information and case sharing, etc., and encourage the industries to protect their own intellectual property rights through technical methods such as data encryption transmission. 4. enhance public consensus through extensive publicity, etc., to reduce and eliminate the basis for such illegal acts from the source.

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

N.A.

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

N.A.

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

N.A.

If YES, please provide citations, examples, or links to such materials:

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

NO

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

F. Hong Kong, China

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: Hong Kong, China

Contact Information: Name: Michelle Chong

Position/Title: Assistant Director

Office/Agency: Intellectual Property Department (IPD)

Email: michellechong@ipd.gov.hk

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem _____ Serious problem _____ Very serious _____

The problem of ISDs has posed challenges to rights owners and IP law enforcement agencies around the world. We will continue to take enforcement actions against the illegal sales and operation of ISD.

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Depending on the facts of each individual case, parties engaged in the operation and connection of illicit streaming servers to allow users to view copyright protected contents illegally could attract civil and/or criminal liabilities under the existing laws of Hong Kong, China.

Statutory provisions

Where an effective technological measure has been applied in relation to a copyright work to restrict unauthorised access, any person who makes, imports or exports for sale or hire, sells or lets for hire, exhibits in public or distributes or possess with a view for sale or let for hire circumvention devices which are primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of the technological measures, commits an offence under the Copyright Ordinance (Cap.528) (CO).

Further, any person who provides a service which

- a. is promoted, advertised or marketed for the purpose of the circumvention of the measure;
- b. has only a limited commercially significant purpose or use other than to circumvent the measure; or
- c. is performed for the purpose of any relevant service for the purpose of enabling or facilitating the circumvention of the measure,

is also criminally liable under the CO.²⁰

In addition to criminal sanctions, any person who does the above acts may also be subject to civil liabilities for circumvention under the CO.²¹

Moreover, operations of illicit streaming servers and ISDs may involve restricted acts that were done without the consent of the relevant copyright owners. Examples of such acts include making infringing copies of copyright works, making available such infringing copies or distributing them to the public. Where these acts are committed in Hong Kong, China, the relevant persons may be subject to civil liability for primary or secondary infringements.²² Further, where the act involves distribution of infringing copies in the course of trade or business which consists of dealing in infringing copies of copyright works or distribution to the extent as to affect prejudicially the copyright owner, it may give rise to criminal liability under the CO.²³

20 Section 273C of CO

21 Section 273B of CO

22 Sections 23, 26 and 31 of CO

23 Section 118 of CO

Liability under common law

Depending on the facts and circumstances of individual cases, the common law offence of conspiracy to defraud may also be applicable.

Case example

In 2014, the Customs and Excise Department (C&ED) of the Government of the Hong Kong Special Administrative Region (HKSAR Government) smashed a syndicate which uploaded copyright contents to overseas servers for internet transmission to TV set-top boxes and sold to local consumers (the Maige TV Box case). The offenders were convicted of the offences of “providing circumvention device or service” and “conspiracy to defraud” in court in December 2017 and were sentenced to imprisonment ranging from 21 to 27 months. The sentence is the heaviest penalty ever in the cases of this kind and it serves as a strong deterrent to culprits of Internet piracy.

We will take into account the facts and circumstances of individual cases to decide the most suitable enforcement options.

Please check one or more:

Statute/Law: X

Provide citation(s):

Sections 23, 26, 31, 118, 273A, 273B and 273C of the Copyright Ordinance and common law offence of conspiracy to defraud.

Regulation/Rules: _____

Provide citation(s):

Court Case(s): X

Provide citation(s): **District Court Case No. DCCC 267/2017**

Voluntary Industry Practices: X

Provide citation(s):

The Hong Kong Creative Industries Association (HKCIA) launched the Hong Kong Infringing Website List (HK-IWL) scheme in December 2016. The HK-IWL contains a list of websites that are found by the right holders to have offered access to copyright contents by various means including streaming without authorisation. The scheme aims to cut down the advertising revenue of infringing websites by dissuading advertising agents and their clients from placing advertisements on such websites. As at 31 May 2020, a total of 123 websites were

listed on the HK-IWL portal and online traffic to those infringing websites is noted to have significantly reduced.

The HKSAR Government has all along been supportive of the HK-IWL scheme. All HKSAR Government bureaux and departments should make reference to the HK-IWL and exclude the infringing websites before placing online advertisements so as to avoid their advertisements from appearing on infringing websites. In addition, the HKSAR Government has been assisting HKCIA in introducing the HK-IWL to different industry sectors, in particular the advertising sector and major brand owners. HKCIA itself has also been promoting the IWL scheme to its overseas counterparts and has collaboration with them to combat illicit streaming of copyright works.

Other:

Provide citation(s):

None: _____

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES _____ NO X

If YES, please describe any currently proposed actions to address this issue:

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES X NO _____

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: _____

Customs/Border Agency: X

Regulatory Agency: _____

IP Office: _____

Other: _____

If you checked any of the above, please provide further information or specifics:

Customs and Excise Department (C&ED) is the government agency responsible for criminal enforcement of the Copyright Ordinance, the Trade Descriptions Ordinance and the Prevention of Copyright Piracy Ordinance under the Laws of Hong Kong, China.

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: _____

Border or Customs Actions: _____

Civil Actions (brought by private parties): _____

Civil Actions (brought by public officials): _____

Law Enforcement Investigations Commenced: 23

Criminal Prosecutions Commenced: _____

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: X

Advertising or Offer for Sale: X Commercial/Public Use: _____ Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

The actions were taken against suspected infringing activities associated with TV set-top boxes with the assistance from the industry and copyright owners under the current legal regime.

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____
Insufficient evidence: X Lack of technical expertise: _____
Not considered priority: _____ Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES X NO _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____
Proposed/implemented regulatory change(s) _____
Conducted/implemented new law enforcement training: _____
Worked with foreign law enforcement agencies: X

Remarks: It is crucial to combat copyright piracy at source and thus important to have close cooperation among law enforcement agencies in different APEC member economies.

Other: _____

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES X NO _____

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

For law enforcement purposes, C&ED maintains a database on past investigations and intelligence collected to facilitate analysis of emerging trends and the latest modus operandi of crimes related to IP rights. The database is not open to the public to avoid prejudice to law enforcement actions.

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES _____ NO X

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES NO

If YES, please provide citations, examples, or links to such materials:

The HKSAR Government attaches great importance to the promotion and public education of IP rights protection. Throughout the years, IPD and C&ED have expended their efforts to enhance public awareness and respect of IP rights through various publicity and educational programmes. Below are some examples:

- a. Under the “I Pledge Scheme” launched since 1999, over 17,700 youngsters have pledged that they would never engage in internet piracy activities or buy counterfeit goods.
- b. IPD conducts regular school visits and organises interactive drama programmes for primary and secondary schools to enhance their awareness of IP rights and to promote anti-piracy messages covering especially the online environment. Over 11,000 school visits have been made involving over 520,000 students. C&ED also delivers talks on IPR enforcement regularly to local schools.
- c. An IP Ambassador Programme was launched in 2016 to recruit law students from universities to promote the message of IP protection and anti-piracy/counterfeiting behaviours to young people.
- d. An IPR Badge Programme for Youth Ambassadors was launched in 2016 to foster youngsters’ respect for IPR, covering a wide spectrum of topics including enforcement work of C&ED, basic IPR knowledge, criminal prosecution against IP crimes, as well as discipline and leadership training.
- e. In 2018 and 2019, C&ED cooperated with several internet service providers by displaying “e-banners” on popular online trading platforms in Hong Kong to promote the importance of IPR protection.

IPD also commissioned regular public surveys to track the performance of its promotion efforts. Outcome of the successive surveys shows that there is a continuous upward trend in public awareness of IP rights protection. As indicated in the recent 2018 survey results, 63% of the respondents indicated they had never listened to pirated music or watched pirated movies or TV shows online.

On the deterrent side, the ruling and heavy sentence of the Maige TV Box case handed down by the District Court in December 2017 were widely reported in the media. C&ED had made use of the opportunity to remind and educate the public that copyright infringement through illicit streaming and conspiracy to defraud are serious criminal offences. C&ED will continue to stay vigilant against piracy activities involving streaming devices and take enforcement action against piracy activities relating to ISDs under the current legal regime.

Besides, prior to major international sports events such as the FIFA World Cup 2018, C&ED also stepped up patrols at black spots selling ISDs. Their operations were widely covered in local media, which served as a timely reminder to the general public in Hong Kong to refrain from buying or selling ISDs.

Relevant news reporting can be found at the following links:

<https://www.scmp.com/news/hong-kong/law-crime/article/2126021/three-hong-kong-jailed-providing-illegal-tv-boxes-stream>

<https://advanced-television.com/2017/12/28/jail-terms-for-hong-kong-pirates/>

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

With the advance of electronic devices and ubiquity of internet services, the HKSAR Government recognises that illegal streaming through various devices like ISDs has posed increasing challenges to rights holders and law enforcement agencies all over the world.

The law enforcement agency of Hong Kong, China has been tackling the problem by various avenues under the existing laws according to the specific facts and circumstances of individual cases. Further, the HKSAR Government has been keeping the IP regime and legislation under constant review to address the changes brought about by technological developments. Industry-led measures have also been in place to combat online copyright infringement including illicit streaming.

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

G. Indonesia

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: Indonesia

Contact Information: Name: Ms. Retno Kusumadewi, Head of Administration Section,
Directorate of Litigation and Dispute Settlement

Mr. Ahmad Rifadi, Assistant Deputy Director for Legal Consideration and
Litigation, Directorate of Copyright and Industrial Design

Office/Agency: Directorate General of Intellectual Property

Email: kerjasama@dgip.go.id

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem _____ Serious problem X Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: Article 1, Law Number 28 Year 2014 on Copyright

Provide citation(s):

Copyright means an exclusive right of the author vested automatically on the basis of declaratory principle after works are embodied in a tangible form without reducing by virtue of restrictions in accordance with the provisions of laws and regulations.

Regulation/Rules:

Joint Ministerial Regulation Between Minister of Law and Human Rights and Minister of Communication and Informatics Number 14 Year 2015, Number 26 Year 2015 Regarding Implementing Closure of Content and /or Access Rights to Use Violations of Copyright and/or Related Rights in the Electronic System.

Provide citation(s):

Article 13 (1) The minister who conducts government affairs in the field of communication and informatics closes the internet site or blocks closes the content and/ or access rights of users who violate the copyright and/ or related rights for part or all of the content based on the recommendations are referred to in article 12.

Court Case(s):

Provide citation(s):

Voluntary Industry Practices:

Provide citation(s):

Other:

Provide citation(s):

None:

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES _____ NO X

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES _____ NO X

If YES, please describe any currently proposed actions to address this issue:

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES X NO _____

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: X

Customs/Border Agency: _____

Regulatory Agency: X

IP Office: X

Other: _____

If you checked any of the above, please provide further information or specifics:

- Ministry of Law and Human Rights
- Ministry of Communication and Informatics

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: X

Border or Customs Actions: _____

Civil Actions (brought by private parties): _____

Civil Actions (brought by public officials): X

Law Enforcement Investigations Commenced: X

Criminal Prosecutions Commenced: _____

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: _____
Advertising or Offer for Sale: _____ Commercial/Public Use: _____ Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

Based on article 13 (1) Joint Ministerial Regulations Between Minister of Law and Human Rights and Minister of Communication and Informatics Number 14 Year 2015, Number 26 Year 2015 Regarding Implementing Closure of Content and /or Access Rights to Use Violations of Copyright and/or Related Rights in the Electronic System, we can give the data. In 2019, Ministry of Communication and Informatics has been closed or blocked as much 66 copyright infringement content/site based on recommendation from Ministry of Law and Human Rights. From January until June 2020, Ministry of Communication and Informatics has been closed or blocked as much 148 copyright infringement content/site based on recommendation from Ministry of Law and Human Rights.

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____
Insufficient evidence: X Lack of technical expertise: _____
Not considered priority: _____ Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES X NO _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): X
Proposed/implemented regulatory change(s) X
Conducted/implemented new law enforcement training: X
Worked with foreign law enforcement agencies: X
Other:

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES _____ NO X

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES _____ NO X

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES X NO _____

If YES, please provide citations, examples, or links to such materials:

- www.dgip.go.id
- [instagram@djki.kemenkumham](https://www.instagram.com/djki.kemenkumham)

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

H. Japan

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: JAPAN

Contact Information: Name: Nana FUSHIMI

Position/Title: Assistant Director, Intellectual Property Division

Office/Agency: Ministry of Foreign Affairs

Email: nana.fushimi@mofa.go.jp

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

As Government it is hard to assess the scale of the problem and the economic harm in Japan because the government have not thoroughly grasped the economic harm yet. The

Government have not realized a comprehensive investigation on this matter nor possesses a liable data.

Otherwise, according to the Content Overseas Distribution Association (CODA), which takes measures against copyright infringement including by ISDs in Japan, the damage for Internet Contents caused by ISDs is estimated to be serious. (See detail in Q16)

Not a problem_____ Minor problem_____ Serious problem_____ Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: Copyright Act

Provide citation(s):

Depending on the way and degree of involvement in the infringement of copyrights etc., the act related to an ISD can be subject to civil actions such as injunctions (Article 112 of the Copyright Act) and compensation for loss or damage (Article 709 of the Civil Code); and subject to criminal actions (Article 119, paragraph (1) of the Copyright Act). In addition, the act of providing an ISD can be regarded as aiding the infringement of copyrights, etc. (Article 62, paragraph (1) of the Penal Code), and subject to compensation for loss or damage (Article 709 of the Civil Code); and to criminal measures (Article 119, paragraph (1) of the Copyright Act).

As described in Q5, if the Copyright Amendment bill that is now under deliberation in the Diet is passed, any person who provides an ISD, which can be regarded as a leech application under the new law, and any person who provides the link to the infringing broadcast contents can be subject to civil actions such as injunctions (Article 112 of the Copyright Act) and compensation for loss or damage (Article 709 of the Civil Code) and criminal actions (Article 119, paragraph (2), item (4) and item (5), and Article 120-2, paragraph (1), item (3) of the Copyright Amendment bill).

- **Copyright Act (Act No. 48 of May 6, 1970) (Extract)**

(Right of Reproduction)

Article 21 The author of a work has the exclusive right to reproduce the work.

(Right to Transmit to the Public)

Article 23 (1) The author of a work has the exclusive right to transmit to the public that work (this includes the right to make the work available for transmission, if the work is to be transmitted to the public via automatic public transmission).

(Right to Demand an Injunction)

Article 112 (1) The author, copyright owner, owner of print rights, performer, or owner of neighboring rights, may file a claim against a person who is infringing or who is likely to infringe the moral rights of the author, the copyright, the print rights, the moral rights of the performer, or the neighboring rights, for the cessation or prevention of such infringement.

(2) When filing the demand under the preceding paragraph, the author, copyright owner, owner of print rights, performer, or owner of neighboring rights may demand the destruction of objects that give rise to an act of infringement, objects made through an act of infringement, or machines or tools used solely for an act of infringement, or demand that any other measures necessary to effect the cessation or prevention of infringement be taken.

Article 119 (1) A person that infringes a copyright, print rights, or neighboring rights (other than one that personally reproduces a work or performance, etc. for the purpose of private use as referred to in Article 30, paragraph (1) (including as applied mutatis mutandis pursuant to Article 102, paragraph (1); same applies in paragraph (3)); one whose action is deemed to constitute infringement of a copyright, print rights, or neighboring rights pursuant to the provisions of Article 113, paragraph (3); one whose action is deemed to constitute infringement of a copyright or neighboring rights (including rights deemed to be neighboring rights pursuant to the provisions of Article 113, paragraph (5); the same applies in Article 120-2, item (iii)) pursuant to the provisions of Article 113, paragraph (4); one whose action is deemed to constitute infringement of a copyright or neighboring rights pursuant to the provisions of Article 113, paragraph (6); or a person set forth in item (iii) or (iv) of the following paragraph) is subject to imprisonment for a term of up to ten years, a fine of up to ten million yen, or both.

(2)(3) (Abbreviation)

Statute/Law: X Unfair Competition Prevention Act

Provide citation(s):

The Unfair Competition Prevention Act defines a word “technological restriction measures” in Article 2, paragraph (8), and the Act defines provision of a device or a program having a function of circumventing technological restriction measures which enables viewing images or hearing sounds restricted by technological restriction measures, as unfair competition (Article 2, paragraph (1), items (xvii) and (xviii)). The UCPA provides civil and criminal measures against the above actions of unfair competition (Article 3, Article 4, and Article 21, paragraph (2), item (iv) of the Act).

Statute/Law: X Customs Act

The Customs Act prohibit exporting, importing and transiting goods composed by those definitions by Article 2, paragraph (1), item (i), (ii), (iii), (x), (xvii) and (xviii) of the Unfair Competition Prevention Act. (Articles 69-2, 69-11, 30, or 65-3).

Regulation/Rules: _____

Provide citation(s): _____

Court Case(s): _____

Provide citation(s): _____

Voluntary Industry Practices: _____

Provide citation(s): _____

Other: _____

Provide citation(s): _____

None: _____

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES _____ NO _____

If YES, please describe any currently proposed actions to address this issue:

The Japanese government submitted the Copyright Amendment bill to the National Diet, which includes the following aims.

To define “a website or an application regarded as especially leading the public to infringing contents” or “a website or an application regarded as mainly used for exploitation of the infringing contents by the public” as a leech site or a leech application.

To regulate acts of providing a link to the infringing contents in a leech site or a leech application by taking civil and criminal actions.

To regulate acts of running a leech site or providing a leech application by taking criminal actions.

This amendment intends to regulate the websites or programs leading users to the infringing contents and to strengthen the anti-piracy measures on the Internet. It will be able to regulate an ISD if the ISD is regarded as a leech application. The measures related to leech sites and leech applications under the Copyright Amendment bill will come into force on 1 October 2020 after the bill is passed.

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

Japanese government refrain from answering this question because we have never considered whether the current civil damages and penalties are sufficient or not. In addition, as mentioned in Q5, there is a possibility that new rules may regulate ISD by regarding it as the leech application. CODA, which is a private organization and stakeholder, thinks that ISD corresponds to leech application and expects new rules will be effective in preventing further distribution of ISD.

YES _____ NO _____

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: _____ X _____

Customs/Border Agency: _____ X _____

Regulatory Agency: _____

IP Office: _____

Other: _____

If you checked any of the above, please provide further information or specifics:

When police recognize violation of law, receive police start investigation or copyright holder file a damage report to police, police investigate the criminal case to persecute to criminals. In case of Customs, Customs enforces goods that infringe IPRs (including goods that compose Unfair Competition Prevention Act.) not only based on application from right holders, but also by ex-officio. In addition, a person who imports, exports, and transits infringing goods shall be punished under Article 109, etc. of the Customs Act.

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: none

Border or Customs Actions: none

Civil Actions (brought by private parties): none

Civil Actions (brought by public officials): none

Law Enforcement Investigations Commenced: none

Criminal Prosecutions Commenced: none

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: _____
Advertising or Offer for Sale: _____ Commercial/Public Use: _____ Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____
Insufficient evidence: _____ Lack of technical expertise: _____
Not considered priority: _____ Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES NO

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____
Proposed/implemented regulatory change(s): _____
Conducted/implemented new law enforcement training: _____
Worked with foreign law enforcement agencies:
Other:

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES NO

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES _____ NO _____

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES _____ NO _____

If YES, please provide citations, examples, or links to such materials:

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Content Overseas Distribution Association, "CODA", which is taking measures against ISDs in Japan, has identified some of the cases below.

ISDs are prevailing in Europe and elsewhere, and impose a massive threat to the contents industries throughout the world as they provide popular programmes such as the Premier League broadcasts simultaneously, boast of a vast volume of contents, and are relatively cheap to purchase and easy to use.

As the threat is new, we do not have any statistics on the financial damage.

None the less, the devices are used widely by expats in particular overseas countries and, in this connection, CODA successfully prosecuted three criminal cases in an economy in cooperation with the local police. For those criminal organizations, ISDs are considered as a major source of income. Therefore, CODA estimates that the same kind of crime will spread in the future.

Also, as a new threat in Japan, an ISD called "UNBLOCK TECH", which is distributed world-wide and enables viewers to access over 1,000 channels including Japanese ones, are available on e-commerce sites approximately 18,000 yen (about 150USD).

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

I. Republic of Korea

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: Republic of Korea

Contact Information: Name: Hyeyoon CHOI

Position/Title: Deputy Director

Office/Agency: Ministry of Culture, Sports and Tourism (MCST)

Email: hychoi77@korea.kr

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem X Serious problem _____ Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: X

Provide citation(s):

- Copyright Act, Article 16 (Right of Reproduction of Author) * Including temporary reproductions
- Copyright Act, Article 18 (Right of Public Transmission of Author)
- Copyright Act, Article 85 (Right of Simultaneous Broadcast of broadcasting organization)
- Copyright Act, Article 104*bis* (Prohibition of Circumventing Technological Protection Measures)
- Copyright Act, Paragraph 3 of Article 104*quater* (Prohibition of Circumventing Encrypted Broadcasting Signals, etc.)
- Copyright Act, Article 104*octies* (Claim, etc. of Suspension or Prevention of Infringement)
- Copyright Act, Article 123 (Right to Demand Suspension of Infringement, etc.)
- Copyright Act, Article 125 (Claim for Compensation for Damages)
- Copyright Act, Article 126 (Acknowledgement of the Amount of Damages)
- Copyright Act, Paragraphs 1.1, 2.3.3, 2.3.5 of Article 136 (Penal Provisions)
- Copyright Act, Paragraph 1.3.2 of Article 137 (Penalty Provisions)
- Copyright Act, Article 141 (Joint Penalty Provisions)
- Criminal Act, Article 32 Paragraph 1.1 (Accessories)

Court Case(s): X

Provide citation(s):

1. 2014 Ka-Hab 50121 (Daejeon District Court, 13th March 2015) - Injunction to prevent copyright infringement
2. 2014 Ga-Hab 534942 (Seoul Central District Court, 4th September 2015) - First instance trial of civil case on compensation for damages against copyright infringement
3. 2015 Na 2052525 (Seoul High Court, 7th July 2016) - Appeal (final) of civil case on compensation for damages against copyright infringement
4. 2015 Go-Dan 2306 (Daejeon District court, 23rd September 2016) - Criminal case against an act of copyright infringement

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

Not relevant

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Not relevant

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation-and/or action against the sale or distribution of ISDs?

YES _____ NO X

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES X NO _____

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: X (National Police Agency, Special Judicial Police for Copyright under the MCST)

Customs/Border Agency: _____

Regulatory Agency: X (Korea Copyright Protection Agency)

IP Office: X (MCST)

If you checked any of the above, please provide further information or specifics:

- The Special Judicial Police on Copyright under the MCST and the National Police Agency implement joint or separate investigations.
- The Korea Copyright Protection Agency(KCOPA) constantly monitors any distribution of illegal streaming devices and other items.

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: _____

Border or Customs Actions: _____

Civil Actions (brought by private parties): _____

Civil Actions (brought by public officials): _____

Law Enforcement Investigations Commenced: 3

Criminal Prosecutions Commenced: 2

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: _____

Advertising or Offer for Sale: _____ Commercial/Public Use: _____ Other: X

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

There are ongoing investigations into the importing and/or selling of devices that enable illegal streaming and into provision of services that allow illegal streaming via such devices. The enforcement authorities are investigating into direct or indirect liability of those who provide such goods or services for their acts that is prohibited under the copyright law.

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____

Insufficient evidence: X Lack of technical expertise: _____

Not considered priority: _____ Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES X NO _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____

Proposed/implemented regulatory change(s): _____

Conducted/implemented new law enforcement training: _____

Worked with foreign law enforcement agencies: X

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES _____ NO X

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES _____ NO X

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES _____ NO X

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Submission:

Please send your completed response by no later than 11 June 2020.

Thank you for your response.

J. Malaysia

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: Malaysia

Contact Information: (i) Name: Rashidah Ridha SHEIKH KHALID (Ms.)

Position/Title: Director of Copyright Division

Office/Agency: Intellectual Property Corporation of Malaysia (MyIPO)

Email: rashidah@myipo.gov.my

(ii) Enforcement Division, Ministry of Domestic Trade and Consumer Affairs

Tel: +603 8882 6008 /6675 /6175

Fax: +603 8882 6171 / 6899

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem _____ Serious problem X Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: Copyright Act 1987

Provide citation(s):

ss41(ha) Any person who during the subsistence of copyright in a work, manufactures, imports or sells any technology or device for the purpose of the circumvention of technological protection measure referred to in subsection 36A(3)

Regulation/Rules:

Provide citation(s):

Court Case(s):

Provide citation(s):

Voluntary Industry Practices:

Provide citation(s):

Other:

Provide citation(s):

None:

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES NO _____

If YES, please describe any currently proposed actions to address this issue:

Proposed amendment focused on the act of uploading, providing, sharing access to illegal copyright works instead of focusing on fighting the technologies itself.

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES _____ NO _____

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: _____ X _____

Customs/Border Agency: _____

Regulatory Agency: _____

IP Office: _____

Other: _____

If you checked any of the above, please provide further information or specifics:

Enforcement Division, Ministry of Domestic Trade And Consumer Affairs

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: _____

Border or Customs Actions: _____

Civil Actions (brought by private parties): _____

Civil Actions (brought by public officials): _____

Law Enforcement Investigations Commenced: _____ 3 _____

Criminal Prosecutions Commenced: _____

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: _____ X _____

Advertising or Offer for Sale: _____ Commercial/Public Use: _____ Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

Basis of Action: Complain from owner of copyright. Raid on retailer selling ISD. Action taken under the Copyright Act 1987.

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____
Insufficient evidence: X Lack of technical expertise: X
Not considered priority: _____ Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES X NO _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): X
Proposed/implemented regulatory change(s): _____
Conducted/implemented new law enforcement training: _____
Worked with foreign law enforcement agencies: X
Other:

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES _____ NO X

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Database not accessible by the public.

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES _____ NO X

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES _____ NO X

If YES, please provide citations, examples, or links to such materials:

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

K. Mexico

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Chinese Taipei, Japan, Mexico, Peru, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: [Mexico](#)

Contact Information: Name: Diana Heredia García

Position/Title: [Divisional Director of International Relations](#)

Office/Agency: [Mexican Institute of Intellectual Property \(IMPI\)](#)

Email: relaciones.internacionales@impi.gob.mx

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem _____ Serious problem X Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: (X)

Provide citation(s):

Article 199 BIS, fraction V.

Regulation/Rules:

Provide citation(s):

Court Case(s):

Provide citation(s):

Voluntary Industry Practices: (X)

Provide citation(s):

Request for the imposition of provisional measures provided for the National Industrial Property Law (LPI). Art. 199 BIS of the LPI.

Other: _____

Provide citation(s):

None: _____

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

Not applicable

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Not applicable

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES _____ NO X

Article 231 of the Federal Law on Copyright, section V, provides for behaviors that can be considered as infringement when “importing, selling, leasing or carrying out any act that allows having a device or system whose purpose is to deactivate the electronic protection devices of a computer program”, in this case, since the technological security measures are about a computer program which is violated with this kind of apparatus, this fraction could be invoked to initiate the corresponding legal actions by the copyright or related rights holders.

If YES, please describe any currently proposed actions to address this issue:

Not applicable

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES X NO _____

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: _____

Customs/Border Agency: _____

Regulatory Agency: _____

IP Office: X

Other: _____

If you checked any of the above, please provide further information or specifics:

The Mexican Institute of Industrial Property (IMPI) is the authority entitled to carry out investigations and sanction those behaviors that fall within the normative hypotheses foreseen as infringements in the Industrial Property Law and infringements of commerce regulations in the Federal Copyright Law. The Office of the Attorney General of the Republic, through the Specialized Unit for the Investigation of Crimes against Copyright and Industrial Property, is entitled to carry out investigations and sanction the conduct typified as crimes.

<https://www.gob.mx/fgr/acciones-y-programas/unidad-especializada-en-investigacion-de-delitos-contra-los-derechos-de-autor-y-la-propiedad-industrial>, consulted on April 29, 2020.

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/ public use of ISDs in your economy?

Administrative/Regulatory Actions: The IMPI received one application for enforcement that was resolved by withdrawal. See Q 10.

Border or Customs Actions: Not of the competence of IMPI.

Civil Actions (brought by private parties): Not of the competence of IMPI.

Civil Actions (brought by public officials): Not of the competence of IMPI.

Law Enforcement Investigations Commenced: Not of the competence of IMPI.

Criminal Prosecutions Commenced: Not of the competence of IMPI.

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: X

Advertising or Offer for Sale: _____ Commercial/Public Use: _____ Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

The IMPI notified the alleged offender and dictated provisional cessation measures, consistent on stopping the selling of access to unauthorized content through a device in the national market.

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____

Insufficient evidence: _____ Lack of technical expertise: _____

Not considered priority: _____

Other: When the legal process was not continued by the applicant (right holder).

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES X NO _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): X

Proposed/implemented regulatory change(s): _____

Conducted/implemented new law enforcement training: _____

Worked with foreign law enforcement agencies: _____

Other:

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES _____ NO X

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES X NO _____

If YES, please provide information or a link to such documents:

https://www.gob.mx/cms/uploads/attachment/file/538431/Encuesta_Nacional_RESULTADOS_CUANTITATIVOS_2019_compressed.pdf. See pages 33-36 of the National Survey.

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES X NO _____

If YES, please provide citations, examples, or links to such materials:

- <https://www.youtube.com/watch?v=qOJamacck0Y>
- <https://www.youtube.com/watch?v=1FLgf-lbbYQ>

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

L. New Zealand

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: New Zealand

Contact Information: Name: Marcus Smith

Position/Title: Senior Policy Advisor

Office/Agency: The Ministry of Business, Innovation and Employment

Email: Marcus.smith@mbie.govt.nz

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem X Serious problem _____ Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: **X**

Provide citation(s):

Section 37 of the Copyright Act 1994 provides that copyright is infringed by dealing in a device specifically designed or adapted for making infringing copies of a work.

Regulation/Rules: _____

Provide citation(s):

Court Case(s): **X**

Provide citation(s):

SKY NETWORK TELEVISION LIMITED v MY BOX NZ LIMITED & ANOR [2018] NZHC 2768; SKY NETWORK TELEVISION LIMITED v SARAH FRANCES CLAIRE PULLAN AND JOHN JAMES CAMPBELL [2018] NZDC 12918

Both these actions alleged breach of the New Zealand Fair Trading Act 1986 by companies dealing in ISDs. Both courts found the defendants liable for misleading or deceptive conduct under that Act, on the basis that use of their services was held out as lawful when in fact this constituted infringement of copyright.

Voluntary Industry Practices: _____

Provide citation(s):

Other: _____

Provide citation(s):

None: _____

Q3: If the answer to Q2 above is "NONE", are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is "YES", please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES _____ NO _____

If YES, please describe any currently proposed actions to address this issue:

Our Copyright Act is currently under review, including liability and enforcement provisions. However, no decisions have yet been taken as to whether the sale and distribution of ISDs is a matter New Zealand will specifically seek to address through the review.

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES _____ NO _____

If NO, please describe any currently proposed actions to address this issue:

As noted under Q5, no decisions have been taken yet in review of the Copyright Act as to whether the existing provisions, including the civil remedies and criminal penalties are sufficient to deter the sale and distribution of ISDs.

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: _____

Customs/Border Agency: _____

Regulatory Agency: _____

IP Office: _____ X _____

Other: _____

If you checked any of the above, please provide further information or specifics:

To the extent that the sale and distribution of ISDs constitutes an infringement of copyright, the onus is on copyright owners to investigate and enforce copyright against those selling and distributing ISDs. To the extent that the sale and distribution of ISDs may be an offence under the Copyright Act, Police, Customs and IP Office have investigate powers to gather evidence for the purpose of a prosecution of those offences.

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: _____ 0 _____

Border or Customs Actions: _____ 0 _____

Civil Actions (brought by private parties): 0
Civil Actions (brought by public officials): 0
Law Enforcement Investigations Commenced: 0
Criminal Prosecutions Commenced: 0

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: Exportation: Manufacturing: Sale:
Advertising or Offer for Sale: Commercial/Public Use: Other:

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: Insufficient resources:
Insufficient evidence: Lack of technical expertise:
Not considered priority: Other:

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES NO X

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s):
Proposed/implemented regulatory change(s):
Conducted/implemented new law enforcement training:
Worked with foreign law enforcement agencies:
Other:

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES NO

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES: _____ NO: X (see below)

If YES, please provide information or a link to such documents:

Industry have commissioned consumer research on this. An example is this research completed in 2018 by the Navigators for Sky TV (annexed to the submission below): <https://www.mbie.govt.nz/dmsdocument/6767-sky-review-of-copyright-act-1994-issues-paper-submission-pdf>

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES: _____ NO: X (see below)

If YES, please provide citations, examples, or links to such materials:

Industry have undertaken education and awareness campaigns.

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

N/A

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

M. Papua New Guinea

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: PAPUA NEW GUINEA

Contact Information: Name: Amelia Na'aru

Position/Title: Registrar

Office/Agency: Intellectual Property Office of Papua New Guinea, Investment Promotion Authority

Email: amelian@ipa.gov.pg

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem X Serious problem X Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: Cyber Crime Code 2016

Provide citation(s):

PART III. - OFFENCES AND PENALTIES.

Division 1. - Offences Related to the Integrity of Data and Electronic System or Devices.

6. UNAUTHORISED ACCESS OR HACKING.

(1) A person who, intentionally and without lawful excuse or justification, or in excess of a lawful excuse or justification, accesses or gains entry without authorisation, to the whole or any part of a protected or non-public electronic system or device, or data, is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding five years or a fine not exceeding K7,000.00, or both.

(2) Where the offence in Subsection (1) results in damage or loss to the whole or any part of an electronic system or device, or data, the offender is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 15 years or a fine not exceeding K25,000.00, or both.

7. ILLEGAL INTERCEPTION.

(1) A person who, intentionally and without lawful excuse or justification, or in excess of a lawful excuse or justification, intercepts by technical or other means -

- a. any non-public transmission to, from or within an electronic system or device; or
- b. electromagnetic emissions from an electronic system or device, not intended for him, is guilty of a crime.

Penalty:

- a. A fine not exceeding K50,000.00 or imprisonment for a term not exceeding 15 years, or both; and
- b. In the case of a body corporate, a fine not exceeding K500,000.00.

(2) Where the offence under Subsection (1) is committed against State or Military transmissions, or transmissions of other sensitive data, the offender is guilty of a crime.

Penalty:

- a. In the case of a natural person, a fine not exceeding K100,000.00 or imprisonment for a term not exceeding 25 years, or both; and
- b. In the case of a body corporate, a fine not exceeding K1,000,000.00.

16. ILLEGAL DEVICES.

(1) A person who, intentionally and without lawful excuse or justification, or in excess of a lawful excuse or justification, designs, produces, sells, procures for use, imports, exports, distributes or otherwise makes available -

- a. an electronic system or device, or thing that is designed or adapted; or
- b. a password, access code or similar data by which the whole or any part of an electronic system or device, or thing is capable of being accessed,

for the purpose of committing an offence defined by other provisions of [Part III](#) of this Act, is guilty of a crime.

Penalty:

- a. In the case of a natural person, a fine not exceeding 1 25,000.00 or imprisonment for a term not exceeding 15 years or, both; and
- b. In the case of a body corporate, a fine not exceeding K100,000.00.

(2) It is a defence to a charge under this section where the design, production, sale, procurement for use, import, distribution or otherwise making available, or possession of devices referred to in Subsection (1), is for authorised testing or protection of an electronic system or device, or for law enforcement purposes.

(3) Whether an illegal device referred to in Subsection (1) is for authorised testing, protection of an electronic system or device, or law enforcement purposes, is a question of fact.

28. ONLINE COPYRIGHT INFRINGEMENT.

A person who, intentionally and without lawful excuse or justification, or in excess of a lawful excuse or justification, or recklessly, uses an electronic system or device, and knowingly and repeatedly -

- a. infringes; or
- b. authorises the infringement of; or
- c. facilitates or enables the infringement of,

a right protected under the [Copyright and Neighbouring Rights Act 2000](#) or any other laws relating to copyright, is guilty of a crime.

Penalty:

- a. In the case of a natural person -
 - i. imprisonment for a term not exceeding 15 years; or
 - ii. a fine not exceeding K100,000.00; or
 - iii. prohibition from accessing and using ICTs or electronic system or devices for the term of imprisonment imposed plus an additional two years; or
 - iv. all or any of Subparagraphs (i), (ii) or (iii); and
- b. In the case of a body corporate, a fine not exceeding K1,000,000.00.

PART V. - ICT SERVICE PROVIDERS.

44. CRIMINAL LIABILITY OF ICT SERVICE PROVIDERS.

(1) An ICT Service Provider which -

- a. intentionally or knowingly, and without lawful excuse or justification or in excess of a lawful excuse or justification, monitors the information which they transmit or store on behalf of their users or actively seek facts or circumstances indicating illegal activity by their users; or
- b. intentionally or without lawful excuse or justification, or in excess of a lawful excuse or justification, initiates or aides in facilitating the action which results in the commission of an offence under this Act or which results in the contravention of any other law in force in Papua New Guinea; or
- c. knowingly or upon knowledge of criminal investigations or proceedings, undertakes or omits to undertake an act, thereby concealing, preventing, or frustrating the criminal investigations or proceedings; or
- d. does not comply with an order by the Court requiring it to -
 - i. assist law enforcement in the prevention, investigation, or prosecution of an offence under this Act or any other law in force in Papua New Guinea; or
 - ii. terminate or prevent a certain action which would result in the commission or continuation of an offence already committed under this Act or any other law in force in Papua New Guinea; or
- e. negligently allows an employee to commit an offence under Paragraph (a), (b), (c) or (d), is guilty of a crime.

Penalty:

- a. In the case of a natural person, a fine not exceeding K100,000.00 or imprisonment for a term not exceeding 25 years, or both; and
- b. In the case of a body corporate, a fine not exceeding K1,000,000.00.

Regulation/Rules:

National Information and Communications Technology (Radio Spectrum) Regulation 2010_in respect of all ICT Apparatus being imported into Papua New Guinea.

Provide citation(s):

Rule 67. Functions of Inspectors.

- (1) In addition to his other powers and functions under the Act and this regulation an Inspector may, on production of his identify card, enter and inspect any station, vessel, aircraft, vehicle, premises or place in which any apparatus is installed or is being installed, and anything in or on it, and may —
- a. test the apparatus; and
 - b. examine and take copies of or extracts from any documents, messages or registers relating to the apparatus.

- (2) The owner, licensee or person in charge of the station, vessel, aircraft, vehicle, premises or place shall afford an Inspector all reasonable assistance for a test under Subsection (1).
- (3) Where in the opinion of an Inspector a breach of the Act or this regulation has been committed in respect of the installation or operation of any apparatus, the Inspector may —
 - a. order the owner, licensee, operator or person in charge of the apparatus to cease the operation of, or to dismantle to the satisfaction of the Inspector, the apparatus; and
 - b. where he thinks it necessary —
 - i. take possession of the apparatus; or
 - ii. make it incapable of operation.
- (4) A person aggrieved by an order or action of an Inspector under Subsection (3) may appeal to NICTA, whose decision is final.
- (5) Subject to Subsection (4), an order under Subsection (3) remains in force until countermanded by NICTA.
- (6) Except where an Inspector is investigating possible harmful interference, an Inspector is not entitled to exercise any powers under this section unless —
 - a. the Inspector has produced a written notice signed by a Member authorising the Inspector to undertake the search and stating the grounds for that search; and
 - b. where the premises is a residence, the Inspector has obtained the consent of the occupier to enter the premises.

Rule 70 Importing unapproved apparatus.

A person who except as provided for by this regulation, or with the consent of NICTA, imports or uses any apparatus other than approved apparatus is guilty of an offence.

Penalty — A fine not exceeding K10,000.00.

Rule 72. Operating without certificate.

A person, who operates any apparatus for which a Certificate of Proficiency is required under this regulation without having the appropriate certificate, is guilty of an offence.

Penalty — A fine not exceeding K10,000.00 per day for each day of illegal operation.

Rule 75. Register of third party authorisations.

- (1) An apparatus licensee who under Section 5 authorises a third party to operate apparatus under its licence, or varies such authorisation, shall, unless NICTA otherwise directs —
 - a. cause a copy of the authorisation or variation to be lodged with NICTA; and
 - b. cause a copy of the authorisation or variation to be kept at its registered office;
 - c. provide a copy of the authorisation or variation to the third party; and
 - d. retain a copy of the authorisation or variation for at least one year after the authorisation or variation ceases to be in force.

- (2) A third party authorised to operate apparatus under an apparatus licensee's licence must —
- a. except in the case where Subsection (2)(b) applies, clearly exhibit any authorisation, and any variation, provided to it in accordance with Subsection (1)(c) at all times in the room or place where the apparatus to which the authorisation, and any variation, relates is situated;
 - b. where it is not practical to exhibit the authorisation, and any variation, in accordance with Subsection (2)(a), make the authorisation, and any variation, available for inspection at all reasonable times on demand by an Inspector; and
 - c. retain a copy of the authorisation, and any variation, for at least one year after the authorisation or variation ceases to be in force.
- (3) NICTA may direct that a spectrum licensee who under Section 5 authorises a third party to operate apparatus under its licence, or varies such authorisation, comply with the obligations in Subsections (1) and (2) as if the spectrum licensee were an apparatus licensee.

Court Case(s): Nil

Provide citation(s):

Voluntary Industry Practices:

Not sure at this stage (did not have enough data to verify this).

Provide citation(s):

Other: _____

Provide citation(s):

None: _____

Q3: If the answer to Q2 above is "NONE", are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is "YES", please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES _____ NO _____

If YES, please describe any currently proposed actions to address this issue:

The current Copyright Act does not identify specifically the action against sale or distribution of ISDs as a criminal offence or offence requiring civil sanctions.

We will be joining the WIPO Copyright internet treaties soon and we are currently updating the Copyright Act to be compliant with the treaties and this should further provide some specific approaches to the sale or distribution of ISDs.

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES NO

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: _____

Customs/Border Agency: PNG Customs

Regulatory Agency: National Information and Communications Authority (NICTA)

IP Office: NO

Other: _____

If you checked any of the above, please provide further information or specifics:

Pursuant to the "NICT Act 2009" **NICTA** is responsible for type approval of all ICT devices that enter the Papua New Guinea.

- Pursuant to the "*Customs Act*" **PNG Customs** is responsible for enforcement of all prohibited imports and exports which also includes ICT apparatus (equipment)
- Both NICTA and PNG Customs have a MOU the purpose of which is to develop and strengthen cooperation and collaboration to regulate the imports of ICT apparatus (equipment) into Papua New Guinea .

ICT apparatus includes **Hand held two Way Radios, Mobile Phones & Associated devices, FM Radio Receivers, Wireless Access Devices, Radio Link devices, Car Radios/stereos.**

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: _____

Border or Customs Actions: _____

Civil Actions (brought by private parties): _____

Civil Actions (brought by public officials): _____

Law Enforcement Investigations Commenced: _____

Criminal Prosecutions Commenced: _____

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: _____

Advertising or Offer for Sale: _____ Commercial/Public Use: _____ Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____

Insufficient evidence: _____ Lack of technical expertise: _____

Not considered priority: _____ Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES _____ NO _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____

Proposed/implemented regulatory change(s): _____

Conducted/implemented new law enforcement training: _____

Worked with foreign law enforcement agencies: _____

Other:

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES _____ NO X _____

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES _____ NO X

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES _____ NO X

If YES, please provide citations, examples, or links to such materials:

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

N. Peru

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: PERU

Contact Information: Name: Fausto VIENRICH

Position/Title: Copyright Director

Office/Agency: National Institute for the Defense of Competition and The Protection of Intellectual Property, INDECOPÍ

Email: fvienrich@indecopi.gob.pe

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem _____ Serious problem X Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: X

Provide citation(s):

Legislative Decree 822, Penal Code, Administrative Rules of the Ministry of Transport and Communications that restrict the importation of equipment.

Regulation/Rules: _____

Provide citation(s):

Court Case(s): _____

Provide citation(s):

Voluntary Industry Practices: _____

Provide citation(s):

Other: _____

Provide citation(s):

None: _____

Q3: If the answer to Q2 above is "NONE", are any statutory or regulatory approaches pending or planned?

YES X NO _____

The analysis and regulatory proposal to achieve the restricted merchandise classification for ISDs is pending.

Currently, these teams do not strictly have the proper classification to stop them from entering Peru. These ISD teams enter Peru and are then marketed through the black market, including various publications on social networks or web pages. Advertising for the sale of ISD equipment shows its illegal purpose. In coordination with the competent authority, information regarding the volumes of formal entry of said equipment can be accessed through the corresponding customs office. On the other hand, in relation to the dimensioning of the problem caused by the use of ISD equipment, a joint work could be proposed, focusing on the dimensioning of the use of the Internet service, intended for the consumption of piracy.

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

In the case of IPTV equipment that has the software incorporated to emit a pay television signal without authorization, the Ministry of Transport and Communications is required to analyze their inclusion in the list of restricted goods for importation.

Likewise, it is required that the aggrieved party make the corresponding complaint to INDECOPI regarding the import of IPTV equipment that has the software incorporated to emit pay television signals without authorization.

The possibility should also be analyzed that INDECOPI initiate an administrative procedure ex officio when it becomes aware of the importation of IPTV equipment that has the software incorporated to emit pay television signals without authorization.

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES _____ NO _____

If YES, please describe any currently proposed actions to address this issue:

In the case of IPTV equipment, the Ministry of Transport and Communications is required to analyze the inclusion of these in the list of restricted goods for importation.

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES _____ NO X

If NO, please describe any currently proposed actions to address this issue:

In the case of IPTV equipment, the Ministry of Transport and Communications is required to analyze the inclusion of these in the list of restricted goods for importation, in the same way as it does with FTA equipment (through a legal device).

To date, it is noticeable that the supply of IDS equipment has not decreased, currently considering the applicable sanctions in the current legal order. These teams enter Peru using formal and informal routes (contraband) in significant volumes. This large-scale income allows the seller to have permanent stock.

The value of such equipment ranges from 100 - 300 US dollars, depending on the functionalities of each model. In the Peruvian economy, the impact of ISD equipment has multiple impacts considering that said equipment is sold to the final consumer, but it is also used by typical cable companies, as a means of obtaining content without authorization from their owners. In the “head” or transmission center of cable companies, you can find different types of equipment of origin and illegal use, including ISD equipment.

In this way, ISD teams directly affect the economy, considering that they affect formal companies, which offer services supported by formal cost structures (taxes, rights, social benefits,

others) as opposed to the informal supply of equipment, the It does not pay taxes, does not pay the corresponding intellectual property rights (copyright or related) and does not generate employment.

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: _____

Customs/Border Agency: _____

Regulatory Agency: _____

IP Office: X

Other: _____

If you checked any of the above, please provide further information or specifics:

In the administrative sphere, the aggrieved party makes the corresponding complaint to INDECOPI regarding the import of IPTV equipment that has the software incorporated to emit Pay Television signals without authorization.

The possibility should also be analyzed that INDECOPI automatically initiate an administrative procedure when it becomes aware of the importation of IPTV equipment that has the built-in software to emit Pay Television signals without authorization.

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: _____

Border or Customs Actions: X

Civil Actions (brought by private parties): _____

Civil Actions (brought by public officials): _____

Law Enforcement Investigations Commenced: X

Criminal Prosecutions Commenced: X

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: X Exportation: _____ Manufacturing: _____ Sale: _____

Advertising or Offer for Sale: _____ Commercial/Public Use: _____ Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

The Fourth Criminal Chamber for Liquidation of Lima sentenced Raúl Tacza Toledo to five years of effective prison sentence, who entered Peru with 2,020 satellite television decoder teams.

Web link to the news: <https://elcomercio.pe/lima/judicial/judicial-sentencia-5-anos-prision-sujeto-importacion-ilegal-decodificador-tv-noticia-nndc-563175-noticia/>

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____
Insufficient evidence: _____ Lack of technical expertise: _____
Not considered priority: _____ Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES _____ NO _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____
Proposed/implemented regulatory change(s): _____
Conducted/implemented new law enforcement training: _____
Worked with foreign law enforcement agencies: _____
Other:

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES _____ NO _____

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES _____ NO X _____

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES NO

If YES, please provide citations, examples, or links to such materials:

However, the Private Sector carried out a study through the Association “Taxpayers for Respect” On the other hand, the Anti-Piracy Alliance <https://www.alianza.tv/es/> (Regional non-profit organization, could provide the authorities with information regarding the impact of ISD, as well as a catalog with the identification of the models currently known and in global marketing.

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

O. Philippines

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: **PHILIPPINES**

Contact Information: Name: **Atty. TEODORO C. PASCUA**

Position/Title: Deputy Director General

Office/Agency: INTELLECTUAL PROPERTY OFFICE OF THE PHILIPPINES

Email: teodoro.pascua@ipophil.gov.ph

Office/Agency: Law Enforcement: Criminal Investigation and Detection Group, Anti-Fraud and Commercial Crimes Unit

Email: dir@cidg.pnp.gov.ph

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem Serious problem Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law:

Republic Act No. 8293 "Intellectual Property Code of the Philippines" and Republic Act No. 9239 "Optical Media Act of 2003" both in relation to Republic Act No. 10175 "Cybercrime Prevention Act of 2012"

Provide citation(s): Section 19(a)(2)

Imprisonment (3-6 Years)/Fine (Php 300k to Php 1.5M)

"Engage in the mastering, manufacture, replication, importation or exportation of optical media without the necessary licenses from the OMB"

Sec. 177 in relation to Sec. 217 of R.A. No. 8293, states:

CHAPTER V COPYRIGHT OR ECONOMIC RIGHTS

Section 177. Copyright or Economic Rights. - Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1 Reproduction of the work or substantial portion of the work;

177.2 Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

XXxxx ...

177.5 Public display of the original or a copy of the work;

177.6 Public performance of the work; and

177.7 Other communication to the public of the work (Sec. 5, P. D. No. 49a)

Section 217. Criminal Penalties. - 217.1. Any person infringing any right secured by provisions of Part IV of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:

- a. Imprisonment of one (1) year to three (3) years plus a fine ranging from Fifty thousand pesos (P 50,000) to One hundred fifty thousand pesos (P 150,000) for the first offense.
- b. Imprisonment of three (3) years and one (1) day to six (6) years plus a fine ranging from One hundred fifty thousand pesos (P 150,000) to Five hundred thousand pesos (P500,000) for the second offense.
- c. Imprisonment of six (6) years and one (1) day to nine (9) years plus fine ranging from five hundred thousand pesos (P500,000) to One million five hundred thousand pesos (P 1,500,000) for the third and subsequent offenses.
- d. In all cases, subsidiary imprisonment in cases of insolvency.

217.2 In determining the number of years of imprisonment and the amount of fine, the court shall consider the value of the infringing materials that the defendant has produced or manufactured and the damage that the copyright owner has suffered by reason of the infringement.

217.3 Any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of

- a. Selling, letting/or hire, or by way of trade offering or exposing for sale, or hire, the article;
- b. Distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or
- c. Trade exhibit of the article in public, shall be guilty of an offense and shall be liable on conviction to imprisonment and fine as above mentioned (Sec. 29, P. D. No. 49a)

Sec. 19 of RA. No. 9239, states:

IV. PENAL PROVISIONS

Section 19. Offenses and Penalties.

- a. Imprisonment of at least three (3) years but not more than six (6) years, and a fine of not less than Five Hundred Thousand pesos (Php 500,000.00) but not exceeding One Million five hundred thousand pesos (Php 1,500,000.00), at the direction of the Court, shall be imposed on any person, natural or juridical, who shall:
 - (1) Engage in the importation, exportation, acquisition, sale or distribution of, or possess or operate manufacturing equipment, parts and accessories without the necessary licenses from the OMB;
 - (2) Engage in the mastering, manufacture, replication, importation or exportation of optical media without the necessary license from the OMB;
 - (3) By himself, or through another, cause the mastering, manufacture or replication of any intellectual property in optical media intended for commercial profit or pecuniary gain without authority or consent of the owner thereof;

- (4) Engage in the Mastering, manufacture, or replication of optical media without affixing or installing in the resulting products the SID Code, and/or such other codes prescribed, assigned and authorized by the OMB. The absence of the codes prescribed, assigned and authorized by the OMB in any optical media shall be prima facie evidence that said optical media are in violation of this Act;
 - (5) Engage in the mastering, manufacture, or replication of optical media using, affixing or installing in the resulting products false SID or other codes. The presence of false or unauthorized codes shall be prima facie evidence that said optical media are in violation of this act;
 - (6) Engage in the mastering, manufacture, or replication of optical media using, affixing or installing in the resulting products false SID or other codes that have been assigned by the OMB to another person, or, having been assigned and authorized said codes by the OMB, allow or authorize another person, establishment or entity to use, affix or install such codes in the latter's products;
- b. Imprisonment of at least one year but not more than three years and a fine not less than one hundred thousand pesos, but not exceeding five hundred thousand pesos, at the discretion of the court, for the following offenses:
- (1) Engaging in the importation, exportation, sale or distribution of or possess or acquire in commercial quantities manufacturing materials used or intended for use in the mastering, manufacture or replication of optical media without the necessary licenses from the OMB;
 - (2) Knowingly performing or rendering the service of mastering, manufacture or replication of optical media, after having been licensed by the OMB, to any person, in respect of any intellectual property, who does not have the consent by the owner of the intellectual property or his representatives or assigns;

For this purpose, any person, establishment or entity that is licensed by the OMB to engage in the above mentioned activities shall be considered to have acted in good faith in respect of any transaction entered into by him in respect to the preceding paragraph, if he notifies the OMB of such transaction within five working days from receipt of the order, furnishing to the OMB all material information thereof;
 - (3) Refusing to submit to inspection by the OMB, or surrender for preventive custody any optical media, equipment, manufacturing materials, including parts, accessories and paraphernalia found during inspection operations to be in violation of the provisions of this Act;

Regulation/Rules:

OMB Memorandum Circular 2018-002

Provide citation(s): Section 5.1

Failure to comply with the licensing requirements as provided for by Section 1 hereof shall be deemed a violation of Title IV, Rule 1, Section 1 (h) of the IRR of R.A. 9239, punishable by suspension of operations for a period of not less than one (1) month, but not more than three

(3) months, confiscation of storage devices, and/or a fine of not less than Php 50,000.00 but not more than Php 100,000.00.

Court Case(s): _____

Provide citation(s):

Voluntary Industry Practices: _____

Provide citation(s):

Other: _____

Provide citation(s):

None: _____

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES NO _____

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

An amendment of Republic Act 9239, otherwise known as the Optical Media Act of 2003 is underway. The draft of the amended law covers paramount measures to counter cybercrimes especially in the fields of online copyright infringement and digital piracy. This amendment shall also include regulation of all new technologies that may be developed in the future.

Ongoing information drive re illicit manufacture, reproduction, distribution, offering for sale, and selling of streaming devices.

Internet Transactions Bill (HB 6122) entitled “An Act Protecting Consumers And Merchants Engaged In Internet Transactions, Creating For This Purpose The Ecommerce Bureau And Appropriating Funds Therefor” is being deliberated now in the House of Representative’s Committee on Trade which coverage includes digital media providers, including advertising, gaming, music subscription, and video on demand.

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES NO _____

If YES, please describe any currently proposed actions to address this issue:

The current legal framework does not include a clear provision on the jurisdiction of IP enforcement agencies over ISD's. Only general provisions regarding the same are in place. While these general provisions allow the IP-enforcement agencies to be creative in pursuing people engaged in commercial activities involving ISD's, it is a certainty that in time, unscrupulous individuals will be able to utilize loopholes in the present laws. Hence, it is the intention of the team responsible for drafting amendments of the Optical Media Act to include clear provisions involving jurisdiction over all methods of perpetrating piracy, ISD's included.

Accordingly, a proposed bill on "Online Infringement" is still subject for approval pending before the Philippine Senate.

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES _____ NO X

If NO, please describe any currently proposed actions to address this issue:

Intellectual Property Office of the Philippines: The fines provided for in R.A. 9239, as well as other OMB issuances are not sufficient to achieve its objectives. Hence, in the draft amendments of the Optical Media Act there is an increase in the fines to be imposed for violators of the law to ensure that they will think twice before committing violations of the same nature. However, with regard to the penalty imprisonment, it is the belief of the OMB that the jail time impossible under R.A. 9239, as well as other OMB issuance, is already sufficient.

Criminal Investigations and Detection Group, Anti-Fraud and Commercial Crimes Unit: It cannot be determined, since this Unit has no available data re cases filed against any entity or individual engaged in the manufacture, reproduction, distribution, offering for sale, and selling of illicit streaming devices.

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: X

Customs/Border Agency: X

Regulatory Agency: _____

IP Office: X

Other: _____

If you checked any of the above, please provide further information or specifics:

While importation, sale or distribution of ISDs are not prohibited per se, the above agencies can conduct investigation relating to ISDs. For Customs, they can conduct investigation relating to ISDs when it involves violation of Customs laws. For enforcement agencies like PNP/NBI and IPOPHL, investigations relating to ISDs may be made in relation to intellectual property violations.

On the other hand, OMB as an agency mandated to regulate and enforce police powers relative to all forms of media storage devices. Considering that ISD's have storage capacities, they also fall under the jurisdiction of the Optical Media Board. As previously mentioned, when the OMB catches a person or entity engaging in commercial activities involving ISD's, it may lead to seizure of illicit goods, closure of establishment, fines, and jail time.

For possible complaints on ISDs the primarily responsible agency for conducting investigations into or enforcement actions against ISDs are either Bureau of Customs, Optical Media Board, National Bureau of Investigation and/or the Philippine National Police' Criminal Investigation and Detection Group or Anti-Cybercrime Group.

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: 2 (OMB)
 Border or Customs Actions: _____
 Civil Actions (brought by private parties): _____
 Civil Actions (brought by public officials): _____
 Law Enforcement Investigations Commenced: 1 (OMB)
 Criminal Prosecutions Commenced: _____

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: X
 Advertising or Offer for Sale: X Commercial/Public Use: _____ Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

An administrative case was filed against the establishments and closure order was issued.

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: X Insufficient resources: X
 Insufficient evidence: _____ Lack of technical expertise: X
 Not considered priority: _____ Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES NO

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____

Proposed/implemented regulatory change(s): _____

Conducted/implemented new law enforcement training: _____

Worked with foreign law enforcement agencies:

Other:

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES NO

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES NO

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES NO

If YES, please provide citations, examples, or links to such materials:

The OMB holds the Anti-Media Piracy Summit every year. For 2019, ISDs were discussed by one of the event's distinguished speaker Mr. Neil Gane, from the AVIA-CAP.

<https://omb.gov.ph/activities/anti-media-piracy-summit/>

IPOPHL promotes legal streaming through its social media accounts and its website.

<https://www.instagram.com/p/B-JKVRwhiWE/>

<https://www.facebook.com/photo?fbid=106061757806738&set=a.106064351139812>

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Hopefully, the appropriate concerned government agency could provide seminars and trainings to educate and disseminate the proper techniques and legal approaches in combating illicit streaming devices (ISDs).

The National Telecommunication Commission (NTC) administers the “Public Telecommunications Policy Act of the Philippines” (Republic Act No. 7925). NTC’s mandate includes regulation of telecommunication entities. It also administers other services and facilities such as Customer Premises Equipment which is defined under Article V, Section 14, as:

SEC. 14. Customer Premises Equipment. - Telecommunications subscribers shall be allowed to use within their premises terminal equipment, such as telephone, PABX, facsimile, data, record, message and other special-purpose or multi-function telecommunication terminal equipment intended for such connection: Provided, That the equipment is type-approved by the Commission.

Thus, streaming devices which are used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers are among the NTC regulated equipment.

However, these streaming devices have been used for illegal streaming of copyrighted contents. In this regard, enforcement mechanisms have been put in place to address the problem of illegal streaming of these contents anchored on the copyright provisions of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, as amended, which provides:

SEC. 216. *Infringement.* – A person infringes a right protected under this Act when one:

- a. Directly commits an infringement;
- b. Benefits from the infringing activity of another person who commits an infringement if the person benefiting has been given notice of the infringing activity and has the right and ability to control the activities of the other person;
- c. With knowledge of infringing activity, induces, causes or materially contributes to the infringing conduct of another.

SEC. 216.1. *Remedies for Infringement.* – Any person infringing a right protected under this law shall be liable:

- a. To an injunction restraining such infringement. The court may also order the defendant to desist from an infringement, among others, to prevent the entry into the channels of commerce of imported goods that involve an infringement, immediately after customs clearance of such goods.
- b. To pay to the copyright proprietor or his assigns or heirs such actual damages, including legal costs and other expenses, as he may have incurred due to the infringement as well as the profits the infringer may have made due to such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or, in lieu of actual damages and profits, such damages which to the court shall appear to be just and shall not be regarded as penalty: *Provided*, That the amount of damages to be awarded shall be doubled against any person who:

- i. Circumvents effective technological measures; or
 - ii. Having reasonable grounds to know that it will induce, enable, facilitate or conceal the infringement, remove or alter any electronic rights management information from a copy of a work, sound recording, or fixation of a performance, or distribute, import for distribution, broadcast, or communicate to the public works or copies of works without authority, knowing that electronic rights management information has been removed or altered without authority.
- c. Deliver under oath, for impounding during the pendency of the action, upon such terms and conditions as the court may prescribe, sales invoices and other documents evidencing sales, all articles and their packaging alleged to infringe a copyright and implements for making them.
 - d. Deliver under oath for destruction without any compensation all infringing copies or devices, as well as all plates, molds, or other means for making such infringing copies as the court may order.
 - e. Such other terms and conditions, including the payment of moral and exemplary damages, which the court may deem proper, wise and equitable and the destruction of infringing copies of the work even in the event of acquittal in a criminal case.

The copyright owner may elect, at any time before final judgment is rendered, to recover instead of actual damages and profits, an award of statutory damages for all infringements involved in an action in a sum equivalent to the filing fee of the infringement action but not less than Fifty thousand pesos (Php50,000.00). In awarding statutory damages, the court may consider the following factors:

- (1) the nature and purpose of the infringing act;
- (2) the flagrancy of the infringement;
- (3) Whether the defendant acted in bad faith;
- (4) the need for deterrence;
- (5) Any loss that the plaintiff has suffered or is likely to suffer by reason of the infringement; and
- (6) Any benefit shown to have accrued to the defendant by reason of the infringement.

In case the infringer was not aware and had no reason to believe that his acts constitute an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not more than Ten thousand pesos (Php10,000.00): *Provided*, That the amount of damages to be awarded shall be doubled against any person who:

- i. Circumvents effective technological measures; or
- ii. Having reasonable grounds to know that it will induce, enable, facilitate or conceal the infringement, remove or alter any electronic rights management information from a copy of a work, sound recording, or fixation of a performance, or distribute, import for distribution, broadcast, or communicate to the public works or copies of works without authority, knowing that electronic rights management information has been removed or altered without authority.

216.2 In an infringement action, the court shall also have the power to order the seizure and impounding of any article which may serve as evidence in the court proceedings, in accordance with the rules on search and seizure involving violations of intellectual property rights issued by the Supreme Court.

The foregoing shall not preclude an independent suit for relief by the injured party by way of damages, injunction, accounts or otherwise.”

217.2. In determining the number of years of imprisonment and the amount of fine, the court shall consider the value of the infringing materials that the defendant has produced or manufactured and the damage that the copyright owner has suffered by reason of the infringement: *Provided*, That the respective maximum penalty stated in Section 217.1. (a), (b) and (c) herein for the first, second, third and subsequent offense, shall be imposed when the infringement is committed by:

“(a) the circumvention of effective technological measures;

“(b) the removal or alteration of any electronic rights management information from a copy of a work, sound recording, or fixation of a performance, by a person, knowingly and without authority; or

“(c) the distribution, importation for distribution, broadcast, or communication to the public of works or copies of works, by a person without authority, knowing that electronic rights management information has been removed or altered without authority.”

Through the Intellectual Property Rights Enforcement Office (IEO), which acts as the enforcement arm of the Intellectual Property Office of the Philippines (IPOP HL), established pursuant to the enforcement power and visitorial powers granted to the Director General of the IPOP HL under Section 7.1 (c), (d) and (e) of the IP Code, the right holders whose IP rights are affected through the use of ISDs as well as the public in general can file a complaint or report regarding illegal ISDs (those with preloaded with infringing content or used to illegally stream contents) for investigation and enforcement. IEO also coordinates and collaborates with the private sectors in addressing these concerns. IPOP HL constantly conducts dialogue or discussions regarding piracy of online content with industry groups and associations like Coalition Against Piracy (CAP).

The Optical Media Board (OMB) has partnered with Asia Video Industry Association-Coalition Against Piracy (AVIA-CAP) in addressing the issues of Illicit Streaming Devices in the Philippines. In March 2019, OMB has directed an in-depth investigation on the proliferation of these ISDs in the Philippines. It has also directed all businesses engaged in the importation, distribution and sale of set-top boxes to secure the necessary licenses from this agency. OMB also summoned e-commerce markets such as Lazada and Shopee to discuss the monitoring of ISDs in their respective platforms.

The member agencies of the National Committee on Intellectual Property Rights (NCIPR) work together in addressing concerns regarding ISDs. Reports on illegal streaming devices and illegal streaming activities are referred to the proper agency for investigation and case build up using IP related laws that can address the case.

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

P. Russia

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Chinese Taipei, Japan, Mexico, Peru, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: Russian Federation

Contact Information: Dmitry Neminushchiy

Counsellor of Regional Integration Division

International Cooperation Department Federal Service for Intellectual Property
Russian Federation

tel.: +7 495 531 65 17 / fax: +7 495 531 66 56

e-mail: rospat182@rupto.ru

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem Minor problem _____ Serious problem _____ Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law:

Provide citation(s):

Regulation: -

Provide citation(s): -

Court Case: -

Provide citation(s): -

Voluntary Industry Practices: -

Provide citation(s): -

Other: -

Provide citation(s): -

None: No information available

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES _____ NO X

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your company that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

NO

If YES, please describe any currently proposed actions to address this issue:

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES NO

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: YES

Customs/Border Agency: NO

Regulatory Agency: YES

IP Office: NO

Other: Ministry of Digital Development, Communications and Mass Media; Ministry of Culture; Ministry of Internal Affairs; and The Federal Service for Supervision of Communications, Information Technology, and Mass Media.

If you checked any of the above, please provide further information or specifics:

Usually they will only conduct upon complain by the copyright owner

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: NIA

Border or Customs Actions: NIA

Civil Actions (brought by private parties): NIA

Civil Actions (brought by public officials): NIA

Law Enforcement Investigations Commenced: NIA

Criminal Prosecutions Commenced: NIA

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: _____

Advertising or Offer for Sale: _____ Commercial/Public Use: _____ Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

NIA

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: NIA

Insufficient resources: NIA

Insufficient evidence: NIA

Lack of technical expertise: NIA

Not considered priority: _____

Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

NIA

If YES, what approaches, if any, have been taken to address this challenge? Proposed/implemented statutory change(s):

Proposed/implemented regulatory change(s):

Conducted/implemented new law enforcement training:

Worked with foreign law enforcement agencies:

Other:

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

NO

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

NO

If YES, please provide information about or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

NIA

If YES, please provide citations, examples, or links to such materials:

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Lack of awareness amongst users

Lack of awareness amongst the enforcement officials as well as the regulatory officials

Submission:

Please send the completed survey response by no later than 29 May 2020.

Thank you for your response.

Q. Singapore

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, and Chinese Taipei, Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: Singapore

Contact Information: Name: Soh Lili

Position/Title: Deputy Director (Intellectual Property Policy Division)

Office/Agency: Ministry of Law

Email: soh_lili@mlaw.gov.sg

Name: Shaun Ng

Position/Title: Assistant Director (Intellectual Property Policy Division)

Office/Agency: Ministry of Law

Email: shaun_ng@mlaw.gov.sg

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem _____ Serious problem X Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: X

Provide citation(s): Copyright Act (Cap 63), sections 136(3A), 137(4) and 193DDA

Regulation/Rules: _____

Provide citation(s):

Court Case(s): X

Provide citation(s):

Neil Kevin Gane v Jia Xiaofeng and Synnex Trading Pte Ltd [2019] SGMC 73

(Reported case with no citation) <https://avia.org/singapore-high-court-blocks-popular-piracy-streaming-websites-and-illicit-streaming-device-applications/>

Voluntary Industry Practices: _____

Provide citation(s):

Other: _____

Provide citation(s):

None: _____

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES NO

If YES, please describe any currently proposed actions to address this issue:

New enforcement measures (civil and criminal) will be made available to copyright owners to deter retailers and service providers from profiting off providing access to content from unauthorized sources, such as through the sale of set-top boxes that enable access to content from unauthorized sources (also commonly known as grey boxes or ISDs). The provisions will be put in place together with other changes to the Copyright Act as part of an overall review of the Act. More details can be found in the Singapore Copyright Review Report released in January 2019, available online at

<https://www.mlaw.gov.sg/files/news/press-releases/2019/01/Annex%20A%20-%20Copyright%20Review%20Report%2016%20Jan%202019.pdf>.

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES NO

If NO, please describe any currently proposed actions to address this issue:

See answer to Question 5 above.

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police:

Customs/Border Agency:

Regulatory Agency:

IP Office:

Other:

If you checked any of the above, please provide further information or specifics:

Rights-holders share responsibility for conducting investigations into or enforcement actions against ISDs

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: 0
Border or Customs Actions: 0
Civil Actions (brought by private parties): 1
Civil Actions (brought by public officials): 0
Law Enforcement Investigations Commenced: N/A
Criminal Prosecutions Commenced: 1

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: _____
Advertising or Offer for Sale: _____ Commercial/Public Use: _____ Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____
Insufficient evidence: _____ Lack of technical expertise: _____
Not considered priority: _____ Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES X NO _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____
Proposed/implemented regulatory change(s): _____
Conducted/implemented new law enforcement training: _____
Worked with foreign law enforcement agencies: _____

Other: If the servers are located overseas, it does not impede the investigation or prosecution. However, if the servers are located locally, rights-holders have additional recourses available against the people operating the servers themselves.

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES _____ NO _____

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES _____ NO _____

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES _____ NO _____

If YES, please provide citations, examples, or links to such materials:

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

R. Chinese Taipei

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: Chinese Taipei

Contact Information: Name: Yi-Ting Hsiao

Position/Title: Officer

Office/Agency: Intellectual Property Office, Ministry of Economic Affairs

Email: ivyho00727@tipo.gov.tw

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem _____ Minor problem _____ Serious problem X Very serious _____

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: X

Provide citation(s):

In 2019, TIPO added the following three as infringing acts in the amendments to Subparagraph 8, Paragraph 1, Article 87 of the Copyright Act:

- (1) To provide the public with computer programs which have aggregated the Internet Protocol Addresses of such works. Such include placing apps which aggregate illegal video and audio links in online app stores.
- (2) To direct, assist or preset paths to the public for using computer programs in the preceding item. Such include instructing or assisting people in installing such programs through certain facilities or equipment.
- (3) To manufacture, import or sell equipment or devices preloaded with the computer programs of the first item. Such include manufacturing, importing, or selling set-up boxes loaded with aforementioned programs.

Regulation/Rules: _____

Provide citation(s):

Court Case(s): _____

Provide citation(s):

Voluntary Industry Practices: X

Provide citation(s):

OTT providers and rights holder groups have taken the following actions since the passage of the amendment:

- (1) Regularly provide a renewed list of the illegal setup boxes that should not be circulated, as a reference for e-commerce platforms and physical stores. In principle, no selling, installing, and uploading of illegal set-up boxes and apps.
- (2) Produce and broadcast a short video on “say no to illegal set-up boxes.”
- (3) Offer cash rewards for reporting of illegal set-up boxes.

Other: _____

Provide citation(s):

None: _____

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES _____ NO _____

In our economy, new laws which aim at stopping ISDs were passed in 2019. That is, Articles 87 and 93 of the Copyright Act came into force on 1 May 2019. So far, the articles are well embraced by all circles of society. More items may be amended depending on the enforcement of these new laws.

If YES, please describe any currently proposed actions to address this issue:

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES _____ NO _____

In our economy, the laws implemented in 2019 as aforementioned can already stop ISDs from being sold and distributed. According to Article 88 of the Copyright Act, “a person who unlawfully infringes on another person’s economic rights or plate rights out of intention or negligence shall be liable for damages.” Also, according to Article 93 of the same act, the person shall face “a sentence of up to two years imprisonment or detention shall be imposed, or in lieu thereof or in addition thereto, a fine of not more than NT\$500,000(USD\$16,666).”

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: _____

Customs/Border Agency: _____

Regulatory Agency: _____

IP Office: _____

Other: _____

If you checked any of the above, please provide further information or specifics:

High Prosecutors Office, Ministry of Justice; Criminal Investigation Brigade, the Second Special Police Corps, National Police Agency (NPA), Ministry of the Interior (MOI); The Telecommunications Investigation Corps, Criminal Investigation Bureau (CIB), NPA, MOI

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs (illicit streaming devices) in your economy?

Administrative/Regulatory Actions: _____

Border or Customs Actions: _____

Civil Actions (brought by private parties): _____

Civil Actions (brought by public officials): _____

Law Enforcement Investigations Commenced: X

Criminal Prosecutions Commenced: _____

On investigating ISDs cases against IPR laws, not only that the Second Special Police Corps, NPA, MOI is in charge of such investigation. The CIB's 7th Investigation Corps fights against economic crimes, too, while the 9th Investigation Corps deals with online infringement cases. The Telecommunications Investigation Corps tackles online telecommunication crimes. In all districts throughout our economy, the Criminal Investigation Corps is also responsible for investigation.

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: X Exportation: _____ Manufacturing: X Sale: X

Advertising or Offer for Sale: X Commercial/Public Use: X Other: _____

The NPA, MOI actively investigates into all ISDs cases which involve criminal punishment due to violation of IPR laws.

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

In the past 12 months, a total of 13 media box infringement cases including 19 suspects were uncovered, and many illegal infringing websites (such as illegal adult websites and movie websites, etc.) have also been handed over to the District Prosecutors Offices for investigation by the NPA, MOI.

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____
Insufficient evidence: _____ Lack of technical expertise: _____
Not considered priority: _____ Other: X

No statistical data related to ISDs cases.

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES X NO _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____

Proposed/implemented regulatory change(s): _____

Conducted/implemented new law enforcement training: _____

Worked with foreign law enforcement agencies: X

- (1) In our economy, overseas ISDs are mainly based in the United States (US) and China. Thus, the MOU on IPR enforcement is signed with the United States, as well as the Cross-Strait Agreement on IPR Protection and Cooperation with China. Based on these two agreements, we provide relevant information to the United States and China when requesting assistance in investigation.
- (2) If there is a major cross-border IPR infringement case, the CIB, NPA, MOI will establish contacts with the United States and China through the following channels:
 - a. CIB may request the preservation of electromagnetic records through the “24/7 High-Tech Crime Network” from the Computer Crime and Intellectual Property Section, Department of Justice, the United States.
 - b. For cases involving China, requests can be made for assistance to the National Copyright Administration. This can be used to strengthen law enforcement cooperation and exchange of information with other economies.
- (3) In addition to the aforementioned special channels, requests can also be made through CIB’s existing channel. For instance, for those economies without overseas liaison officers, CIB may request assistance via the International Criminal Police Organization.

Other: X

About a major rights-infringing website (based overseas) that our economy uncovered:

In 2020, we uncovered “8maple.ru,” the rights-infringing website with the largest visiting volume in our economy. The rights-infringer, while based in our economy, rented 25 host computers

located in France, Canada, and Romania from cloud service providers, and provided illegal video and audio streaming to users. The infringer then profited from advertisements that came along with the streaming. The police of our economy first acquired information about the infringer by tracking the site's IP addresses, and discovered more about the site's cash flow and registration info. The infringer was finally seized.

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES _____ NO X

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES _____ NO X

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES X NO _____

If YES, please provide citations, examples, or links to such materials:

- (1) Educational advocacy: Through a range of events, TIPO advocates annually that:
 - a. People should watch videos and films on legally established websites
 - b. Set-up box manufacturers should never produce equipment with built-in hyperlinks which enables users to connect to infringing website to view infringing content
 - c. E-commerce platforms (such as Yahoo!, books.com.tw, and Rakuten) should never allow vendors to sell equipment with built-in hyperlinks which enables users to connect to infringing website to view infringing content
- (2) TIPO has helped rights holders and various advertising-agency associations to sign a voluntary agreement entitled "Follow the Money." Once the agencies stop placing ads on rights-infringing websites, illegal cash flow will naturally die out.

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

S. Thailand

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Chinese Taipei, Japan, Mexico, Peru, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: Thailand

Contact Information: Name: Mr. Sirapat Vajraphai

Position/Title: Head, International Cooperation Section 1

Office/Agency: Department of Intellectual Property, Thailand

Email: Dipadmin@moc.go.th

Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem ____ Minor problem Serious problem ____ Very serious ____

Q2: What legal approaches (i.e., statutory, regulatory, or case decision), if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: X

Provide citation(s):

(1) Broadcasting and Television Businesses Act B.E. 2551 (2008)

Regulation: X

Provide citation(s):

(1) The Office of the National Broadcasting and Telecommunication Commission Announcement on the Production, Importation, Sale, Possession for Sale or Installation of Internet TV Box dated 28 March B.E. 2560 (2017)

Court Case: _____

Provide citation(s): _____

None: _____

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Q5: Are there specific areas where you believe the current legal framework in your economy does not provide the necessary tools to investigate and prosecute this issue?

The Office of the National Broadcasting and Telecommunication Commission Announcement on the Production, Importation, Sale, Possession for Sale or Installation of Internet TV Box dated 28 March B.E. 2560 (2017), which was issued in accordance with Section 70 of the Broadcasting and Television Businesses Act B.E. 2551 (2008), provides that a person who wishes to produce, import, sale, possess for sale, or provide installation service of an Internet TV Box is required to obtain a permission from the NBTC. Anyone who violates this requirement is subject to the maximum of two years imprisonment, or 2,000,000 Baht fine, or both.

The current Copyright Act B.E. 2537 (1994) provides protection against the act of unauthorized circumvention of technological protection measures attached to a copyright work, which may

include any encryption measures put in place by the right holder to protect against the unauthorized access or use of the copyright TV program transmitted through the internet or other means. The person who violates this act is subject to the fine of between 10,000 – 100,000 Baht. In the case that such act is done for commercial purposes, the person committing the act will be fined between 50,000 – 400,000 Baht, or imprisoned for three months to two years, or both.

It is to our believe that the Copyright Act and the NBTC's Announcement provide necessary measures against the illicit streaming devices at all junctures, from importation, production, possession for sale, sale and installation service. At the same time, they also provide for the criminalization against the act of using such devices in circumventing any measures imposed by the right holder in preventing the unauthorized access or use of the copyright work. The measure will even be strengthened once the pending amendment to the Copyright Act B.E. 2537 (1994) is promulgated.

Q6: Are there any legal or other barriers to the successful investigation and prosecution of ISDs?

YES NO

If so, please describe such barriers:

As the prosecution of the cases of this nature concerns some technical expertise of the authorities involved, namely the government agencies, police, prosecutors and judges, it is very essential that all agencies concerned are appropriately trained with such specific knowledge to ensure the appropriate outcome of the cases. Furthermore, in the cases where the prosecution bases on the provision of the Copyright Act, the close cooperation from the right holders who are affected by the illegal actions is required.

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police:

Customs/Border Agency:

Regulatory Agency:

IP Office:

Other:

If you checked any of the above, please provide further information or specifics:

1. Royal Thai Police, where the cases of these natures fall into the responsibilities of the Economic Crime Suppression Division
2. Department of Special Investigation
3. Customs Department
4. Office of the National Broadcasting and Telecommunications Commission

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: _____

Border or Customs Actions: _____

Civil Actions (brought by public officials): _____

Criminal Investigations and/or Prosecutions: 6

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: X

Advertising or Offer for Sale: X Commercial/Public Use: _____ Other: X

(Installation without authorization)

Q10: If actions have been taken, please also provide information on the actions taken:

The Office of the National Broadcasting and Telecommunications Commission in cooperation with the Royal Thai Police, brought legal actions against those who, without authorization, sold or installed internet TV boxes. 205 devices were seized in these actions, all of which will be destroyed after the cases reach their final judicial decisions with a view to ensure that they will not find their ways back into the channel of commerce.

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____

Insufficient evidence: _____ Lack of technical expertise: _____

Not considered priority: _____ Other: NONE

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES _____ NO X

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____

Proposed/implemented regulatory change(s): _____

Conducted/implemented new law enforcement training: _____

Worked with foreign law enforcement agencies: _____

Other comments:

The legislation under the supervision of the NBTC focuses on the acts of unauthorized production, importation, sale, possession for sale, or provision of Internet TV Box installation service with no prejudice against the location of the illegal streaming servers.

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES NO

If so, what is the mechanism to access it?

The database on cases concerning ISDs are under the supervision of the Office of the National Broadcasting and Telecommunications Commission, and they may be released to interested persons upon request on a case-by-case basis.

Q14: Have you conducted/commissioned any studies, surveys, or reports on ISDs?

YES NO

If so, please provide information about or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES NO

If so, please provide citations, examples, or links to such materials:

There are various public outreach programs to educate technical shops, entrepreneurs and general public on the legal basis around the acts concerning the devices prohibited by current pieces of legislation as well as harms that may be done to the society had the offense is committed. In 2019, 205 public outreach projects were recorded including seminars in various relevant topics in Bangkok and provincial areas.

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Further to the information provided above, the Department of Intellectual Property, Thailand has proposed an amendment to the current Copyright Act B.E. 2537 (1994) to, among others, criminalize the acts of importing, selling and offering for sale of devices which have primarily objective to circumvent technological protection measures used to protect against

illegal access or use of copyrighted works. The amendment to the Act, once promulgated, will provide additional necessary instruments against circumvention devices in respect of measures used by copyright holders in protecting their works including encrypted works transmitted on the internet.

The draft amendment was approved in principle by the Cabinet and has gone through the Council of State revision on 16 August 2019. It will be submitted to the Cabinet for approval before to the Parliament for consideration soon.

Submission:

Please send the completed survey response by no later than 29 May 2020.

T. United States of America

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: United States of America

Contact Information:

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Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

Not a problem ____ Minor problem ____ Serious problem X Very serious ____

<https://www.theglobalipcenter.com/wp-content/uploads/2019/06/Digital-Video-Piracy.pdf>

Using macroeconomic modeling of digital piracy, the study estimates that global online piracy costs the United States economy at least **\$29.2 billion** in lost revenue each year.

Internet streaming has grown to become the dominant form of delivery for both legitimate and infringing content, and infringing streaming is the dominant form of piracy of audiovisual content. ISDs are one component of the larger problem of illicit streaming. While a substantial portion of illicit streaming occurs without the use of an ISD (e.g., through streaming websites), ISDs are a serious and growing problem for US-based content industries.

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: X

Provide citation(s):

Criminal Statutes

- 17 USC §§ 501-505 set forth a range of civil remedies and for infringements of copyright, including infringements of the reproduction, distribution, and public performance rights typically implicated by illegal streaming services and ISDs. Although the manufacturers and sellers of ISDs may not necessarily engage in direct infringement of copyright as defined in the statutes, they may still be held civilly liable under theories of secondary liability for infringement, developed in case law.
- 17 USC §§ 506(a)(1)(A) (criminalizing willful copyright infringement done for purposes of commercial advantage or private financial gain)
- 18 USC §§ 2319(b)(3); 18 USCA. § 3571(b)(5); 18 USCA. §3559(a)(6) (establishing misdemeanor penalties for certain public performances, including a fine up to \$100,000 and imprisonment up to one year)
- 18 USC § 2 (provides that anyone who “aids, abets, counsels, commands, induces or procures” the commission of an offense (including the copyright offenses referenced above) is also punishable as a principal.)

- Where counterfeit marks are used in connection with importation or distribution of ISDs, the civil (15
 - USC §§ 1114 *et seq.*) and criminal penalties (18 USC § 2320) for trafficking in counterfeit marks may be used.
 - Where ISDs are imported illegally, particularly through the use of fraud, various customs violations may apply:
 - 18 USC § 541, Entry of Goods Falsely Declared
 - 18 USC § 542, Filing False Invoice
 - 18 USC § 545, Smuggling of Goods

Civil Statutes

- 17 USC § 106(4) (granting the owner of copyright exclusive rights in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly)
- 17 USC § 501 (establishing civil causes of action for copyright infringement)
- 17 USC § 502; 17 USC § 504(b); 17 USC § 504(c)(1); 17 USC § 505 (remedies for infringement)
- 15 USC § 45(a)(1) (authorizes the FTC to police unfair and deceptive trade practices. The Copyright alliance has encouraged the FTC to use this authority to pursue instances where distributors advertise their ISDs as 100% lawful or afflict consumers with damaging malware for misleading and impairing consumers and harming competition.)
- 17 USC § 1201; 17 USC 1201(a)(2) and (b)(1) (Establishing a violation for circumvention of copyright protection systems as well as sales, importation, manufacture, offers to the public or provision of such devices or products and violation concerning importation of such devices)
- 19 USC §1595a(C)(2)(c) for a violation of 17 USC §1201 (Current seizure authority for importation of such devices)
- 17 USC §1203(providing remedies for violations under 17 USC § 1201)
- 19 USC §1595a(c)(2)(C)(authorizing seizure of merchandise in which copyright violations are involved)

Regulation/Rules: X

- The Code of Federal Regulations provides corresponding regulations.
- Proposed Rule, 84 FR 55251, Published Oct. 16, 2019, *inter alia*, “simplify the detention process involving goods suspected of violating the copyright laws, and prescribe new regulations enforcing the DMCA.” Comment period closed Dec. 16, 2019.

- Currently, CBP utilizes the standard copyright detention and seizure regulations when dealing with DMCA violative devices; 19 CFR §133.42-43.

Provide citation(s):

Court Case(s): X

Provide citation(s):

Seizure Authority

There have been no judicial challenges to CBP’s seizures of circumvention devices under 17 USC§1201.

Civil

- There are a number of cases that have helped define the circumstances in which a provider of streaming services or the maker or seller of devices may be held liable for infringement. However, one of the more notable ones is *American Broadcasting Companies, Inc. v. Aereo*, 573 US 431 (2014) in which the Supreme Court found that streaming is a public performance.
- Two other Supreme Court cases, *Sony Corp v Universal City Studios Inc.*, 464 US 417 (1984) and *MGM Studios v Grokster*, 545 US 913 (2005), define the circumstances under which the distributor of devices that may be used for copyright infringement may be held liable for infringement committed by others. (That is, although distribution of devices capable of commercially significant non-infringing uses generally does not constitute contributory infringement, when done with the object of promoting its use to infringe copyright, it may result in liability for the resulting acts of infringement by third parties.)
- *Universal City Studios Prods. LLLP v. TickBox TV LLC*, 2018 US Dist. LEXIS 40756 (C.D. Cal. 2017)(defendant is a manufacturer of streaming device that allows consumers to install software and addons to access infringing content. This case settled in 2018, but the complaint included causes of action for intentionally inducing the infringement of plaintiffs’ copyright works and for contributory copyright infringement by knowingly and materially contributing to the infringement of plaintiffs’ copyrighted works, both under 17 USC § 106. Judgment was entered for Plaintiffs who were awarded damages in the amount of \$25,000,000 and a permanent injunction)
- *Netflix Studios, LLC v. Dragon Media, Inc.*, 2018 US Dist. LEXIS 225115 (C.D. Cal. 2018) (similar to *TickBox* case, defendant is manufacturer of a streaming device that allows consumers to install software and addons to access infringing content and includes same causes of action. Plaintiffs settled for \$14.5 million in damages and a permanent injunction)
- *China Cent. Tv v. Create New Tech. Hk*, 2016 US Dist. LEXIS 197605, (C.D. Cal. 2016) (Defendant AMG sold streaming devices preloaded with applications for streaming television programs. On its website, defendant advertised and promoted the infringing apps and infringing capabilities of the device. On a motion for default judgement, the court found that the plaintiff had alleged sufficient facts for the claim of secondary

- copyright infringement, granted a permanent injunction and awarded statutory damages in the amount of \$6,885,000.)
- *Asia TV USA Ltd. v. Kamran Int'l Trade, Ltd.*, 2018 US Dist. LEXIS 166786 (E.D.N.Y. Sep. 2018)(defendants operated a “pirate broadcasting network” that captured channels of plaintiff’s television program as well as manufactured and sold a streaming device loaded with a software interface to users to stream the copyrighted content. On a motion for default judgment, the court found the complaint adequately alleged facts necessary to establish the elements of copyright infringement and granted plaintiffs’ request for a permanent injunction as well as awarded maximum statutory damages in the amount of \$8,250,000.)
 - *Joint Stock Co. Channel One Russ. Worldwide v. Infomir LLC*, 2020 US Dist. LEXIS 59589, at *5 (S.D.N.Y. Apr. 3, 2020)(This case was filed in 2016 and is still ongoing with respect to several defendants, including Infomir LLC. Infomir allegedly manufactures and sells set-top boxes configured and marketed to facilitate piracy including one model that is sold with pre-loaded software apps that permit subscribers to launch browsers from the set-top box allowing subscribers to view plaintiffs’ channels over streaming services. Plaintiff’s complaint includes claims for, amongst others, unauthorized decryption or circumvention of technological measures in violation of the DMCA, 17 USC § 1201 and (5) trafficking in decryption technology in violation of the DMCA, 17 USC § 1201.)
 - *TVB Holdings (USA), Inc. v. HTV Int'l Ltd.*, 2018 US Dist. LEXIS 41323 (E.D.N.Y. 2018) (Defendants manufactured and sold set-top devices that enable users to access, view and share via a peer-to-peer network plaintiff’s copyrighted programming without plaintiffs’ authorization. The devices featured an app store that allowed users to download infringing apps to stream infringing copies of plaintiff’s programming. On a motion for default judgment, the court found that plaintiff’s allegations were sufficient to establish liability for direct, contributory and vicarious liability, granting plaintiffs’ request for a permanent injunction and awarding \$46,140,000 in statutory damages.)

Criminal

- *USA v. Alshaikhli*, 3:19-cr-03582 (S.D. Ca. 2019)
USA v. Alqaraghuli, 3:19-cr-03583 (S.D. Ca. 2019)
 (Defendants operated a brick and mortar storefront in El Cajon, California where they sold set-top boxes preloaded with illicit streaming apps. Defendants were charged with willfully and for the purposes of commercial advantage or private financial gain, infringing a copyright by aiding and abetting in the public performance of a copyrighted work, in violation of 17 USC §§ 506(a)(1)(A) and 18 USC §§ 2319(b)(3). Both defendants pleaded guilty to the charges and were sentenced to a year of unsupervised probation and \$1,000 restitution)
- *United States v. Kristopher Lee Dallmann*, et al., 1:19-cr-00253-TSE (E.D. Va. 2019)
 (eight defendants were indicted in connection with operation of two of the largest unauthorized streaming services in the United States, Jetflixs and iStreamItAll. The two services were specifically designed to work on many different types of devices include set-top boxes and video game consoles. Two defendants were charged with, amongst

others, criminal copyright infringement by public performance. Thus far, two defendants have pleaded guilty.)

Voluntary Industry Practices: **X** _____

Provide citation(s):

The Creative Content Industry (CCI) has a strong brand protection program in place that utilizes administrative and civil remedies. Through these programs, the CCI is able to gather vital information that they pass onto law enforcement, who uses the information as the basis of criminal investigations.

Sellers of legitimate media streaming devices and operating systems have taken various actions to remove or disable apps or other add-ons that allow such devices to be modified into ISDs. For example, Google has removed the TV Portal app from the Google Play store, and Roku has taken action to eliminate “private channels” being used to stream infringing content on Roku devices.

Other: **X** _____

Provide citation(s):

An important area of economic growth for the CCI has been the development of legitimate digital platforms. Additionally, the proliferation of legitimate platforms has been shown to decrease the use of ISDs that enable access to pirated content.

None: _____

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES **X** _____ NO _____

If YES, please describe any currently proposed actions to address this issue:

Streaming Loophole

Applicable laws do not specifically address streaming. As streaming became more prevalent, case law addressed this gap by ruling that streaming fell under the definition of a ‘public

performance', which is a misdemeanor. This created a discrepancy between the treatment of streaming as a misdemeanor, and downloading/reproduction as a felony.

Thus, existing criminal penalties under United States law for copyright infringement committed by means of internet streaming are relatively low compared to penalties available for other types of infringement.

Largely because existing criminal penalties were enacted in an era when reproduction and distribution of physical or electronic copies or phonograms were the primary means of piracy, those criminal penalties are reserved for violations of the reproduction and distribution rights, and calculated in terms of the number of "copies" involved in infringement. Because streaming is now more prevalent, this discrepancy leaves the CCI at risk, as easy to use illicit streaming devices continue to be a threat. These devices offer access professional looking platforms that can fool some consumers into thinking they are legitimate.

This issue is compounded by the fact that premium advertising for legitimate goods appears on illicit sites.

Because infringement by means of illicit streaming or ISDs may involve infringement of the public performance right rather than the reproduction or distribution of multiple copies, the consensus among law enforcement and intellectual-property agencies within the Federal government is that existing criminal copyright law should be revised to provide stronger deterrent penalties for illicit streaming.

Illicit streaming services and devices are elusive and opaquely complex, and transnational criminal organizations utilize multi-faceted schemes that touch numerous countries. Because of this complexity, expanded law enforcement cooperation is critical in order to effectively combat these crimes.

Unfortunately, expanded law enforcement is not always possible for schemes where the base crime is a misdemeanor. It is particularly challenging at the beginning of those investigation that have no indication of felonies, such as counterfeiting or money laundering, being involved.

Although no legislative proposals are currently pending in Congress, in light of the broad interest in addressing this issue, we anticipate legislative proposals may be introduced in the near future.

Seizures

Another proposed action is disclosure to the right holder of the circumvented copyright of identifying information concerning the parties involved in the importation of the seized device:

Rule, 84 FR 55251, Published Oct. 16, 2019, inter alia, "simplify the detention process involving goods suspected of violating the copyright laws", and provide for pre-seizure disclosure of information to right holder if their review of the information would assist CBP in its determination as to whether the device is in violation of 17 USC 1201, clarifies bond conditions for IPR owners to obtain samples of imported goods suspected of violating 17 USC 1201.

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES NO

If NO, please describe any currently proposed actions to address this issue:

A combination of criminal and civil remedies is needed to deter the sale and/or distribution of ISDs. As a criminal investigative agency, HSI receives leads from private industry, which are sometimes based upon information from civil and administrative actions.

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: X

Customs/Border Agency: X

Regulatory Agency:

IP Office: X

Other:

If you checked any of the above, please provide further information or specifics:

Federal law enforcement agencies, including the Federal Bureau of Investigation, (FBI) Homeland Security Investigations (ICE-HSI), the United States Postal Inspection Service (USPS), are primarily responsible for criminal investigations related to ISDs.

Law enforcement and police agencies, such as ICE/Homeland Security Investigations, and its partners to the HSI-led National Intellectual Property Rights Coordination Center (IPR Center) conduct criminal investigations into the TCOs behind the sale of the ISDs that enable piracy. The Department of Justice's Computer Crimes and Intellectual Property Section (CCIPS) prosecutes these crimes.

CBP is the primary border control agency in the United States, responsible for regulating and facilitating international trade, enforcing United States laws and regulations, including those prohibiting the importation of intellectual property rights infringing goods. Customs and Border Protection is responsible for seizing illicit ISDs as they enter the United States. CBP can seize illicit streaming devices for trademark violations, customs violations, and some copyright violations. However, it remains challenging in some situations to seize streaming devices at the border because not all indications of whether a device is illicit are readily apparent.

The Department of State's Office of International Intellectual Property Enforcement and the United States Patent and Trademark Office (USPTO) advocate for the protection and enforcement of intellectual property rights, and conduct important training around the world. This work ensures that the interests of American intellectual property rights holders, such as the Creative Content Industry, are protected.

In 2019 HSI investigated a case where a California corporation sold ISDs face-to-face at a store in El Cajon which resulted in charges against two individuals.

DOJ has prosecuted at least one case relating to the sale of illicit streaming devices. (See answer to Q2- *USA v. Alshaiikli*, 3:19-cr-03582 (S.D. Ca. 2019) and *USA v. Alqaraghuli*, 3:19-cr-03583 (S.D. Ca. 2019)).

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: _____

Border or Customs Actions: _____

Civil Actions (brought by private parties): _____

Civil Actions (brought by public officials): _____

Law Enforcement Investigations Commenced: *see below

Criminal Prosecutions Commenced: <10

United States law enforcement agencies generally do not comment on pending criminal investigations, although there are currently numerous open investigations involving infringing internet streaming and/or ISDs. The DOJ does not have comprehensive statistics on cases involving ISDs, but there have been several criminal prosecutions involving the distribution of ISDs, including prosecutions of physical devices preconfigured as ISDs, and providers of illicit streaming services involved in the distribution of illicit streaming devices and apps.

CBP used to collect and publish statistics on number of seizures of DMCA violative devices. However, for at least the past two FYs, such statistics have not been reported. This is primarily attributable to the fact that Homeland Security Investigations (HSI) does not have a way to readily determine how many of its criminal investigations pertain specifically ISDs. Since most of the content piracy cases it now handles pertain to illicit streaming services, and not necessarily to illicit streaming devices.

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: _____ Exportation: _____ Manufacturing: _____ Sale: X

Advertising or Offer for Sale: _____ Commercial/Public Use: _____ Other: _____

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

USA v. Alshakhli, 3:19-cr-03582 (S.D. Ca. 2019)

USA v. Alqaraghuli, 3:19-cr-03583 (S.D. Ca. 2019)

Defendants operated a brick and mortar storefront in El Cajon, California where they sold set-top boxes preloaded with illicit streaming apps. Defendants were charged with willfully and for the purposes of commercial advantage or private financial gain, infringing a copyright by aiding and abetting in the public performance of a copyrighted work, in violation of

17 USC §§ 506(a)(1)(A) and 18 USC §§ 2319(b)(3). Both defendants pleaded guilty to the charges and were sentenced to a year of unsupervised probation and \$1,000 restitution.

Because HSI cannot readily determine how many of its criminal investigations pertain specifically to ISDs, it is not able to research these cases and determine which types of activity were involved. Anecdotally, HSI has seen instances where legitimate boxes were imported, and preconfigured with illicit content by the person selling them in the United States, HSI has also see instances where preconfigured illicit boxes were imported into the United States.

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: _____
Insufficient evidence: _____ Lack of technical expertise: _____
Not considered priority: _____ Other: _____

HSI does not track why investigations are not pursued.

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES X NO _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____
Proposed/implemented regulatory change(s): _____
Conducted/implemented new law enforcement training: X
Worked with foreign law enforcement agencies: X
Other:

Working through its Attaché Offices around the globe, HSI has worked with foreign law enforcement partners to investigate criminal organizations that facilitated piracy, to include illicit streaming devices and/or services. This international collaboration is an integral part of these types of investigations.

The fact that streaming servers associated with ISDs may be located overseas can present investigative challenges, requiring cooperation and assistance from foreign law enforcement. However, US copyright law addresses the transmission of infringing content into the United States by servers abroad, which can be subject to civil and criminal penalties.

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES X NO _____

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

The United States does not maintain a single, comprehensive database of all enforcement actions related to illicit streaming and ISDs. However, individual investigative agencies maintain databases of enforcement actions, categorized by subject matter, from which a list of ISD enforcement actions might be derived. The National Intellectual Property Rights Coordination Center serves as an interagency point of contact for referrals related to ISDs, and is involved in deconflicting investigations, but does not maintain a comprehensive database of such cases. Investigative agency databases with information on pending investigations would generally not be open to the public, but under the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (the "PRO IP Act"), the Department of Justice make annual reports to Congress with aggregate numbers on intellectual property investigations and prosecutions and with representative examples of prosecutions.

HSI maintains an internal case management system. This system is not accessible by the public. CBP: SEACATS tracks the seizure actions undertaken based on an underlying violation of 17 USC

§1201. This information is not made available to the public.

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES _____ NO X

If YES, please provide information or a link to such documents:

[The Department of Justice has not commissioned such reports or studies, but other components may have additional information.]

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES X NO _____

If YES, please provide citations, examples, or links to such materials:

In 2019, the FBI released a short audio recording discussing illicit streaming, including streaming via set-top boxes: <https://www.fbi.gov/audio-repository/ftw-podcast-illicit-streaming-021419.mp3/view>

On its website, the Federal Trade Commission (FTC) warns consumers that hackers spread malware through apps on ISDs and advises consumers not to use ISDs: <https://www.consumer.ftc.gov/blog/2019/05/malware-illegal-video-streaming-apps-what-know>

The National Intellectual Property Rights Coordination Center and the Office of the Intellectual Property Rights Enforcement Coordinator have hosted several industry outreach

events over the past several years that have provided forums for discussion of concerns and experience related to illicit streaming and ISDs.

As of late, CBP has not initiated any public awareness campaigns directed towards illicit streaming devices. CBP does not have material on their website directed towards such illicit streaming devices.

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

U. Viet Nam

Survey on Domestic Treatment of Illicit Streaming Devices (ISDs)

Note: The United States, joined by co-sponsors Japan, Mexico, Peru, Chinese Taipei, and Thailand, is circulating this survey to gather information on the domestic treatment of, and approaches to, illicit streaming devices (ISDs) under domestic law. The intent of the survey is to collect information as to the scope of the problem in the APEC region and how such devices are treated under domestic law in APEC economies.

Information:

Name of Economy: VIET NAM

Contact Information: Name: PHAM THANH TUNG

Position/Title: DIRECTOR OF INFORMATION AND INTERNATIONAL COOPERATION DIVISION

Office/Agency: COPYRIGHT OFFICE OF VIET NAM

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Background:

Streaming media is content sent in compressed form over the Internet in a continuous stream of data that can be played as it arrives. A streaming server is an online entity that provides file distribution services for media files. Legitimate streaming servers provide the means for rights owners to deliver live audiovisual content or video on demand (“VOD”) to customers via media players. However, criminals use the same technology to distribute copyright-protected content illegally with streaming servers offering the same streaming options.

A **streaming device** is used to connect a television to the Internet and incorporates applications, including a media player, which enables users to view audiovisual content from streaming servers.

Illegal streaming servers allow TV content to be decrypted and captured from many different sources, aggregated through a single program guide, and then streamed to consumers illegally, with the actual program stream usually unencrypted, to facilitate ease of transmission.

An **illicit streaming device** is configured with software to allow consumers to stream content from an illegal streaming server. Such software includes illicit extensions, as well as apps that are available through multiple means, for example, app stores, promotional websites, and in-store dongles.

Questions:

Q1: Indicate your assessment of the scale of the problem of ISDs and the economic harm it is causing to broadcasters and content owners in your economy:

NA

(We do not have data to assess the scale of the problem of ISDs)

Q2: What approaches, if any, are in place in your economy to deal with illicit streaming devices (ISDs)?

Please check one or more:

Statute/Law: X

Provide citation(s): Law on Intellectual Property

Article 28.- Acts of infringing upon copyright

10. Duplicating, reproducing, distributing, displaying or communicating works to the public via communication networks and by digital means without permission of copyright holders.
12. Willingly canceling or deactivating technical solutions applied by copyright holders to protect copyright to their works.
13. Willingly deleting or modifying right management information in electronic form in works.
14. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing equipment when knowing or having grounds to know that such equipment may deactivate technical solutions applied by copyright holders to protect copyright to their works.

Article 35.- Acts of infringing upon related rights

6. Disengaging or modifying right management information in electronic form without permission of related right holders.
7. Willingly canceling or deactivating technical solutions applied by related right holders to protect their related rights
8. Publishing, distributing or importing for public distribution performances, copies of fixed performances or phonograms or video recordings when knowing or having grounds to know that right management information in electronic form has been disengaged or modified without permission of related right holders.
9. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing equipment when knowing or having grounds to know that such equipment help illegally decode an encrypted program- carrying satellite signal.
10. Willingly receiving or relaying an encrypted program-carrying satellite signal when such signal has been encoded without permission of the legal distributor.

The Criminal Code of Viet Nam

Article 225. Crime of copyright, related rights

1. A person who, without the consent of the holders of copyright, related rights, deliberately commits any of the following acts which infringe upon copyright, related rights protected in Viet Nam for commercial scale or to earn an illegal profit of from VND 50,000,000 to under VND 300,000,000 or causes a loss of from VND 100,000,000 to

under VND 500,000,000 for the holders of such copyright, related rights, or with the violating goods assessed at from VND 100,000,000 to under VND 500,000,000 shall be liable to a fine of from VND 50,000,000 to VND 300,000,000 or face a penalty of up to 03 years' imprisonment:

- a) Reproduction of work, phonogram, videogram;
 - b) Distribution to the public the copies of work, phonogram, videogram.
2. This offence committed in any of the following cases shall carry a fine of from VND 300,000,000 to VND 1,000,000,000 or a penalty of 06 - 03 years' imprisonment:
- a) The organized offence;
 - b) The offence has been committed more than once;
 - c) The illegal profit reaped is VND 300,000,000 or over;
 - d) The loss incurred by the holders of copyright, related rights is VND 500,000,000 or over;
 - dd) The illegal goods are assessed at VND 500,000,000 or over.
3. The offender might also be liable to a fine of from VND 20,000,000 to VND 200,000,000, prohibited from holding certain positions or doing certain works for 01 - 05 years.
4. Punishments incurred by a corporate legal entity that commits any of the offences specified in this Article:
- a) Any corporate legal entity that commits an offence specified in Clause 1 of this Article for commercial scale or to earn an illegal profit of from VND 200,000,000 to under VND 300,000,000 or causes a loss of from VND 300,000,000 to under VND 500,000,000 for the holders of such copyright, related rights or with the violating goods assessed at from VND 300,000,000 to under VND 500,000,000; earns an illegal profit of from VND 100,000,000 to under VND 200,000,000 or causes a loss of from VND 100,000,000 to under VND 300,000,000 for the holders of such copyright, related rights or with the violating goods assessed at from VND 100,000,000 to under VND 300,000,000 while having incurred an administrative penalty for any of the offences specified in this Article or having an unspent conviction for the same offence shall be liable to a fine of from VND 300,000,000 to VND 1,000,000,000;
 - b) A corporate legal entity that commits this offence in the case specified in Clause 2 of this Article shall be liable to a fine of from VND 1,000,000,000 to VND 3,000,000,000 or has its operation suspended for 06 months - 2 years;
 - c) The violating corporate legal entity might also be liable to a fine of from VND 100,000,000 to VND 300,000,000 is prohibited from operating in certain fields or raising capital for 01 - 03 years.

Decree 131/2013/ND-CP

Article 20. Acts of infringing upon the right to apply technological solutions to self-protect copyright

1. A fine of between VND 3,000,000 and 5,000,000 shall be imposed for internationally deleting or modifying copyright management information in electronic form attached to the original or copies of a work.
2. A fine of between VND 5,000,000 and 10,000,000 shall be imposed for intentionally canceling or deactivating technical and technological solutions applied by the copyright holder to protect copyright to his/her work .
3. A fine of between VND 10,000,000 and 20,000,000 shall be imposed for producing, assembling, mutating, distributing, importing, exporting, selling or renting devices or system to deactivate technical and technological solutions applied by the copyright holder to protect copyright to his/her work.
4. Remedial measures:
 - a) Forcible re-export of material evidence used for committing acts of violation for import specified in Clause 3 of this Article;
 - b) Forcible of destruction of material evidence used for committing acts of violation specified in Clause 2 and Clause 3 of this Article in case the remedial measure specified in point a of this Clause is not applied.

Article 35. Acts of infringing upon the right to apply technological solutions to self-protect related rights

1. A fine of between VND 3,000,000 and 5,000,000 shall be imposed for disengaging or modifying right management information in electronic form without permission of the related right holder.
2. A fine of between VND 5,000,000 and 10,000,000 shall be imposed for intentionally canceling or deactivating technical solutions applied by the related right holder to protect his/ her/its related rights.
3. A fine of between VND 10,000,000 and 20,000,000 shall be imposed for broadcasting, distributing or importing for public distribution fixed performances and copies thereof or phonograms or video recordings with cancelled or modified right management information in electronic form without permission of the related right holder.
4. A fine of between VND 20,000,000 and 30,000,000 shall be imposed for producing, assembling, mutating, distributing, importing, exporting, selling or renting devices or system that help illegally decode encrypted program- carrying satellite signals.
5. A fine of between VND 30,000,000 and 40,000,000 shall be imposed for intentionally receiving or relaying encrypted program-carrying satellite signals without permission of the lawful distributor.
6. Remedial measures:
 - a) Forcible re-export of material evidence used for committing acts of violation, for acts of import specified in Clause 3 and Clause 4 of this Article;
 - b) Forcible of destruction of material evidence used for committing acts of violation specified in Clauses 2, 3, 4 and 5 of this Article in case the remedial measure specified in point a of this Clause is not applied.

Regulation/Rules: _____

Provide citation(s):

Court Case(s): _____

Provide citation(s):

Voluntary Industry Practices: _____

Provide citation(s):

Other: _____

Provide citation(s):

None: _____

Q3: If the answer to Q2 above is “NONE”, are any statutory or regulatory approaches pending or planned?

YES _____ NO _____

Q4: If the answer to Q3 is “YES”, please provide information on any pending or planned actions below:

Q5: Is there any specific feature in the current legal framework in your economy that has been identified as needing revision in order to allow for a more efficient investigation and/or action against the sale or distribution of ISDs?

YES _____ NO X _____

If YES, please describe any currently proposed actions to address this issue:

Q6: Are the current civil damages and/or penalties provided for in your economy viewed as being sufficient to deter the sale or distribution of ISDs?

YES X _____ NO _____

If NO, please describe any currently proposed actions to address this issue:

Q7: What agency (agencies) is primarily responsible for conducting investigations into or enforcement actions against ISDs?

Law Enforcement/Police: X

Customs/Border Agency: X

Regulatory Agency: X

IP Office:

Other: X

If you checked any of the above, please provide further information or specifics:

- Chairpersons of People's Committees of all levels
- People's Public Security
- Border guards, Maritime Polices, Customs agencies and market management agencies
Market management agencies
- Information and Communication inspectorate agencies
Culture, Sports and Tourism inspectorate agencies

Q8: How many enforcement actions, if any, have been taken in the past twelve (12) months against the importation, exportation, manufacturing, advertising/offering for sale, sale, distribution, or commercial/public use of ISDs in your economy?

Administrative/Regulatory Actions: N/A

Border or Customs Actions: N/A

Civil Actions (brought by private parties): N/A

Civil Actions (brought by public officials): N/A

Law Enforcement Investigations Commenced: N/A

Criminal Prosecutions Commenced: N/A

Q9: If enforcement actions have been taken, please indicate the type(s) of activity against which action(s) have been taken:

Importation: N/A Exportation: N/A Manufacturing: N/A Sale: N/A

Advertising or Offer for Sale: N/A Commercial/Public Use: N/A Other: N/A

Q10: If any enforcement actions have been taken as indicated in Q8 and Q9, please provide any additional information on the actions taken:

N/A

Q11: If cases were investigated but not ultimately pursued (i.e., no action was brought against the party investigated), what were the most common reasons a case was not pursued?

No clear legal basis: _____ Insufficient resources: X
Insufficient evidence: _____ Lack of technical expertise: _____
Not considered priority: _____ Other: _____

Q12: If illegal streaming servers connected to ISDs are located overseas or outside your jurisdiction, would this make a difference in the investigation or prosecution of the ISDs?

YES X NO _____

If YES, what approaches, if any, have been taken to address this challenge?

Proposed/implemented statutory change(s): _____
Proposed/implemented regulatory change(s): _____
Conducted/implemented new law enforcement training: _____
Worked with foreign law enforcement agencies: X
Other: _____

Q13: Does your economy maintain a database in which such enforcement actions are tracked?

YES _____ NO X

If YES, is the database accessible by the public and, if so, what is the mechanism or procedure to be able to access it?

N/A

Q14: Have you conducted or commissioned any studies, surveys, or reports on ISDs?

YES _____ NO X

If YES, please provide information or a link to such documents:

Q15: Have you used any non-legal approaches to combat use of ISDs, such as public awareness campaigns, online educational materials, public or social media ads to educate consumers about risks of using ISDs?

YES _____ NO X

If YES, please provide citations, examples, or links to such materials:

Q16: Any other information that you wish to submit or make known concerning how ISDs are treated in your economy (please feel free to attached additional pages, if needed):

<https://nguoi-tieu-dung.vn/android-tv-box-gia-re-va-day-la-ly-do-ma-nguoi-tieu-dung-khong-nen-mua-d44212.html>

Submission:

Please send your completed response by no later than 29 May 2020.

Thank you for your response.

