



Submission of the Cable and Satellite Broadcasting Association of Asia (CASBAA)
to the Office of the U.S. Trade Representative
February 11, 2008

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

The Cable and Satellite Broadcasting Association of Asia (CASBAA) is a trade association with activities in 15 Asian countries and regions, dedicated to the promotion of multi-channel pay-television via cable, satellite, broadband and wireless video networks. Founded in 1991, CASBAA represents some 125 member companies, which serve more than 3 billion people. US-owned member organizations include AETN International, Bloomberg Television, Boeing Space Systems, Comcast International Media, CNBC Asia, Discovery Networks Asia, ESPN Star Sports, HBO Asia, Intelsat, J-Com, Lockheed Martin, Microsoft, Morgan Stanley, the Motion Picture Association, Motorola, MTV Networks Asia Pacific, National Geographic Channel, NBC Universal, Playboy Entertainment, Paul, Weiss, Rifkind, PricewaterhouseCoopers, Qualcomm, Scientific Atlanta, Sony Pictures Television International, STAR Group (NewsCorp), Turner International Asia Pacific, and Walt Disney Television International.

CASBAA appreciates this opportunity to provide information to the US Trade Representative's office on practices and policies of trading partners in the Asia-Pacific that deny adequate and effective copyright protection to the television broadcast content of CASBAA's US-based member companies.

1. Country whose practices deny effective protection to intellectual property in the broadcasting sector, and continue to warrant Priority Watch List status:

Thailand

Thailand's previous government took some steps to fill the broadcasting regulatory vacuum in that country. A new "Broadcasting and Television Business Operations Act" was passed by the National Legislative Assembly on December 21, 2007. The new law provides licensing authority, *inter alia*, for all pay-TV operators, including provincial

cable TV companies, and may remedy some of the chaos which prevailed under the previous regulatory vacuum.

Unfortunately, the Assembly did not take the opportunity to appreciably strengthen the legal provisions on intellectual property protection in the pay-TV industry; the legislation's treatment of intellectual property issues is exceedingly weak. Despite recommendations from the industry and, we understand, USTR, the Assembly did not include respect for intellectual property as an explicit licensing condition for pay-TV operators. It did include a provision for possible suspension of an operator's license on intellectual property grounds, but only after a final adjudication of a violation of the copyright law has already taken place (which is likely to take many years, during which time piracy will continue), and then only for a maximum of 30 days. With years of piracy to be followed – perhaps -- by 30 days of suspension, the balance is clearly not on the side of IP protection.

Moreover, it is not clear how quickly, if ever, this provision will be implemented. Under previous laws, at the conclusion of the judicial processes, the government had the authority to revoke the licenses of infringing cable operators. However, it never did so in the cases of 10 other operators convicted of piracy by the intellectual property courts in 2006, in cases filed by pay-TV operator TrueVisions (formerly known as UBC).

In the meantime, rampant piracy of broadcast pay-TV content continues across the country. Hundreds of provincial cable operators continue to freely pirate US-origin (and other) programming. This bleeding of revenues from the legitimate value chain damages both authorized licensees (principally True Visions) and US content providers. The industry is willing to license other Thai cable operators but with few exceptions, provincial operators have shown no desire to pay the current market prices for content, and they are under no government pressure to do so.

However, there is increasing availability of Thai-language free-to-air content on satellites over Thailand, and as this content is quite appealing to the average Thai consumer, we believe that some provincial cable operators are using this content to “back out” English-language pirated programming. This contributed to a slight decline in the piracy rate among provincial operators reported in CASBAA's industry survey for 2007. The slight decline (from US\$161 million in 2006 to US\$152 million in 2007) was more than compensated by estimated rapid growth in the number of individuals using circumvention devices (pirate set-top boxes and smart cards) to illegally receive programming. The new Broadcasting Law includes, for the first time, anti-circumvention legislation outlawing manufacturing, importation, sale, or servicing of pirate set-top boxes targeted at decrypting signals owned by licensed Thai broadcasters (i.e. True Visions). It does not include similar proscription of circumvention devices aimed at decrypting foreign content suppliers' signals. In the CASBAA survey, industry insiders reported overall estimated pay-TV piracy levels at US\$179 million in 2007, up from US\$167 million last year.

Efforts to obtain judicial enforcement of laws supposedly protecting intellectual property actions have not enjoyed a high level of success. During 2006, US-based content providers acting through the Motion Picture Association instigated raids by the Thai police on pirate cable companies in Phuket and Bangkok. There has been no expeditious movement on these cases during 2007; a court hearing in the Phuket cases might be held early in 2008.

There is no assurance, in any case, that meaningful judicial sanctions will result from this process. In the past five years, True Visions in conjunction with the public prosecutors has lodged cases against many pirate operators. However, the Central Intellectual Property and International Trade Court (CIPITC) imposed disappointing sentences on convicted offenders. At the beginning the Court levied sentences of US\$1,000-20,000 and several months' imprisonment (suspended). In more recent cases, however, the corresponding verdicts were very light, i.e. no fines or imprisonment if the offender does not repeat the same offence within a year. Such lax sentencing rendered enforcement efforts ineffective, and disappointed the rights owners and the legitimate licensee, who had expended considerable resources to bring the cases to conclusion.

In sum, there has been no reversal in the pay-TV piracy situation in Thailand, and there seem few grounds to hope that the next year might bring about a change. We believe that until there *is* a meaningful change on the ground, with evidence of a real commitment by the Thai government to enforcing its intellectual property laws against cable pirates, Thailand should remain on the Priority Foreign Country list.

2. Trading Partners whose practices deny effective protection to intellectual property in the broadcasting sector, and warrant intensive bilateral discussions:

Philippines

Intellectual property violations remain a widespread problem in the Philippine cable television industry. In recent years, the Philippines government has begun making public statements that are more supportive of copyright holders in the broadcasting industry, but this has produced no change in the on-the-ground situation. Unscrupulous cable operators continue to freely steal broadcast signals (mostly US-owned) and re-sell them to subscribers without making any payments to copyright owners. CASBAA and our research partner Standard Chartered Bank conservatively estimated that revenue losses to the legitimate pay-TV industry from all forms of piracy in 2007 were US\$ 85 million, a 5.4% increase over the previous year.

No aggressive regulatory action has been taken against these continued violations. Cable company licenses continue to be renewed by the National Telecommunications Commission (NTC), without regard to whether the company is engaging in signal theft. In an effort to provide an alternative route to resolve intellectual property complaints, the Intellectual Property Office of the Philippines (IPOPhils) and the NTC signed a Memorandum of Agreement to create an administrative enforcement mechanism. Under

the MoA, IPOPhils would receive and investigate complaints of intellectual property violations. If the complaints were found valid, the NTC would consider using its regulatory powers against the pirate firm. This MoA was put into place last year, and its effectiveness is now being tested with cases filed by copyright owners.

Despite strenuous and costly efforts to seek judicial enforcement by copyright owners, no relief has been forthcoming. Raids instigated by copyright owners in 2005 have so far produced only lengthy tergiversation by various actors in the legal system. Just before the 2007 Special 301 review, the Department of Justice agreed to file copyright violation charges in the Mindanao courts against one leading pirate firm which was found *in flagrante delicto* during the 2005 raids. This decision was overturned in mid-2007 by the Secretary of Justice, who issued an astonishing opinion to the effect that broadcasting organizations, whether copyright owners or not, were entitled to no copyright protection in the Philippines! At length this inexplicable point of view was reversed, after detailed representations by the industry and the US authorities, and the Department of Justice sustained the filing of criminal charges with the courts. The defendants are now asking the Department of Justice to again reverse itself, and there has been further inexplicable delay in obtaining a refusal of that request. Indeed, the defendants have engaged in lengthy and repeated dilatory challenges to deflect real action, and have so far succeeded: at the date of this writing (February 2008), the courts have not yet ordered the defendants arrested to answer the charges. Legitimate copyright owners and broadcasting organizations are close to concluding that no real relief is available under current law through the Philippine judicial system.

CASBAA member companies have been doing business in the Philippines for almost 20 years. They have seen a promising commercial environment drastically deteriorate because of unchecked signal piracy. The Philippine government has been unable or unwilling to take action to change this trend. Strong action is required to achieve adequate and effective protection. The NTC has solid grounds for revoking the pay-TV operator licences which it grants to pirate companies, but it has not done so. Instead, every government action is subject to interminable delay and blockage.

Despite the declared desire of the Philippine government to improve respect for intellectual property rights in broadcasting, the international television broadcasting industry has so far seen no evidence of material change in the acts, policies and practices of the Philippines which have denied adequate and fair protection of the intellectual property rights of CASBAA members.

CASBAA continues to believe that the long history of inaction in the face of blatant public piracy by cable companies warrants serious reconsideration of the Philippines' status on the Watch List. We recommend therefore, that USTR institute a regular bilateral monitoring process for progress on cable piracy enforcement actions, together with a discussion of legal and institutional reforms that would quickly produce real action against cable pirates.

China

Foreign media firms, including television program suppliers, suffer from highly restrictive access barriers to the Chinese market. By law and regulation, the vast majority of foreign TV suppliers are totally excluded from the market. A limited bouquet of 31 foreign channels is allowed to be transmitted to hotels above the 3-star level and foreign residences.

However, despite this rigid control over legitimate suppliers of copyrighted programming, the Internet in China has been an environment where “anything goes” and considerable amounts of foreign programming have been made available illegally, by commercial operators as well as amateur hackers. This has included the streaming of entire bouquets of pay-TV channels, which has been the largest concern of CASBAA and its members. Member companies have found numerous instances of pirate streaming of US-based channels, including HBO, ESPN, Discovery, CNN, the Disney Channel and Cartoon Network, onto the Internet in China. This programming is also transmissible available outside China, and China has become an international center for piracy of broadcast channels.

At the end of 2007 the Chinese authorities published new regulations requiring state licensing of internet content providers. These regulations, which came into force on January 31, 2008, contain provisions requiring content providers to respect intellectual property rights. It remains to be seen what their practical effect will be.

Another aspect of China’s role in the regional pirate economy arises because of China’s role as a manufacturing and export/distribution center for pay-TV circumvention devices and services. These take two principal forms:

- 1) “Hacked” set-top boxes and smart cards. These devices, when attached to cable systems or satellite antennas, permit the unauthorized and unremunerated reception of pay-TV programs, as the software within them has been altered to circumvent access control systems. Millions of these boxes installed in China permit Chinese citizens to avoid government media restrictions and watch foreign television. According to reports received by CASBAA from surrounding countries and territories, circumvention devices numbering in the hundreds of thousands have been exported to, and are damaging legitimate TV suppliers in, among others, Hong Kong, the Philippines, Malaysia, Vietnam, and Indonesia. We also understand that tens of thousands of Chinese circumvention boxes have been distributed in the Middle East. In all markets outside China, the boxes have the sole purpose of enabling viewers to partially or totally avoid payment of pay-TV fees.

The syndicates which sell the boxes frequently take non-infringing “generic” boxes, and load software on them which enables unauthorized receipt of programming. They also provide after-sales service, which enables customers to circumvent any change in encryption software by distribution platform operators. Chinese law provides no avenue to pursue the syndicates which install the infringing software. (By comparison, in Korea

in 2006 three manufacturers/exporters of circumvention boxes were punished with fines and suspended sentences by a court there.)

2) “Control Word Redistribution.” The encryption software within many set-top boxes relies on an algorithm called a “control word” which interacts in real time with software in the set top box to enable decryption of the signal. Piracy syndicates extract the keys or “control words” from a legitimate box/smart card, and use internet servers to share them in real time with a multitude of other users, enabling these users to view the signal without authorization or remuneration to the broadcaster/content owner. There is no legal protection in China against the circumvention services provided by these piracy syndicates. As a result, viewers both inside and outside China can simply connect to selected IP addresses in China to get the keys or “control words” to decrypt and view pirated services.

No estimates are available yet of the value of programming thus stolen.

CASBAA recommends that the U.S.G. make internet streaming of television programming, and export of circumvention devices and circumvention services, a focus of the ongoing US-China dialogue on intellectual property matters.

Macau

The Macau S.A.R. has a serious cable piracy problem. Historically, the city was cabled by several (7-8) television service providers, which functioned as community antenna (CATV) companies to distribute to Macau homes programming from the Hong Kong free-to-air TV channels, which could not be received directly because of the distance from Macau to the Hong Kong transmitters.

In the last decade, these “antenna companies” have augmented their legitimate product lines with pirated international programming, usually obtained from foreign satellite channels. The usual pirated fare is sports programming and Hollywood movies. This programming, distributed in Macau in violation of local law and international copyright treaties, infringes the economic rights of the international program providers and the government-authorized legitimate cable TV provider, Macau Cable TV Ltd.

Macau is a small market, with only about 150,000 pay-TV households. However, the pirate “antenna companies” dominate it, supplying an estimated 80% of that market. As of mid-2007, CASBAA and Standard Chartered Bank estimated the economic loss to the legitimate industry at about US\$ 13 million. Macau is also a jurisdiction which is rapidly modernizing, aspiring to become a world-class international recreation center, and the government has adopted its cable-TV policy in light of those modernization goals. It deserves the continuing encouragement of the international community in this respect.

In response to complaints from the international programmers, Macau Cable, and both US and EU trade negotiators, the Macau government announced in mid-2005 that it would gradually require the antenna companies to legitimize their business, and either

sign program supply contracts with copyright owners or cease supplying their channels. The antenna companies responded with a boycott, cutting off TV signals to 70-80% of Macau households, and publicly saying the government was threatening public access to television. The government relented, but took the position that while not attempting to drive the antenna companies out of business, it would not permit them to expand into new commercial offerings or technological improvements. Meanwhile, the antenna companies have continued to operate their existing pirate lines of business. Press reports indicate that another boycott occurred in early 2008.

Macau is at an important juncture, and its government is under considerable pressure from influential copyright infringers to further delay enforcement of its intellectual property laws. CASBAA recommends that the U.S.G. engage the government of the Macau S.A.R. in a focused dialogue, to ensure that the authorities there understand the continuing importance of cleaning up the pay-TV industry and guaranteeing that all actors respect intellectual property rights.

3. Trading Partners which maintain specific practices impairing the protection of intellectual property in the pay-TV industry:

Taiwan

Taiwan was one of the first markets in Asia to enjoy widespread pay-TV service, and it remains potentially one of the most attractive Asia Pacific markets for suppliers of multi-channel television and broadband video content and services. Unfortunately, a rigid and highly politicized regulatory environment has contributed to restricted market access for foreign programming as well as slow development of the digital pay-television industry.

One of the most pernicious and costly aspects of this system for US-based program suppliers is the existence of a large number of unremunerated connections to cable TV systems. Negotiations between foreign program suppliers and Taiwan cable TV operators cannot rely on the official government statistics, which in April 2007 recorded 4.88 million cable TV users (a penetration rate of 72.2%) in Taiwan. However, audience surveys by A.C. Nielsen and other reputable third parties consistently record far higher numbers of people who say they watch cable TV (5.75 Million users, or 85%).

This is a substantial gap. It can be attributed either to a) high levels of piracy by individuals (which government takes no action to repress) or b) commercial fraud by cable operators, endorsed by government which unquestioningly accepts declarations of subscriber numbers that it has known for years do not correspond to reality. In the latter case, program suppliers are forced to accept the “underdeclared” number as the basis for payment for programming. In either case, program suppliers do not receive fair compensation for the number of consumers actually viewing their programs. The value of the “undeclared” 870,000 connections, at current prices for basic cable in Taiwan, is 169 million USD annually. We believe that the Taiwan authorities have it well within their power to repress this phenomenon, whether it results from individual piracy or

commercial fraud. However, the government authorities currently tolerate and abet the system, by accepting fraudulent declarations.

CASBAA urges that Taiwan remain on the Watch list, and the US engage actively with the Taiwan authorities to encourage reform of its regulatory system so that incentives for digitization (to reduce individual piracy) are increased, and the ability of operators to deprive copyright owners by “underdeclaration” of the revenue to which they are entitled is reduced.

India

Indian regulatory policies deny fair and equitable access to foreign pay-TV companies. The Indian pay-TV market is one of the largest in the world; cable TV systems reach 71 million homes. The market has developed at an extremely rapid pace, on the strength of private investment in infrastructure, as well as content developed by Indian and foreign channel suppliers. Unfortunately, beginning in 2005 and continuing into the current year the Indian authorities have evinced an intention to exert greater statist control of the market, in a manner that threatens market access for foreign companies.

Specific examples of the Indian policies in question include:

-- A restrictive downlinking-permission process that requires foreign companies to establish a commercial presence in India, with potentially large tax consequences, before they can be carried on Indian cable or satellite TV systems.

-- Uneven restraints on foreign investment in Indian pay-TV systems, which vary the allowed percentage of foreign investment from 20% for satellite-based systems to 49% for cable networks and 74% for telecom-network based systems without any economic or political justification.

-- Arbitrary content classification rules that disadvantage foreign suppliers of films and music videos. These rules, crafted in a way to rely on certifications issued for theatrical release, disadvantage foreign television channels which rely more heavily on content not previously released to Indian theatrical circuits. A change in the rules in 2006 resulted in US-owned channels being excluded from certain key pay-TV markets for months, as there was no government system in place to facilitate compliance by foreign channels.

-- Restrictions on foreign news channels, which are not allowed to seek advertising revenue in India. Indian news channels face no such restrictions. In parallel, foreign investment in news channels is under specific constraints.

-- The Indian authorities have also proposed, but not yet implemented, an across-the-board 15% local content requirement for all foreign television channels. If enacted, such a requirement would pose a serious and inequitable market access restraint on foreign companies.

In light of all these market access restrictions, we recommend that India remain on the Priority Watch List, and that the USG negotiate actively to persuade India to adopt regulatory approaches that treat US content suppliers in a more equitable fashion.

4. Countries where some progress has been made, and for which no change is recommended.

Vietnam

There is a high overall level of copyright piracy in Vietnam, including in the pay-TV industry. Common malpractices – as in other Southeast Asian countries – include cable companies refusing to make payment for the full number of customers to whom they provide programming (underdeclaration) and use of unlicensed content on television channels, including unlicensed play-out of DVDs, many of which may themselves be pirated. In addition, there is a problem in Vietnam with small provincial cable operators using overspill broadcasts from neighboring countries' satellite systems to supply their customers, without making the appropriate licensing payments.

Against that background, Vietnam has taken a very large and very positive step forward in the last year. Under government pressure, the state-owned digital terrestrial broadcaster, Vietnam Multimedia Corporation (formerly known as the Vietnam Television Technology Investment & Development Corporation), VTC, has ceased the unauthorized retransmission of foreign channels which have asserted their rights, including all US-owned channels. This was a major step for VTC, which states that it is developing and implementing a business plan to grow as a major legitimate broadcaster of free-to-air and pay-TV programming via its innovative digital transmission system.

This is an important step in the professionalization and modernization of Vietnam's television industry. Vietnam's pay-TV market is growing rapidly, as rising incomes and a hunger for more content stimulate demand. The legitimate business of companies in the Vietnamese pay-TV industry and their partners who supply international cable/satellite channels is growing, and VTC's conversion to legitimate broadcasting will help accelerate that process. (Some international program suppliers have already concluded contracts with VTC itself.) The large size of VTC's audience (estimated up to 5 million homes) made it in the past the largest single signal pirate in Asia, and its conversion to legitimate business operations marks major progress in Vietnam's modernization.

South Korea

As in the past, our member companies report no problems with commercial-scale signal piracy in South Korea, though unauthorized circulation of content via the Internet is very common, and continues to weaken the growth of the pay-TV industry.

Pending ratification of the US-Korea Free Trade Agreement, and organizational changes in the Korean regulatory framework, the situation of US and other international entrants to the Korean pay-TV market remains unchanged: it is constrained by a system of market access barriers designed to protect various parts of the Korean broadcasting industry. Limited liberalization measures have been undertaken in recent years (including some reductions in restrictions on foreign investment and slight relaxation in the foreign programming quota) and have had some positive effects, but the remaining restrictions still deny fair and equitable market access to international television firms.

CASBAA does not advocate any change in Korea's status on the Watch List. However, we urge US trade policymakers to make achieving ratification of the US-Korea Free Trade Agreement a high priority, so the industry can reap the benefits of the changes, albeit modest, which were negotiated in the context of that Agreement.

Appendix 1

Derivation of CASBAA piracy estimates

The CASBAA estimates of the cost of piracy to the legitimate pay-TV industry are derived from a survey of industry players, who are asked to give their confidential estimates (based on audits, subscriber records, market research and other resources available to the companies) of the number of paid and unpaid connections. The survey includes CASBAA member companies who are both broadcasters and platform operators in the various jurisdictions.

The survey identified three types of piracy common in the markets covered in this submission. They are described below.

Working with investment bank Standard Chartered Bank (CASBAA's partner in formulating the 2007 piracy estimates), CASBAA used the results of the survey to derive a central estimate of the number of pirate connections. A value was assigned to the revenue lost according to the following breakdown:

- a) Unauthorized Cable Access – This represents actions by individuals or groups to tap into the lines of legitimate cable TV companies, without paying subscription fees. Because the legitimate industry receives no income from this source, the lost revenue per pirated connection was valued at levels approximating the published national average revenue per user (ARPU). Note that for several countries this number is probably conservative, as most illegal taps probably occur on large cable systems in major metropolitan areas such as Manila and Bangkok area, where actual revenues are above the national average, and thus the real cost is likely to be higher than the estimate.
- b) Unauthorized Operators – This represents actions by rogue cable companies, who take broadcast signals by unauthorized means (hacked set-top boxes or “overspill” boxes from neighboring countries), replicate the signal and sell to hundreds or thousands of consumers. This number includes primarily 100% pirate operators, who do not pay for any of their content. Because the legitimate industry receives negligible income from this source, the lost revenue per pirate connection was valued at close to the national ARPU.
- c) Subscriber under-declaration – This represents actions by cable companies who use some legitimate content, but do not pay for all the channels they use, or all the subscribers they serve. CASBAA valued the loss to the legitimate industry conservatively, using its knowledge of conditions in various markets. For the Philippines, for example, the cost of underdeclaration was valued at US\$3 per undeclared subscriber, on the basis that some of the content is actually being remunerated, and some is compensated to the content owner through other contractual clauses.

The raw estimates are then adjusted for an assumed “conversion factor” to account for the fact that in the absence of piracy, only a portion of consumers would switch to legitimate program streams. This factor differs for each market based on national income, cable price levels, and extent of distribution networks (home passes by cable systems) enabling conversion to legitimate programs.