



Submission of the Cable and Satellite Broadcasting Association of Asia (CASBAA)
to the Office of the U.S. Trade Representative
March 20, 2008

Negotiation of an Anti-Counterfeiting Trade Agreement

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, Microsoft, Morgan Stanley, the Motion Picture Association, Motorola, MTV Networks Asia Pacific, National Geographic Channel, NBC Universal, Playboy Entertainment, Paul, Weiss, Rifkind, PricewaterhouseCoopers, Qualcomm, Cisco, Sony Pictures Television International, STAR Group (NewsCorp), Time Warner, Turner International Asia Pacific, Voom HD Networks, and Walt Disney Television International.

CASBAA appreciates USTR's request for input on the matters to be covered by an Anti-Counterfeiting Trade Agreement (ACTA). The Request for Public Comment notes that an ACTA should address "today's challenges" in the field of intellectual property protection; we would urge that as far as possible, the new agreement should be forward-looking, addressing not only the patterns of infringement that are epidemic today, but also those emerging threats that – with the propagation of new technologies and increases in broadband network capacity – are likely to create common forms of international infringement tomorrow.

This is particularly true insofar as our industry is concerned: the rapid spread of broadband internet capacity in many countries has produced a situation where widespread piracy of video content – previously deterred or delayed by a lack of bandwidth – is becoming more easy and therefore more common. Many of these patterns of infringement are becoming increasingly international, with computer servers, index sites, and upload locations present in one country being used to feed piracy in many other countries. Forms of content, such as broadcasts of sporting events which – because of their immediacy and high time-value – have in the past not been widely pirated (on optical media, for example), are now increasingly susceptible to real-time piracy.

Given the many and growing international linkages in these patterns of piracy, we believe it is essential that effective action to address the problem be taken on an international scale. National legislation and national efforts must be supplemented by international cooperation. In this respect, we warmly welcome the initiative to negotiate an ACTA, as we believe such an agreement will set a benchmark for international cooperation that will become a reference, not only for the states and trading entities which are parties to the agreement, but also for the entire international community.

We believe, therefore, that an ACTA can and should be an extremely high-quality agreement. The negotiating parties should not accept a "lowest common denominator" approach that restricts the ACTA to provisions already in place in other broad international trade agreements. Rather, they should seek to include new provisions to cover areas of emerging importance in international infringement. A search for expeditious results is laudable; but we urge the negotiating parties not to allow the quest for speed to mitigate in favor of a weaker agreement. The overriding goal should be achievement of an agreement that sets the highest possible international standards for cooperation in this area.

CASBAA suggests three areas of particular relevance to the international pay-TV industry, for attention in the ACTA:

1) Signal Piracy: The ACTA should recognize that infringement of copyrights through interception and unauthorized commercial use of international satellite transmissions is a serious and growing problem in many parts of the world. As a technical matter, it is not possible to narrowly restrict satellite transmissions to the territory of individual countries. However, misuse of the signals can and should be addressed. Parties to the treaty should agree upon effective action to prevent all commercial misuse of such signals.

Common commercial infringements in today's world include:

- Unauthorized interception, decryption and retransmission of encrypted broadcast signals to multiple customers of commercial cable networks or other broadcasters.
- Unauthorized interception, decryption and retransmission of encrypted broadcast signals to multiple dwelling units by apartment building managers, as part of their building management business.
- Unauthorized interception, decryption and public exhibition of encrypted broadcast signals, in public commercial venues such as restaurants, bars, hotels, and members' clubs.
- Unauthorized distribution and use of broadcast signals (whether encrypted or unencrypted) to increase traffic to and through online websites.

-- Other unauthorized distribution and use of broadcast signals (whether encrypted or unencrypted), such as via pirated DVDs.

(It should be stressed that even where broadcast streams are delivered on an unencrypted basis, this does not imply authorization for retransmission of this content, or otherwise detract from the intellectual property and other legitimate rights of the content owner and/or licensee. Any use of unencrypted content also requires the consent of the content owner and/or licensee, and unauthorized use can significantly damage the brands and business models of broadcasting organizations.)

In all of these areas, the ACTA should embody international agreement that the damage to the interests of rights holders and broadcasters should be the principal criterion for setting penalties.

In addition to these commercially-based infringements, we believe that the ACTA should also address the problem of individual use of circumvention devices to view unauthorized broadcast programming. End-user piracy of this type should be made a criminal offense, so that governments cut off the financial flows that support the circumvention industry, and to send an unambiguous message to individuals about what is right and what is wrong.

We would suggest the following additional specific means of attacking these problems, for inclusion in the ACTA:

-- Agreement that, where publicly-licensed infringing organizations are misusing broadcast signals, governments will act *suo moto* to suspend those licenses. (These might include cable operating licenses, telecom licenses, public spectrum licenses, or business operating licenses.) Final judicial determination of copyright violations should *not* be required to invoke license suspension; regulatory authorities should be empowered to act under their own administrative procedures. Licenses of repeat offenders should be totally revoked without hope of renewal.

-- Application of strong criminal penalties to commercially-motivated retransmission of unauthorized broadcast signals to more than a minimum number of premises (say, 5 homes).

-- In civil law, enactment of statutory damages of sufficient size to have a meaningful deterrent effect which will also take into account the difficulty in assessing the damage to copyright holders and broadcasting organizations from public exhibition or retransmission of a single broadcast signal.

2) Unauthorized online distribution of video programming: Increasingly, online piracy includes not only individual works of video programming but entire streams of broadcast programming. We would urge the negotiating parties to ensure that ACTA's treatment of online piracy take account of the fact that, apart from the ownership of the individual works in question, ongoing piracy of broadcast streams does incalculable damage to the

brands and business models of broadcasting organizations. ACTA's provisions should include measures to suppress piracy both by host servers and by P-2-P networks.

ACTA parties should also agree to apply adequate and effective penalties against those who profit from unauthorized downloading, as well as those who induce the online infringement of others. This category includes websites offering directory and search services for online content, as well as websites in one country which market infringing content which is actually hosted on servers in another jurisdiction.

3) International traffic in circumvention devices and services: A key support for international signal piracy, on both a commercial and individual level, is widespread trafficking in circumvention devices and services. ACTA parties should agree to apply adequate and effective border measures to interdict the supply of circumvention devices. Specifically, where an equipment supplier in one country has a record of trading in devices which function to circumvent pay-TV access controls or encryption, then future shipments of goods from that supplier should be subject to intensive inspection to ensure that those goods are not susceptible to use as circumvention devices.

ACTA parties should also agree to enact legislation to suppress the international supply of circumvention services, e.g. by the internet. (One real-world example concerns so-called "card sharing" of smart card encryption information: circumvention syndicates set up computer servers in one country which supply decryption data on a real-time basis which, when connected via the Internet to pre-equipped set top boxes, permit the mass unauthorized and unremunerated reception of pay-TV content. In some countries it is currently impossible to take legal action against such servers.)

General provisions:

A) We support creation of an effective peer review mechanism to allow ACTA parties to assess each others' policies and practices. Functioning international examples of such peer review mechanisms exist for several matters under the purview of the OECD and CSCE. An ACTA peer review mechanism should incorporate provisions for input from rights holders and other stake holders, so that the peers can examine the real-world impact of IP policies.

B) We also support creation of public-private cooperation in various forms to address the piracy problems. The pervasiveness and technical complexity of the intellectual property problems afflicting our industry mean that neither public administrations nor private operators have sufficient resources to address them individually; apart from specific infringement cases, public-private cooperation is essential to keeping an adequate level of enforcement awareness in an environment of constant technical change and development.

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