



A Review of Anti- Piracy Measures in the Latin America and Caribbean

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Objectives

Outline the legal framework and primary distinctions between the Latin American and Caribbean



Regulatory Implications of IPR Enforcement of Content in the Caribbean vs Latin America.

Implications of key intellectual property treaties and conventions.

Concerns regarding trade agreements between USA and the Caribbean that affect the transmission of cable television content.

Topical legal decisions and how they impact the Caribbean and developing economies.



The Current Realities of Enforcement in Latin America and the Caribbean



Remedial vs. Punitive Measures Regarding Enforcement



Conclusion – What does Success Look Like?



Regulatory Implications of IPR Enforcement on US Content in the Caribbean

Four Main Copyright Convention and Treaties operate within the Caribbean:

- The Berne Convention (1887)
- The Universal Copyright Convention Geneva (1955) and Paris (1974)
- The Agreement on Trade Related Intellectual Property Rights (TRIPS) (1995)
- WIPO Copyright Treaty (2002)

Regional and Geo-Specific Agreements and Legislation

- The Caribbean Basin Trade Partnership Act ('CBPTA')
- The Caribbean Basic Economy Recovery Act (CBERA)

Major Challenges

- Conflict between Treaties and Geo-Specific Agreements. Treaties are geared towards the creative works while Legislation is geared towards securing economic gain.
- Complex Regulatory institutions
- Variegated Accession Schedule between the Caribbean nations
- Incomplete Legislative Amendments regarding Copyright Legislation and Broadcasting Regulations.
- Weak supporting legislation i.e. Data protection, Cyber security and Criminal practice and procedure statutes.



Snapshot of Realities in Latin America

- Dual Regulatory Systems (Chile, Brazil and Argentina). Is this the best way to regulate piracy practices?
- Gap between laws and enforcement measures evident in the instances of piracy. Chile has the highest rate of anti-piracy enforcement with 82% while Brazil has had the lowest of 65% with Argentina being in middle with 72%. Despite these levels of performance, there is still large amount of monies lost due to the evasion of taxes.
- Strong advocacy- Uruguay , Ecuador and Columbia lead the legislative push in anti piracy. Citel has made recommendation to all LatAm Governments for the ban on the importation of android boxes and similar devices. Alianza is also lobbying for similar terms to be included in the TPP.



Snapshot of Realities in the Caribbean

- Copyright Legislation in St. Kitts and the Bahamas allowed for the broadcasting of US content. The law in Bahamas was repealed in 2009. USTR played a key role in these markets in reducing formal practice of piracy. However, the practice of piracy still persists.
- Jamaica has never had a compulsory licensing provision like that of St Kitts and Nevis or the Bahamas. Jamaican cable distributors are compelled, in terms of section (1)(iv) of the Television and Sound Broadcasting Regulations (1996), to “secure the relevant permission or enter into agreements or arrangements necessary for the operation of [their] businesses”.
- Section 9 of the Copyright Act of Jamaica empowers the owner of copyrighted material to determine who has access to its content. The USTR intervention in the Jamaica’s regulatory space redefined regulation.

Review of Punitive Measures to Curb Piracy

- De Minimis Defence to Copyright Infringement being employed in India. The Delhi High Court applied the doctrine while deciding a copyright infringement suit in India Independent News v Yashraj Films Pvt Ltd 2013 (53) PTC 586 (Del).
- The Courts in India take the following into consideration : the type of harm, the cost of adjudication, the purpose of purported violation, the effect of legal rights of third parties.
- Injunctions have been primarily used in India by broadcasters to protect their rights from infringement by known and unknown infringers. These were generally known as 'Ashok Kumar orders' and were first issued in Taj television v Rajan Mandal High Court of Delhi. June 14, 2002. [2003] F.S.R. 22.



Brief Case Review in Jamaica and Guyana

- **Television Jamaica Limited v. CVM Television Limited (2015 CD 00112)** – Court found that there was not sufficient grounds to prevent CVM from broadcasting portions of the coverage of the World Championships in Jamaica.
- **E-Networks v. International Media Content Limited (2018) CD 00361** – E-Networks, a Guyanese provider of had an injunction granted in their favour, preventing IMC from blocking the provisioning of content provision of the World Cup. However, NCN , the nation’s broadcasting entity was noted as having the exclusive rights to broadcast World Cup coverage in Guyana. Who had the exclusive rights in Guyana to do so?



Administrative Measures to Address Piracy

- Regional Treaty to address Intellectual Property and Cultural Trade Issues.
- Regional Office('CAPRI') that handles Intellectual Property Claims and Representations on behalf of the region.
- Collective Bargaining and Strict Regulations by Agencies and Authorities.
- Opportunity for Creative Industries to develop in Jamaica.



What will Success Look Like?

- International assistance and advocacy can be used to reduce the practice of piracy.
- Definitive Orders can be applied for the secure rights of contents to address problems such as cyberlocking.
- Collaboration between the ISPs and the Content providers regarding advocacy for revenue sharing.
- PrePaid Models for Provision of Content as a viable alternative e.g. ReadyTv in Jamaica and similar models in LatAm.
- Training of the judiciary to be able interpret the laws and administer justice fairly and justly.
- Collective Licensing Schemes



What will Success Look Like?

REAL COMMUNICATION !



Thank You!

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