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CAMCORDING AND FILM PIRACY IN ASIA-PACIFIC ECONOMIC COOPERATION ECONOMIES

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Abstract

The unauthorized recording of movies in cinema theaters is known as “camcording.” Typically camcord copies are distributed via Internet file-sharing and through the sale of unlicensed optical discs. Prior studies have not shown a correlation between the date of camcord availability and theater revenue. This report investigates whether such a correlation exists through a statistical analysis of proprietary and publically available data on movie release dates and the corresponding date of availability for the first known camcord. The data suggests that for each day that camcording is delayed during the opening weekend, box office revenue in the United States increases by as much as 3 percent. In addition, this report includes a set of case studies based on in-person interviews in order to further explore the impact camcording has on the film industry in select Asia-Pacific Economic Cooperation (APEC) economies. These case studies suggest that camcording is negatively impacting these industries. This report concludes with a list of effective practices, based on these case studies, to assist governments in their efforts to combat camcording.

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TABLE OF ABBREVIATIONS

APCM	Asociación Protectora de Cine y Música A. C. (Mexico)
APEC	Asia Pacific Economic Cooperation
BRIDEPI	La Brigada Investigadora de Delitos de Propiedad Intelectual (Chile)
DIP	Department of Intellectual Property (Thailand)
DVD	digital video disc
HKC&ED	Hong Kong Customs and Excise Department
HKYA	Hong Kong Theaters Association
ICAC	Independent Commission Against Corruption (Hong Kong)
IFACT-GC	International Federation Against Copyright Theft-Greater China
IMPI	Instituto Mexicano de la Propiedad Industrial (Mexico)
IP	intellectual property
IPOPHL	Intellectual Property Office of the Philippines
IPR	intellectual property rights
MCL	Multiplex Cinema Ltd.
MDTCC	Ministry of Domestic Trade, Co-Operatives and Consumerism (Malaysia)
MFACT	Malaysian Federation Against Copyright Theft
MPA	Motion Picture Association
MPAA	Motion Picture Association of America
OMB	Optical Media Board (Philippines)
P2P	peer-to-peer
U.S.	United States
TFF	National Federation of Thai Film Associations
USPTO	United States Patent and Trademark Office
USTR	United States Trade Representative

CAMCORDING AND FILM PIRACY IN ASIA-PACIFIC ECONOMIC COOPERATION ECONOMIES

1. INTRODUCTION TO CAMCORDING

Today, there are many ways to view feature films, including downloads, streaming, cable, optical discs, and the commercial cinema. Despite these advances, the theater remains the predominant channel for the initial release of movies. Film producers, both large and small, rely on ticket sales to recoup production costs, but advances in technology make it easier for consumers to circumvent the box office.

A camcorder is one such advance in technology. It is a lightweight, handheld video camera that typically records data in digital form onto a storage device such as a videotape, DVD, or hard disk. Camcorders are easy to operate, can fit in a pocket or under a shirt, and are easily smuggled into movie theaters. Hence, the unauthorized recording of a feature film as it is being played on a theater screen is known as *camcording*, and the resulting recording as a *camcord*. Typically, camcords are reproduced and distributed via Internet file-sharing and through the sale of unlicensed optical discs. Note that other devices, such as mobile phones and digital cameras, are also used to make unlicensed recordings of films in theaters. Our use of *camcording* and *camcord* is not strictly limited to recordings made by camcorders, but includes recordings made by these devices as well.

The film industry identifies camcording as a major problem, and industry representatives estimate that camcords are responsible for at least 90 percent of the first available versions of illegally distributed new release films. Because most camcords are made available to consumers within days of the theatrical release at a fraction of box office prices, the industry argues that box office revenue for popular, first-run movies suffers. If this is true, camcording results in lost revenue for production houses and theater owners.

Industry and other studies find that camcording has a significant, adverse economic impact on film producers, and many other reports explore how to eliminate such practices. Although we suggest effective practices, a comprehensive review of how to eliminate piracy is beyond the scope of this report. Rather, this report attempts to quantify the

impact of camcording and assess what box office impact, if any, is expected from delaying the release of a camcord. It does so through a statistical analysis based largely on industry data.

This report takes a different approach than most similar studies, and includes case studies conducted in a sampling of Asia-Pacific Economic Cooperation (APEC) economies. The studies support the findings of the statistical analysis and examine the impact camcording has on the movie industries of developing economies. The results suggest that camcording has a strongly negative effect on these industries.

We begin with a brief review of the available industry and academic literature related to movie piracy. We move next to a statistical analysis correlating the date of camcord availability to losses in opening weekend box office revenue in the United States. We devote a large portion of the report to a discussion highlighting interviews conducted in APEC economies, and we detail government efforts to curtail camcording and piracy in those economies. Through our research, we learned that camcording has a negative impact on domestic film industries throughout APEC as well as the film industry in the United States. In an effort to help governments combat the harmful effects of camcording, we conclude this report with a list of effective practices to assist in the reduction of camcording.

2. REVIEW OF EXISTING RESEARCH

Literature examining the film industry has consistently found that camcording is harmful—to theater box office sales, to related industries, and to society. For instance, two recent studies by Ipsos MediaCT and Oxford Economics utilize customer survey data to analyze the impact of piracy in Australia and Canada.¹ The Australian study finds that piracy accounts for US\$551 million of consumer spending losses to the industry in Australia in 2010. These losses are shared by cinema owners, local distributors, producers, and retailers.

The study also finds that one-third of the adult population in Australia participates in some form of movie piracy. Reportedly 45 percent of piracy consumers in Australia

¹ IPSOS MEDIA CT & OXFORD ECONOMICS, ECONOMIC CONSEQUENCES OF MOVIE PIRACY: AUSTRALIA (2010); IPSOS MEDIA CT & OXFORD ECONOMICS, ECONOMIC CONSEQUENCES OF MOVIE PIRACY: CANADA (2010).

claim that they would have paid for the content if there was no access to cheap, pirated copies. The figures in Canada are similar.

The Canadian study finds US\$931 million of consumer spending losses to the industry in 2010. Like in Australia, 42 percent of males in Canada between 18 and 24 have reportedly engaged in some form of movie piracy. Similarly, roughly half of piracy consumers claim that they would have paid for the content if there was no access to cheap, pirated copies.

These studies are consistent with earlier ones, which also find that camcording results in large financial losses to the movie and related industries. For instance, a 2004 Deloitte & Touche study estimates that digital piracy results in US\$3 to 4 billion lost revenue each year.² Similarly, a May 2006 LEK Consulting study estimates that piracy is responsible for US\$6.1 billion in losses to the member studios of the Motion Picture Association of America (MPAA).³

Other studies estimate the broader economic impact of camcording. For instance, one study combines the LEK Consulting findings with U.S. Bureau of Economic Analysis data. The September 2006 report from the Institute for Policy Innovation estimates the ripple effect that piracy has on other facets of the economy, including job creation and salaries in movie and related industries. In this context, the total cost of piracy is estimated closer to US\$20.5 billion each year.⁴

Additional reports focus on the relationship between organized crime and camcording as well as how the Internet facilitates distribution of pirated movies. For instance, one 2009 RAND study explores how the relationship between motion picture piracy and organized crime negatively impacts society.⁵ Another industry report finds that 23.8 percent of all Internet traffic and 17 percent of U.S. Internet traffic infringes

² DELOITTE AND TOUCHE LLP, PIRATES: DIGITAL THEFT IN THE FILM INDUSTRY 1, 5 (2004).

³ L.E.K. CONSULTING, THE COST OF MOVIE PIRACY 4-5 (2006).

⁴ STEPHEN SIWEK, INSTITUTE FOR POLICY INNOVATION, THE TRUE COST OF MOTION PICTURE PIRACY TO THE U.S. ECONOMY 8 (2006).

⁵ G.F. TREVERTON ET AL., RAND CORPORATION, FILM PIRACY, ORGANIZED CRIME AND TERRORISM (2009).

copyright.⁶ Yet another finds that the effective enforcement of online copyrights would benefit consumers.⁷

Not surprisingly, the majority of the academic literature also finds that piracy negatively impacts motion picture sales. For example, Ma, Montgomery, Smith, and Singh estimate that pre-release movie piracy causes a 15 percent drop in box office revenue.⁸ Danaher and Waldfogel agree that Internet piracy reduces international box office revenue, and Rob and Waldfogel finds that piracy reduces box office movie consumption by university students.⁹ In APEC markets, Bai and Waldfogel use survey data in finding that 75 percent of movie consumption in China is pirated.¹⁰ They also agree that pirated movies displace box office sales, estimating that five copies of pirated movie equal one lost box office ticket. Examining the secondary market, however, Smith and Telang find no evidence that the presence of pirated content harms sales of older catalog movie content.¹¹

3. DESIGN AND LOGIC OF THE STUDY AND SOURCES OF EVIDENCE

We attempt to quantify the impact of camcording using a statistical analysis. We use case studies conducted in a sampling of APEC economies to bolster our modeling. Our case studies also help assess whether piracy impacts the domestic film industries of these developing economies.

We used statistical modeling to help answer whether camcording impacts box office revenue. Our dataset combines proprietary data and publicly available data. The proprietary data includes the date of the first known camcord for movies. We focus on the window when popular movies are first released. The publicly available data helps us

⁶ ENVISIONAL LTD., TECHNICAL REPORT: AN ESTIMATE OF INFRINGING USE OF THE INTERNET (2011), http://documents.envisional.com/docs/Envisional-Internet_Usage-Jan2011.pdf.

⁷ DANIEL CASTRO, THE INFORMATION TECHNOLOGY AND INNOVATION FOUNDATION, BETTER ENFORCEMENT OF ONLINE COPYRIGHT WOULD HELP, NOT HARM, CONSUMERS (2010), <http://www.itif.org/files/2010-copyright-coica.pdf>.

⁸ Liye Ma et al., Carnegie Mellon University, *Pre-Release Movie Piracy and Box Office Sales: Estimates and Policy Implications 1* (Carnegie Mellon University, Working Paper, 2010).

⁹ Brett Danaher & Joel Waldfogel, University of Pennsylvania, *Reel Piracy: The Effect of Online Movie Piracy on Film Box Office Sales* (University of Pennsylvania, Working paper, 2010).

¹⁰ Jie Bai & Joel Woldfogel, University of Pennsylvania, *Movie Piracy and Sales Displacement in a Sample of Chinese College Students 9* (University of Pennsylvania, Working Paper, 2009).

¹¹ Michael Smith & Rahul Telang, *Competing with Free: The Impact of Movie Broadcasts on DVD Sales and Internet Piracy*, 33 MANAGEMENT INFORMATION SYSTEMS QUARTERLY 321 (2009).

evaluate such subjective factors as movie characteristics and such objective factors as box office revenue.

Based on the combined data, we conducted a regression analysis. From the modeling results, we attempt to quantify whether delaying the camcording of a film during its initial theatrical release weekend impacts its box office revenue. However, there are two inherent limitations in our modeling approach which require greater explanation.

First, we obtained the proprietary data from forensic piracy reports supplied by the major movie studios. We recognize that the proprietary nature of the reports makes it difficult to replicate our dataset, and we acknowledge that the movie industry has a vested interest in the outcome of our analysis that may call into question the accuracy of the data upon which we rely. Given the paucity of publicly available data detailing camcording activities, however, we believe that the benefits of using such proprietary data outweigh such potential independence concerns.

We have taken steps to cross-check our analysis with the existing literature and reported results of the case studies. We find no significant inconsistencies or other anomalies that suggest our original dataset is skewed or somehow inaccurate.

Second, our dataset includes assumptions that also require explanation. For instance, we are sensitive to the practical reality that the greater the popularity of a movie, the more likely it will be camcorded. We are also conscious that there is a positive association between camcord release dates and the popularity of a film—the more popular the movie, the greater the pressure to distribute a pirated version to capture market share.

This link between movie popularity and camcord release dates creates statistical estimation and interpretation challenges. In our attempt to quantify how camcording impacts box office revenue, and precisely how much a delay of camcording for a popular movie could increase that revenue, we seek to isolate popular movies for our dataset. We do so by assuming that camcording that occurs outside a period of two weeks before to three days after the initial release is likely to come from less popular and less widely promoted movies.

We selected this timeframe because it permits us to focus on opening weekend sales, often a barometer used to measure success in the industry. We took steps to cross-check whether the time-period selected is accurate. For instance, we note that our results

are not sensitive to the specific time-period used and found no statistically significant difference using a period of a week before to two or four days after initial release. But we note that alternative time-periods may be equally appropriate and note our assumption here.

To gain a greater understanding of camcording issues experienced in APEC economies, we conducted on-the-ground interviews. These interviews also enabled us to broadly cross-check the results of our statistical modeling. We picked a representative sampling of APEC economies and met with various persons in these economies who are knowledgeable about piracy issues. We describe here how we chose the economies and persons with whom to meet.

Our sample consists of one-third of the APEC members, meaning we conducted case studies in seven of the 21 APEC-member economies. Selection was based on several factors, including geographic location of the economy, state of development, reputation for film piracy, and past efforts to address camcording. We sought a representative balance among these factors, and also took into strong consideration recommendations from experts at USPTO and the Motion Picture Association of America (MPAA). We also focused on those economies where we were able to identify knowledgeable people willing to speak to us about this issue. Based on these criteria, we conducted interviews in Chile, Hong Kong, Malaysia, Mexico, the Philippines, Russia, and Thailand.

We met with government representatives, including those in intellectual property, diplomatic and trade offices, as well as enforcement personnel, attorneys, consultants at risk-consulting firms, experts at industry associations and trade groups, academics, movie studio executives, and theater representatives. Typically our discussions focused on the incidence of camcording, the relationship between camcording and unauthorized film distribution, the economy's involvement in the international trade of unlicensed films, how the government deals with camcording and film piracy, the attitude of consumers towards film piracy, and what those interviewed believe are the most significant film piracy concerns in their area.

Although the anonymity of certain interviewees makes it difficult to replicate or confirm our results, we permitted this anonymity to respect interviewees' concerns for personal and professional security. Several interviewees discussed a link—or at least a

perceived link—between camcording and organized crime. Others discussed politically-sensitive topics. We decided that anonymity was a necessary concession for their candor.

When possible, we cross-checked the stories we heard in each APEC economy with the statistical modeling results, the prior literature, and the stories we heard in other APEC economies. The stories were surprisingly consistent, which we believe permits us to argue that anonymity should not detract from the value of the case studies. We acknowledge the limitations in our approach and encourage additional studies on this topic.

4. STATISTICAL STUDY ANALYSIS AND INTERPRETATION

Our empirical results suggest that delaying camcording of a movie by a single day increases its opening weekend box office revenue in the United States by an average of 3 percent. For the movies in our sample, this translates into an average increase in opening weekend revenue of US\$650,000 per movie. We note that the direction and approximate magnitude of our results are consistent with the available academic and industry literature and are consistent with what we heard in our interviews.

Our main dataset captures the date a camcorded copy of a movie first appears using forensic piracy reports provided to us by major movie studios. The data reviewed covers 276 movies released between August 2009 and March 2011, which includes the majority of major Hollywood studio releases. Of the 276 movies in the dataset, we understand that 232 movies were camcorded, which is roughly 85 percent.

We obtained additional information for each of the 276 movies in the dataset from publicly available sources, such as IMDB.com and boxofficemojo.com. These sources document the movie's production budget, IMDB user and Metascore star ratings, genre, theatrical release dates, number of screens at initial release, and weekly box office sales. Table 1 shows the summary statistics for our combined data.

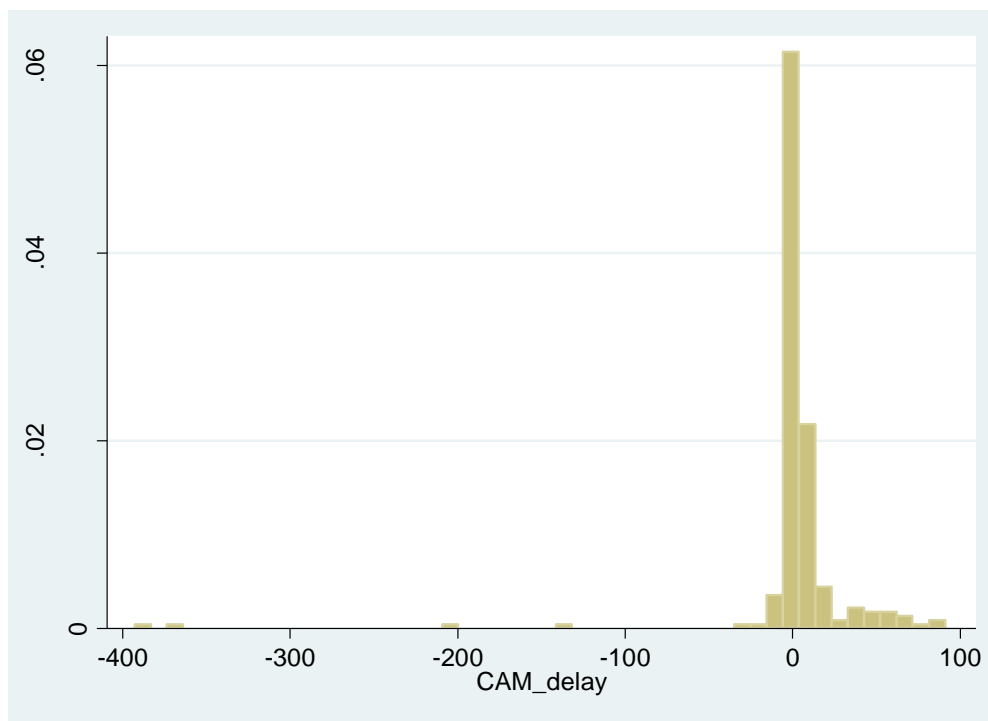
Table 1: Summary Statistics

Variable	Obs (N)	Mean	Std. Dev.	Min	Max
CAM_delay (days after initial release)	232	2.2	43.0	-393	91
USA Opening Weekend Box Office (\$MM)	271	21.7	21.4	0.0045	143
USA Total Box Office (\$MM)	272	72.7	84.2	0.0091	761
Production Budget (\$MM)	272	56.8	52.6	0	260
Screens at release	271	2,712.4	938.3	2	4,468
IMDB Star Rating	276	6.1	1.2	1.3	8.9
IMDB Metascore	268	49.1	16.3	8	95
Action Genre	276	0.31	0.46	0	1
Comedy Genre	276	0.43	0.50	0	1
Romance Genre	276	0.22	0.42	0	1
Family Genre	276	0.17	0.37	0	1
Drama Genre	276	0.39	0.49	0	1

In examining these numbers, we note that there is a large variation in each of the key movie characteristic variables noted above, including opening weekend box office, total box office, production budget, and the number of screens at release. These variations suggest that although smaller, independent releases may be underrepresented in our data, our dataset is comprehensive and includes both blockbusters as well as smaller releases.

The main variable of interest is CAM_delay, which measures the number of days between the movie's first release date in the United States and the date of the first known camcord. Figure 1 is a histogram displaying this information for the movies in our sample. It shows that while camcords are occasionally available well before the initial theatrical release (typically from camcording at pre-release screenings, from early international release dates, or through other leaks), most camcording occurs on the same day, or within the first few days, of a movie's initial release in theaters.

Figure 1: Histogram of Camcording Delay



We focus our analysis on movies whose first camcord occurs within a period from two weeks before to three days after the initial theatrical release. Doing so permits us to account for the likelihood that instances of piracy are correlated with movie popularity, which would complicate our attempt to accurately measure the effect of camcording on box office revenue.¹² The effect of limiting the data in this way reduces our sample by roughly half to 146 movies.

Our choice of a relatively small time period is driven by the fact that, in our setting, variation over a small time period is more likely to be driven by random shocks than variation over a larger time period. The specific range was selected because piracy that occurs more than two weeks before release is likely to come from movies that have an unusual release schedule, such as movies that are screened in film festivals well in advance

¹² The easiest way to address this problem is to obtain a true random variation in camcording activity where we experimentally assign when camcorded copies of movies are released. A second approach would be to identify a variable (*i.e.*, an *instrument*) that is correlated with piracy availability without being correlated with movie popularity. Absent these alternatives, as in our case, the next best option is to eliminate observations from our sample where the camcording date is most likely driven by movie characteristics such as popularity, which is what we did.

of their theatrical release. Similarly, camcording that occurs more than three days after release is likely to come from less popular and less widely promoted movies.

Focusing on the first three days after release also allows us to focus on camcording that occurs during the opening weekend. For these reasons, we maintain the assumption that within our chosen time period, the camcord release date is not directly affected by observable movie characteristics such as popularity. Based on these data, we ran the following regression:

$$\text{Log}(\text{US_weekend_BoxOffice}_i) = \beta_0 + \beta_1 \text{CAM_delay}_i + \sum_{k=2}^K \beta_k \text{Movie_Characteristics}_i + \epsilon_i$$

For every movie i , we estimate β_0 , β_1 and β_k (where k goes from two to twelve). We include eleven movie characteristics, including production budget, number of screens at release, genre (family, action, comedy, romance, and drama), release time (coded as either MAY_JUNE or NOVEMBER_DECEMBER), IMDB ratings and IMDB metascore.¹³ ϵ_i is a random error which is the gap between the actual box office and the box office our explanatory variables would have predicted.

Our goal is to examine how an increase in CAM_delay affects the box office prospects of a movie. In particular, if camcording affects movies adversely then we should see a positive estimate on β_1 indicating that CAM_delay increases a movie's box office performance. Table 2 shows two specifications for this model.

¹³ Metacritic, How We Create the Metascore Magic, <http://www.metacritic.com/about-metascores> (detailing how to interpret the metascore) (last visited Aug. 15, 2011).

Table 2: Camcording Model Results

CAM_delay Window: -15 to +3 days (N=141)				CAM_delay Window: -15 to 0 days (N = 84)		
Log (US_weekend_box office)	Coef.	T-stats	p-value	Coef.	T-stats	p-value
Number of screens	0.001	8.6	0.00	0.001	8.84	0.000
Production budget	0.074	1.06	0.293	0.293	0.18	0.855
Family	-0.257	-1.63	0.103	-0.417	-2.35	0.021
Action	-0.025	-0.72	0.474	0.005	0.12	0.968
Comedy	-0.067	-0.55	0.587	0.017	0.14	0.892
Romance	0.054	0.62	0.536	0.125	0.17	0.458
Drama	-0.049	-0.32	0.748	-0.061	-0.53	0.599
MAY_JUNE	-0.006	-0.43	0.665	-0.048	-0.43	0.668
NOVEMBER_D~R	-0.028	-0.75	0.453	-0.055	-0.50	0.620
IMDB_movie Rating	-0.034	-0.49	0.622	-0.001	-0.01	0.989
IMDB_Meta score	0.011	2.04	0.043	0.012	1.87	0.066
CAM_delay (b1)	0.030	1.96	0.052	0.034	1.95	0.055
Constant (b0)	13.550	29.77	0.000	12.07	29.5	0.000

One specification uses a CAM_delay window from -15 to +3 while the other specification uses a window from -15 to 0, meaning all piracy is at the pre-release level. We include both of these specifications for the purpose of robustness. A p-value of less than 0.05 suggests statistical significance at 5 percent level (p-values of 10 percent, 5 percent, and 1 percent are generally accepted levels for hypothesis testing).

Our variable of interest, CAM_delay, is both positive and significant (although the p-value, which is slightly higher than 0.05, may be considered marginally significant). This suggests that a longer delay in camcord availability is correlated with higher box office revenues. In particular, an estimate of 0.03 indicates that a one-day delay in camcord

availability increases opening weekend box office revenues by roughly 3 percent. The estimate is essentially the same in both specifications.¹⁴

A 3 percent revenue increase translates into an average of US\$650,000 per movie for the movies in our sample. This figure is generally consistent with the prior literature which suggests a strong negative impact of piracy on motion picture revenue. We recognize the inherent limitations in our dataset, however, and acknowledge that our results may be biased to the extent that the date of camcord availability is correlated with movie popularity. We note that to the extent more popular movies are pirated more often than less popular ones, our estimation of the effect of camcording on box office revenue is conservative relative to actual impact.

5. CASE STUDY ANALYSIS AND INTERPRETATION

The above statistical analysis is limited in that its dataset contains only films produced by the U.S. film industry. In order to determine whether the results of this analysis were more generally applicable, we interviewed representatives from various APEC economies. These interviews, summarized below, support the results of our statistical modeling and suggest that camcording harms film industries in APEC economies outside of and in addition to the United States. We present the case studies in alphabetical order and discuss camcording in the broader context of film piracy, as camcording and the pirated distribution of films are interrelated.

a. Chile

Interviewees reported that camcording is not a significant problem in Chile. The Chilean economy produces few films and popular foreign films are generally released in Chile after they have been released and camcorded elsewhere. Instead, Internet piracy is the main concern of Chilean filmmakers and theater owners.¹⁵ Filmmakers' works are uploaded onto the Internet. Theater owners compete with pirated media for customers.

¹⁴ We receive similar estimates when changing the CAM_delay window. Depending on the specification, the p-value of the estimate changes although the magnitude remains positive and in the range of 1 to 3 percent.

¹⁵ Interview with Silvio Caiozzi, Film Dir. and Producer, Unión Nacional de Artistas (UNA), in Santiago, Chile (June 21, 2011) [hereinafter UNA]; interview with Andrés Young B., Attorney, Grupo Chilefilms, in Santiago, Chile (June 22, 2011) [hereinafter Grupo Chilefilms].

1. Camcording, Copyright Legislation, & Enforcement

Although there is no specific law targeting camcording in Chile, the attorneys and theater representatives we interviewed insisted that camcording is not a significant problem within Chile.¹⁶ This is consistent with industry studies finding that only three U.S. films having been camcorded in Chile since 2008.¹⁷

Camcording is prosecuted under Article 79 of Chilean Copyright Law N°17.336. Chilean attorneys believe that the penalties established by Article 79 are sufficient when effectively enforced. The article criminalizes the use of a protected, i.e. copyrighted, work without authorization.¹⁸ The penalty imposed includes imprisonment from 61 to 540 days plus a fine ranging between US\$300 and 3,000.¹⁹

Chile's police unit, La Brigada Investigadora de Delitos de Propiedad Intelectual (BRIDEPI), specializes in intellectual property crimes. In 2009, BRIDEPI confiscated counterfeit products estimated to be worth US\$6 million.²⁰ They also arrested 113 cartel members linked to the importation of pirated films into Chile.²¹ Despite these successes, the chief of BRIDEPI has publicly stated that Chile should devote additional resources to prosecuting intellectual property crimes, specifically to respond to Internet piracy.²² BRIDEPI and Chilean officials who prosecute intellectual property crimes possess a strong reputation for honesty and are not perceived as corrupt.²³

There is little incentive to camcord in Chile. Popular foreign films are generally released in Chile after they are released and camcorded elsewhere.²⁴ For example, one of the popular *Harry Potter* films was released roughly two weeks after its box office release

¹⁶ Interview with Luis Ignacio Olmedo B., Partner, Marinovic y Cia, in Santiago, Chile (June 22, 2011); Grupo Chilefilms, *supra* note 15.

¹⁷ Memorandum, Motion Picture Ass'n of America, Asia Pacific Camcording Background Info [hereinafter Camcording Background].

¹⁸ Ley 17.336 sobre Propiedad Intelectual, [Copyright Act], as amended, Diario Oficial, 4 de Mayo de 2010 (Chile), art. 79

¹⁹ *Id.*

²⁰ Julian Dowling, *Protecting Intellectual Property*, BUSINESS CHILE MAGAZINE, Mar. 3, 2010.

²¹ *Id.*

²² *Id.*

²³ Interview with Antonio A. Marivic C., Partner, Marinoic y Cia, in Santiago, Chile (June 22, 2011); Grupo Chilefilms, *supra* note 15, *see also* TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX 2010 RESULTS (2010), available at http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results (Chile ranked 21 out of 178 countries in Transparency International's 2010 Corruption Perceptions Index, with a score of 7.2) [hereinafter Transparency International].

²⁴ Interview with Lily M. Bravo-Castillo, Professor, University of Chile, in Santiago, Chile (June 23, 2011).

in the United States.²⁵ By the time the film was released in Chile, pirated versions with Spanish subtitles had already been distributed.²⁶

2. *The Chilean Film Industry*

The Chilean film industry produces only 10 to 12 feature films each year, and those films lack the commercial appeal of U.S. blockbusters.²⁷ Chile has a relatively small population of roughly 17 million people. One Chilean exhibitor claimed that Chilean films have limited domestic appeal because Chilean directors are often more concerned with creating art than commercially successful products.²⁸ This may be because Chilean films receive government subsidies based on the results of a national competition which rewards artistry.²⁹ Chilean films are also difficult to market abroad.³⁰

Chilean films captured a much greater share of total viewership 10 years ago, when they occupied 25 percent of Chilean theater screens.³¹ Today they occupy less than 10 percent.³² The reasons for this decline are unclear. Box office turnout is generally low in Chile.³³

The unauthorized downloading of films over the Internet remains the dominant concern of the Chilean film industry. Chilean exhibitors believe that they are losing revenue to Internet piracy because potential customers can download films from the Internet before they view them in theaters.³⁴ Chilean filmmakers fear that their works will be uploaded and shared.³⁵ According to a 2009 survey, 23.7 percent of Chileans download movies for free on the Internet.³⁶

²⁵ *Id.*

²⁶ *Id.*

²⁷ UNA, *supra* note 15.

²⁸ Interview with Anonymous, in Santiago, Chile (June 22, 2011).

²⁹ Interview with Juan Carlos Silva A., Attorney, Chilean National Council of Culture and the Arts, in Santiago, Chile (June 23, 2011).

³⁰ UNA *supra* note 15.

³¹ *Id.*

³² *Id.*

³³ Grupo Chilefilms, *supra* note 15; see also CAMARA DE EXHIBIDORES MULTISALAS DE CHILE A.G., EL CINE EN CHILE EN EL 2010 (2011).

³⁴ Grupo Chilefilms, *supra* note 15.

³⁵ UNA, *supra* note 15.

³⁶ *Id.*

3. Conclusions

Although camcording in Chile is minimal, it is not clear whether this results from effective enforcement or a lack of incentive to camcord because of delayed theatrical release dates. Internet downloading continues to be a problem and exhibitors fear that the digital distribution of films that have been camcorded abroad reduces their box office revenue. Although BRIDEPI effectively handles physical intellectual property crimes, they may lack the resources to effectively address Internet crimes.

b. Hong Kong

The Hong Kong Special Administrative Region's (Hong Kong) handling of camcording has improved because of the government's introduction of specific anti-camcording legislation with a strict possession requirement and its effective cooperation with the private sector. These features of Hong Kong's intellectual property rights (IPR) strategy provide a model for other economies wishing to emulate the region's results.

1. Media Piracy

Hong Kong's IPR infringement landscape has changed dramatically over the past fifteen years. In the late 1990s, over 1,000 small shops concentrated in areas such as Mong Kok, Sham Shui Po, and Wan Chai sold pirated movies and other counterfeit goods.³⁷ At that time it was common for these shops to sell illegal copies of U.S. films that had yet to be released in Hong Kong theaters, and organized crime drove much of the illegal trade in pirated movies.³⁸ Because of the relatively small amount of money involved and the absence of an easy remedy, local police did not acknowledge the scope of infringement.³⁹ In

³⁷ Interview with Sam Ho, Executive Dir. and Gen. Manager, Int'l Fed'n Against Copyright Theft – Greater China (IFACT-GC), in H.K. (June 20, 2011) [hereinafter IFACT-GC]; interview with Albert Ho, Senior Superintendent, H.K. Customs & Excise Dep't, Intellectual Prop. Investigation Bureau, in H.K. (June 20, 2011) [hereinafter H.K. Customs].

³⁸ IFACT-GC, *supra* note 37. Films in Hong Kong would generally be released three months after they came out in the United States. *Id.*

³⁹ IFACT-GC, *supra* note 37. Pirated goods vendors would often be back in business the day—or even hours—after a raid. *Id.* See also Winnie Chung, Studios Suing H.K. Bootleggers/Biggest Civil Suit in Nation's History Takes Aim at Disc Pirates, *The Hollywood Reporter*, July 20, 1999 (noting the police would generally ignore pirated optical disc vendors unless there were pornographic materials or clear organized crime involved).

recognition of the problem, USTR placed Hong Kong on the Special 301 Watch List in 1997 after noting the “ubiquity” of pirated goods in its 1996 report.⁴⁰

The Hong Kong government took significant steps to crack down on IPR infringement in April 1998, when its Independent Commission Against Corruption (ICAC), in cooperation with content industry representatives, seized optical disc manufacturing equipment and pirated movies worth US\$38.5 million.⁴¹ Industry representatives and government authorities used the success of this raid, referred to as the Golden Science case, to push for stronger IPR enforcement and stricter legislation. The Hong Kong government created a special task force to tackle piracy and counterfeiting, and initiated a relentless barrage of raids to put retailers selling IPR-infringing goods out of business.⁴² The strategy worked, and the majority of pirate shops were gone within a year.⁴³ The remaining shops survived by becoming more efficient and effective.⁴⁴

As a reflection of its progress in combating IPR infringement, Hong Kong was removed from the Special 301 Watch List in 1999.⁴⁵ USTR encouraged Hong Kong to continue to devote manpower to addressing the problem and cautioned that the region needed to make further strides to lower one of the highest piracy rates in the world.⁴⁶

2. *Anti-Camcording Legislation*

In 2001, three years after the Golden Science case, Hong Kong enacted specific anti-camcording legislation.⁴⁷ The law was included with various optical disc licensing rules under the Prevention of Copyright Piracy Ordinance.⁴⁸ Any person in possession of video-recording equipment in a place of public entertainment can be fined up to approximately US\$650.⁴⁹ Subsequent offenses can result in fines of up to approximately US\$6,500 and

⁴⁰ OFFICE OF THE U.S. TRADE REPRESENTATIVE, 1997 SPECIAL 301 REPORT (1997); *See* OFFICE OF THE U.S. TRADE REPRESENTATIVE, 1996 SPECIAL 301 REPORT (1996) (noting Hong Kong’s IPR infringement problems but not placing it on the Watch List).

⁴¹ IFACT-GC, *supra* note 37; Hong Kong CD, Equipment Raid is Largest Ever in Asia, *Billboard Bulletin*, Apr. 29, 1998 [hereinafter CD Raid].

⁴² H.K. Customs, *supra* note 37.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ OFFICE OF THE U.S. TRADE REPRESENTATIVE, 1999 SPECIAL 301 REPORT (1999).

⁴⁶ *Id.*

⁴⁷ IFACT-GC, *supra* note 37.

⁴⁸ Prevention of Copyright Piracy Ordinance, 2001, CAP 544, § 31C (H.K.).

⁴⁹ Camcording Background, *supra* note 17.

three months imprisonment.⁵⁰ As of writing, no repeat offenders have been convicted under the law.⁵¹

The law's possession requirement does not require the offender to have actually recorded any video, or that the recording be of a certain length—only that the offender possesses the equipment to make recordings.⁵² Because most modern theatergoers violate this strict requirement by possessing mobile phones capable of video recording, the legislation is selectively enforced. Theater staff act only when a theatergoer records a portion of the film. This includes snapshots.⁵³

3. Enforcement

Despite an enthusiastic start to its enforcement, the law did not result in any arrests between 2004 and 2007.⁵⁴ This does not mean that there were no camcording activities, but instead reflects a lack of enforcement.⁵⁵ Industry and government representatives did not communicate effectively, and theater staff were not proactive in policing camcording.⁵⁶ To remedy these problems, the International Federation Against Copyright Theft - Greater China (IFACT-GC) organized roundtable meetings with Hong Kong Customs and Excise Department (HKC&ED), exhibitors, and other groups to reestablish commitment and coordinate activities.

Although there were 28 cases of anti-camcording enforcement between the beginning of 2009 and the middle of 2011, this number is inflated by the strictness of Hong Kong's possession requirement.⁵⁷ The main perpetrators were not professional camcorders but theatergoers primarily from Mainland China who took pictures or short videos of films and may not have known about Hong Kong's anti-camcording legislation.⁵⁸ When theater

⁵⁰ *Id.*

⁵¹ H.K. Customs, *supra* note 37.

⁵² *The Laws of Hong Kong: Prevention of Copyright Piracy Ordinance, 2007, Cap. 544, 9, §31(C)* (H.K.).

⁵³ IFACT-GC, *supra* note 37; H.K. Customs, *supra* note 37.

⁵⁴ *Id.*

⁵⁵ IFACT-GC, *supra* note 37.

⁵⁶ *Id.*

⁵⁷ H.K. Customs, *supra* note 37.

⁵⁸ IFACT-GC, *supra* note 37; H.K. Customs, *supra* note 37; interview with June Wong, Gen. Manager, Multiplex Cinema Ltd., in H.K. (June 21, 2011) [hereinafter Multiplex Cinema]; *but see* Press Release, Motion Picture Ass'n Int'l, Another Camcorder Arrested in Hong Kong (Jan. 20, 2010), available at http://mpa-i.org/newspress/newspress_hongkong100120.html [hereinafter Camcorder Arrested] (stating that a man was arrested on suspicion of recording close to 90 minutes of the film *Avatar* using two mobile phones).

staff detects camcording, they contact HKC&ED regardless of its severity.⁵⁹ No unlicensed films—in hard or soft copy—have been traced to Hong Kong camcords since 2008.⁶⁰

Political will is a prerequisite for effective IPR enforcement. Hong Kong takes camcording seriously because of its desire to be an IPR pioneer in Asia and a hub for innovation and creativity.⁶¹ Policymakers and government officials understand that it is in the region's best interest to protect IPR and that if they fail to do so the region's reputation will suffer.⁶² They view anti-camcording activities as essential to their holistic approach to IPR protection and enforcement.⁶³ Because Hong Kong possesses few natural resources and instead relies on human capital, this reputation is important, and government leaders view anti-camcording activities as essential to their holistic approach to IPR protection and enforcement. IFACT-GC and exhibitors such as Multiplex Cinema Ltd. (MCL) are satisfied with the government's efforts to fight camcording and other piracy concerns.⁶⁴ HKC&ED's staff are professional, and corruption is low.⁶⁵

HKC&ED—Hong Kong's sole agency with the authority to enforce its anti-camcording legislation—is a model for effectively combating camcording and other IPR infringement.⁶⁶ The agency makes efforts to build relationships with IPR stakeholders such as IFACT-GC and MCL and has consequently succeeded in developing an informed and practical IPR enforcement strategy.⁶⁷ HKC&ED is able to conduct a proper camcording risk assessments or contact the appropriate industry representatives when it confiscates pirated DVDs because of its communication with the private sector.⁶⁸ In addition to enforcement, HKC&ED engages in education and outreach. It holds joint public relations

⁵⁹ Multiplex Cinema, *supra* note 58.

⁶⁰ Press Release, Int'l Fed. Against Copyright Theft – Greater China, Anti-Camcording Training for Hong Kong Cinema Staff Keeps Pressure on Movie Thieves (June 28, 2010), available at http://ifact-gc.org/press_releases/2010/IFACT-GC_Release_Jun28_2010_MAD%20Training.pdf [hereinafter Anti-Camcording Training]; see Camcorder Arrested, *supra* note 58.

⁶¹ IFACT-GC, *supra* note 37; Multiplex Cinema, *supra* note 58.

⁶² H.K. Customs, *supra* note 37; IFACT-GC, *supra* note 37.

⁶³ H.K. Customs, *supra* note 37.

⁶⁴ IFACT-GC, *supra* note 37; Multiplex Cinema, *supra* note 58.

⁶⁵ IFACT-GC, *supra* note 37.

⁶⁶ Camcording Background, *supra* note 17.

⁶⁷ IFACT-GC, *supra* note 37; H.K. Customs, *supra* note 37.

⁶⁸ *Id.*

activities with the Intellectual Property Department, the Hong Kong Theater Association, and the Motion Picture Association (MPA), and meets with business liaison groups.⁶⁹

4. *Training and Prevention*

Another key to Hong Kong's success has been industry and government's cooperation with exhibitors and their frontline staff.⁷⁰ Anti-camcording training sessions teach theater staff about the anti-camcording law and HKC&ED's dedicated camcording hotline.⁷¹ They also create an opportunity for industry and government officials to share effective practices and answer questions.⁷² IFACT-GC's "Anti-Camcording Reward Scheme" pays approximately US\$250 to theater staff who spot and report instances of illegal camcording.⁷³ HKC&ED has a similar reward scheme, but has not paid an award since 2007.⁷⁴

Industry and government also cooperate to patrol theaters. IFACT-GC ensures that HKC&ED has a release schedule so that the department can patrol films during the first three days their release, when camcords are most valuable.⁷⁵ HKC&ED runs both overt and covert patrols.⁷⁶ IFACT-GC also sends plainclothes patrols to catch camcorders and monitor whether exhibitors are following standard practices.⁷⁷

5. *Conclusions*

With its sound laws, aggressive enforcement, and effective court system, Hong Kong has been able to minimize IPR infringement. Problems remain, especially with online piracy, but thanks to the diligence of filmmakers and exhibitors and the government, camcording has not recently been one of them.

⁶⁹ H.K. Customs, *supra* note 37.

⁷⁰ IFACT-GC, *supra* note 37; H.K. Customs, *supra* note 37; Multiplex Cinema, *supra* note 58.

⁷¹ Anti-Camcording Training, *supra* note 60. Theater staff can call HKC&ED's dedicated hotline when they suspect that a theatergoer has used a video-recording device. HKC&ED responds to hotline calls immediately. Theater staff can call police to detain the suspect while waiting for HKC&ED officials to arrive. *See also* IFACT-GC, *supra* note 37; H.K. Customs, *supra* note 37.

⁷² IFACT-GC, *supra* note 37; Multiplex Cinema, *supra* note 58; Anti-Camcording Training, *supra* note 60.

⁷³ Camcording Background, *supra* note 17.

⁷⁴ H.K. Customs, *supra* note 37.

⁷⁵ IFACT-GC, *supra* note 37

⁷⁶ H.K. Customs, *supra* note 37; IFACT-GC, *supra* note 37.

⁷⁷ IFACT-GC, *supra* note 37.

c. Malaysia

The film industry considers Malaysia to be a partial success story. Although Malaysia was once considered a hotbed of camcording, no camcords of U.S. films have been traced there since 2008.⁷⁸ However, many unlicensed copies of films continue to be produced and sold freely in Malaysia.

1. Copyright Legislation

Section 41(1)(g) of the 1987 Copyright Act authorizes theater operators to prohibit and seize devices used to illegally record films. The Act authorizes the detention of suspects through a citizen's arrest procedure.⁷⁹ The minimum punishment for camcording under the Act is a fine of US\$1,300 or imprisonment of up to 10 years, or both.⁸⁰

The Malaysian Parliament is debating amending the Act to impose strict liability against anyone "operat[ing] an audiovisual recording device in a screening room to record any film in whole or in part."⁸¹ The Act's current language concerning the legality of partial recordings is vague, which has caused confusion among law enforcement personnel.⁸² As a result, there were no convictions under the Act between 2006 and 2011, despite 63 camcording interdictions.⁸³ Instead, it is common practice for the police to delete a partial recording and release the suspect.⁸⁴

The Malaysian government has also attempted to prevent film piracy through administrative action. In 2010, the Ministry of Domestic Trade, Co-Operatives and Consumerism (MDTCC) instructed its enforcement division to act *ex officio* in instances of infringement, leading to the seizure of a significant number of pirated products.⁸⁵ MDTCC also announced that landlords who ignore piracy-related activities by tenants would be subject to stiff penalties.⁸⁶

⁷⁸ Camcording Background, *supra* note 17.

⁷⁹ Copyright Act of 1987 (Act No. 322) § 41(1)(g) (2006) (Malay.).

⁸⁰ Intellectual Property Corporation of Malaysia, Act 332 (Copyright Act), 1987, §41(1)(g); *see also* INT'L INTELL. PROP. ALLIANCE, 2010 SPECIAL 301 REPORT (2010) [hereinafter IIPA].

⁸¹ An Act to Amend the Copyright Act of 1987 (DR 46/2010) § 43(a) (2010)(Malay.).

⁸² Interview with Anonymous, in Kuala Lumpur, Malay. (Apr. 28, 2011) [hereinafter KL Interview A];

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ OFFICE OF THE U.S. TRADE REPRESENTATIVE, 2011 SPECIAL 301 REPORT (2011) [hereinafter 2011 Special 301].

⁸⁶ Veena Babulal, *Shop Owners to be Liable*, NEW STRAITS TIMES, Nov. 12, 2009, *available at* http://findarticles.com/p/news-articles/new-straits-times/mi_8016/is_20091112/shop-owners-

2. Enforcement and Prevention

In an effort to curb illegal camcording, the Malaysian Federation against Copyright Theft (MFACT) has worked closely with local movie exhibitors, providing them with training, educational videos, and toolkits.⁸⁷ “Mr. Security” anti-camcording posters and standees are displayed in theaters, and a trailer warning patrons that camcording is illegal is supposed to be screened prior to the start of each film. Yet, this is not always the case.⁸⁸

In addition, MFACT enlists the help of theater owners through a financial reward system, which encourages film exhibitors to police their theaters.⁸⁹ Theater staff are trained to identify suspicious activities involving recording devices and to report acts of camcording.⁹⁰ A cinema manager then stops these acts and notifies the local police.⁹¹ Although this incentive program has helped limit camcording, the vagueness of the general law has meant that, thus far, few legal actions have resulted from theater self-enforcement.⁹²

3. Broadcast and Optical Media Piracy

The number of Malaysian factories producing unlicensed optical discs has decreased in recent years.⁹³ Factories must now be licensed through the Optical Discs Act of 2000 and are subject to regular audits.⁹⁴ As a direct result of these registration requirements, it is difficult to import the machines used to produce unlicensed optical discs into Malaysia.⁹⁵ However, there have been two cases of replication machines operating illegally in 2011.⁹⁶

<http://www.asiaone.com/News/AsiaOne+News/Malaysia/Story/A1Story20100511-215434.html>. *Heavier penalties to fight film piracy in Malaysia*, NEW STRAITS TIMES, May 11, 2010, available at <http://www.asiaone.com/News/AsiaOne+News/Malaysia/Story/A1Story20100511-215434.html>.

⁸⁷ IIPA, *supra* note 80.

⁸⁸ Mfact.org, Optical Disk Piracy, http://www.mfact.org/moviethieves_optical.html (last visited Aug. 15, 2011) (“Despite reading reports that these trailers will be aired prior to the start of a film, we did not observe this during the screenings of two separate films in Malaysia in two different theaters.”).

⁸⁹ Interview with Anonymous, in Kuala Lumpur, Malay. (Apr. 28, 2011).

⁹⁰ Camcording Background, *supra* note 17.

⁹¹ KL Interview A, *supra* note 82; Camcording Background, *supra* note 17.

⁹² KL Interview A, *supra* note 82.

⁹³ Interview with Anonymous, in Kuala Lumpur, Malay. (Apr. 28, 2011).

⁹⁴ Optical Discs Act 2000 (Act No. 606) § 4 (2006) (Malay.).

⁹⁵ KL Interview A, *supra* note 82.

⁹⁶ IIPA 2010, *supra* note 80.

Despite this decrease in production, stores specializing in pirated discs continue to exist and operate openly.⁹⁷ Burner labs, which supply these specialty stores, produce lower volumes than the factories but are cheaper and more mobile.⁹⁸

We visited a number of markets which sold unlicensed optical discs in Kuala Lumpur and its surrounding suburbs. A single mall often contained multiple vendors who, as a precaution against raids, did not keep their stock in-house. Instead, customers waited up to 30 minutes while a runner retrieved their order from a nearby warehouse or apartment.⁹⁹

In addition, Astro, a Malaysian satellite television provider, airs Malaysian films on several channels within weeks of their theatrical release.¹⁰⁰ Therefore, the camcording of local films may be unnecessary because pirates can easily make copies of these digital broadcasts.

4. *The Malaysian Film Industry*

The Malaysian film industry produces between 20 and 25 films each year and has become increasingly profitable.¹⁰¹ Despite these advances, however, foreign films generate the majority of exhibitors' revenue.¹⁰² To encourage continued growth, the government subsidizes national productions.¹⁰³

Although camcording is uncommon, broadcast piracy has had a considerable negative effect on local film producers and related industries, whose revenues fell 75 percent from 1996 to 2010, from approximately US\$100 million to US\$25 million.¹⁰⁴ Legitimate sales of optical discs containing Malaysian films decreased over 80 percent during the same period, from the hundreds of thousands to somewhere between 10,000 and 20,000.¹⁰⁵

⁹⁷ KL Interview A, *supra* note 82.

⁹⁸ IIPA 2011, *supra* note 80.

⁹⁹ Interview with Anonymous, in Kuala Lumpur, Malay. (Apr. 29, 2011).

¹⁰⁰ KL Interview A, *supra* note 82; Astro.com, Astro First, http://www.astro.com.my/astrofirst/articles/art_3684.html (last visited Aug. 15, 2011).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Ismail Sabri, *Malaysia Wants to Be Excluded from Piracy Watch List*, BERNAMA, Mar. 09, 2010, available at http://www.krustudios.com/main/content/109/?parent_id=4&news_active=1.

¹⁰⁵ *Id.*

5. Conclusions

Camcording in Malaysia has decreased greatly because of a variety of factors. Significantly, MFACT has worked successfully with local theaters to prevent camcording. The Malaysian parliament is debating an amendment, which includes specific anti-camcording language, to the general copyright law to eliminate ambiguity over the legality of partial camcords. Sales of unlicensed optical discs and broadcast piracy now constitute the greatest piracy-related problem in Malaysia. Malaysia has made progress in driving sellers of unlicensed film copies out of the formal economy, but more is needed.

d. Mexico

The Mexican film industry suffers from a variety of piracy-related concerns. The Mexican government has implemented a number of reforms and programs to strengthen its IPR enforcement regime. Specific anti-camcording legislation that would close loopholes in Mexico's general copyright law has been proposed but was rejected.

1. *The Mexican Film Industry and Media Piracy*

Mexico's box office attendance ranks fifth worldwide and attendance figures have increased steadily in recent years. Ticket sales increased from 179.5 million in 2009 to 189.2 million in 2010. Although foreign companies produce the vast majority of films screened in Mexico, viewership of Mexican films is steadily increasing as a percentage of overall sales, accounting for 5.5 percent of total box office sales in 2009 and 5.7 percent in 2010. The best-performing Mexican film in 2010 earned approximately US\$10.2 million and was attended by 2,908,222 viewers. However, the development of Mexico's film industry has been affected by a number of piracy-related factors.

Existing data shows that film piracy is damaging the Mexican film industry. According to industry surveys, eight out of ten optical discs purchase in Mexico are unlicensed. The industry claims that this results in yearly losses of approximately US\$340 million. Thirty-two U.S. films were camcordered in Mexican theaters between 2008 and 2010.

According to the Mexican Association for the Protection of Movies and Music (APCM), Mexico's importation of hundreds of millions of blank DVD-R discs is a cause for concern. Even though these imports are legal, the Mexican government has estimated that

the majority are used for piracy. Generally, the incidence of physical piracy in Mexico has not decreased. In many cases, piracy is connected to organized crime groups, which makes it difficult to combat.

2. Copyright Legislation and Proposed Anti-camcording Legislation

Mexico does not have a specific anti-camcording law. The current framework relies on general copyright legislation. The Federal Criminal Code (Article 424 bis) defines the term “reproduction” and imposes a penalty of three to ten years imprisonment for those found guilty of unauthorized reproduction of copyrighted material for commercial purposes.¹⁰⁶ The Federal Copyright Law permits private copying for non-commercial purposes such as personal use.

This framework has been strengthened by a number of recent reforms. In April 2008, members of Congress introduced a proposal to reform Article 429 of the Federal Criminal Code to establish ex officio prosecution for all copyright infringement crimes covered by the code. The reform, which enables PGR to inspect falsified goods in street markets without needing to wait for a complaint from affected rights holders, came into effect in 2010. It establishes a penalty of two to six years imprisonment and a fine of up to 10,000 times the minimum wage on individuals found guilty of selling falsified merchandise in public.

On February 17, 2011, the Economics Commission approved a series of reforms empowering IMPI to impose strengthened sanctions on acts of piracy. The reforms modified Article 232 of the Federal Copyright Law, establishing a fine of up to forty thousand times the minimum wage on those who engage in a number of infringing acts. This includes those who: publically use a protected work without the expressed permission of the author; use a person’s image without their authorization; produce, reproduce, store, distribute, transport, or sell unauthorized copies of copyrighted works; or import, sell, rent, or enable the use of a device that disables copyright protection technologies.

On March 8 2011, the Congress Commissions on Commerce and Industrial Promotion and Legislative Studies received an initiative to reform Section III in Article 231

¹⁰⁶ Ley Federal Del Derecho De Autor [Federal Law of Copyright], as amended, art. 1, Diario Oficial de la Federación [DO], 23 de Juli de 2003 (Mex.).

of the Federal Copyright Law. This modification intends to extend existing copyright infraction penalties to those found guilty of producing, reproducing, storing, distributing, transporting, and selling unauthorized copies of cinematographic works. The initiative is currently under review.

In addition, specific anti-camcording legislation has been proposed. Senators introduced an initiative to reform Article 424 of the Federal Criminal Code and Article 148 of the Federal Copyright Law to explicitly prohibit camcording on October 27, 2009. Specifically, the initiative would have criminalized the unauthorized recording a work of film or sound using a recording device during the public exhibition of the work, regardless of whether the recording happens with the intention of profiting from it. However, the Senate rejected the initiative on March 22, 2011.

3. Enforcement and Prevention

The Mexican Institute of Industrial Property (IMPI) governs the administrative processes related to anti-piracy efforts and has the authority to launch administrative investigations against alleged pirates and perform inspections at manufacturing plants, points of sale, and border crossings. IMPI seized approximately US\$4.0 million worth of illegal products in 2010 and, as of writing, US\$6.6 million in 2011.¹⁰⁷ The Office of the General Prosecutor (PGR) reports that they have arrested 13 individuals for piracy-related offenses between January 2009 and June 2011.¹⁰⁸ However, anti-camcording activities comprise a small percentage of total Mexican anti-piracy activities, with only approximately 1 percent of PGRs actions targeted camcording.

The Mexican judiciary has sentenced perpetrators and applied significant penalties for camcording offenses. PGR has won every single camcording case, setting an important precedent in the judicial system. Judicially-mandated destructions of falsified goods also occur frequently.

Various executive agencies have implemented programs to strengthen customs and other aspects of IPR enforcement. Since 2007, the federal government has organized 28 workshops at 17 customs points to train 1064 customs officials in the detection of falsified

¹⁰⁷ INSTITUTO MEXICANO DE LA PROPIEDAD INDUSTRIAL, IMPI EN CIFRAS 2011 (2011), *available at* http://www.impi.gob.mx/wb/IMPI/impi_en_cifras2.

¹⁰⁸*Id.*

goods. In March 2009, IMPI launched the “IMPI Customs Observers” project, which places IMPI officials at border points in order to help customs agents detect falsified products. As of November 2010, 306 containers transporting allegedly falsified products were detected and detained as a result of this project. In the first six months of 2011, the project helped detect and detain 227 containers. A current legislative proposal empowering customs officials to detain suspected falsified merchandise at border points without requiring a judicial order or a petition by IMPI would further strengthen this program. IMPI has also signed a number of agreements with various business and customs groups strengthening inspections inside Mexico and at the border.¹⁰⁹

IMPI has also launched campaigns to raise public awareness. For example, on September 17, 2007, IMPI debuted the First Children’s Drawing Contest entitled “Kids Against Piracy...Towards a Culture of Respect for Ideas.” This was a national contest aimed at raising awareness about the value of intellectual property amongst elementary school students. Diverse private sector representatives collaborated with IMPI for this project, and a total of 5,575 drawings from almost every state were submitted. This contest has continued yearly and is currently in its fourth edition.

4. Conclusions

Despite government and industry efforts, piracy and counterfeiting have resulted in losses for the legitimate Mexican film industry. Although anti-piracy policies are controversial within the Mexican legislature, the executive, concerned with the associated losses in foreign investment and technology transfer, has implemented a number of anti-piracy programs. Efforts to curb piracy should take advantage of this willingness to enforce IPR and build on existing strengths in the Mexican legal system. However, legislative action may ultimately be needed because of the problems attending the commercial use requirement in the general copyright law.

¹⁰⁹ During the past two years, IMPI has signed agreements with various organizations: Mexican Association for the Production of Works of Video and Music (AMPROFON); Mexican Authors and Composers Society (SACM); Mexican Center for the Promotion and Protection of Copyrights (CEMPRO); Mexican Music, Video, and Multimedia Producers Society (SOMEXFON); and the Business Software Alliance (BSA). The purpose of these agreements is to discourage IP infractions by performing joint inspections at diverse businesses. In addition, PGR regularly organizes meetings between the General Customs Administration, IMPI, the National Copyright Institute, and industry representatives to strengthen intra-government cooperation and cooperation between the government and the private sector.

e. Philippines

Although more camcords have originated in the Philippines over the last few years than any other economy in this report, the Philippines appears to be making progress in reducing camcording. As of writing, only one camcord of a U.S. film has been traced to a Philippine theater in 2011.¹¹⁰ This is a marked improvement over the 44 camcords of U.S. films traced to the Philippines in 2008.¹¹¹ Local experts attribute the reduction in camcording to the adoption of specific anti-camcording legislation and the development of educational programs.¹¹²

1. Camcording

Industry consultants claimed that anti-camcording enforcement in the Philippines is hindered by its lack of resources.¹¹³ There are 55 modern movie theaters in Metropolitan Manila (Metro Manila), where 98 percent of camcords of U.S. films have been recorded.¹¹⁴ The sheer number of theaters and lack of enforcement resources makes it difficult for police to monitor camcording activities without more specific information or assistance from theater owners.

In addition, corruption represents a serious problem, and bribery is common.¹¹⁵ According to one industry representative, cartel operatives receive US\$200 to 250 per camcord—more than the monthly salary of an average policeman in Metro Manila.¹¹⁶

Despite these shortcomings, the incidence of camcording has decreased. Forty-four camcords of U.S. films were traced to the Philippines in 2008.¹¹⁷ The number of camcords has decreased in each successive year. There has been only one reported camcord of a U.S. film which originated in the Philippines so far in 2011.¹¹⁸

¹¹⁰ Interview with Paul Ingram, Executive Vice President, Hill & Associates, in Manila, Phil. (Mar. 8, 2011) [hereinafter Hill & Associates].

¹¹¹ *Id.*

¹¹² *Id.*; Interview with Ronnie Ricketts, Chairman, Optical Media Board (OMB), in Manila, Phil. (Mar. 9, 2011) [hereinafter OMB].

¹¹³ Hill & Associates, *supra* note 110.

¹¹⁴ *Id.*

¹¹⁵ Interview with Anonymous, in Manila, Phil. (Mar. 8, 2011).

¹¹⁶ *Id.*

¹¹⁷ Hill & Associates, *supra* note 110.

¹¹⁸ Hill & Associates, *supra* note 110.

2. Anti-Camcording Legislation

In response to industry pressure and the increasing visibility of camcording problems, the Philippine government enacted the Anti-Camcording Act of 2009. Under the Act, any person caught using or attempting to use an audiovisual recording device to make a copy of any part of a cinematographic film or other audiovisual work in an exhibition facility may be sentenced to imprisonment of six months and one day to six years and one day and fined between US\$1,000 and 17,000.¹¹⁹ Judges are required to impose the maximum penalty if the purpose of the camcording or attempted camcording is to sell, rent, or otherwise commercially distribute the camcord.¹²⁰

The Act assigns primary enforcement responsibility to the Philippine National Police, the National Bureau of Investigation, and the Optical Media Board (OMB).¹²¹ An amendment to the Act granting additional enforcement authority to IPOPHL has undergone multiple readings and is pending final passage.¹²² There have been no convictions under the new law.¹²³ However, interviewees believed that the law serves as a strong deterrent and has played a crucial role in reducing camcording in the Philippines.¹²⁴

In addition to its penalties, the Act addresses the population's general lack of awareness of IPR. The Act requires that theaters hang posters in their entrances and ticket booths warning customers that camcording is illegal. It also requires that theaters run trailers to the same effect. The Act imposes a US\$1,000 fine on those theaters failing to comply with these requirements.¹²⁵

¹¹⁹ Camcording Act of 2009, No. 3529, 13 May 2010, available at <http://www.senate.gov.ph/lisdata/12930116261.pdf> [hereinafter Philippines Camcording Act].

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Interview with Louie Andrew C. Calvario, Attorney, Intellectual Property Office of the Philippines, in Manila, Phil. (Mar. 10, 2011); see also An Act Amending Certain Provisions of Republic Act No. 8293, Otherwise Known as "The Intellectual Property Code of the Philippines", and for Other Purposes, Senate Bill No. 962, 25 May 2011, available at <http://www.senate.gov.ph/lisdata/1133796411.pdf>.

¹²³ Hill & Associates, *supra* note 110.

¹²⁴ *Id.*

¹²⁵ Philippines Camcording Act, *supra* note 119.

3. *Training and Educational Campaigns*

OMB is spearheading an informational campaign on the importance of IPR. In 2009, OMB initiated an awareness campaign aimed at discouraging film piracy among youths.¹²⁶ This campaign included a series of campus tours and appearances by OMB Chairman and popular Filipino movie star Ronnie Ricketts.¹²⁷

USPTO, in coordination with IPOPHL and OMB, conducted a technical assistance training workshop focusing on optical disc piracy enforcement and forensic investigation in July 2010. The workshop trained more than one 100 government officials and industry representatives.¹²⁸ Hill & Associates, a risk consulting firm that monitors film piracy in the Philippines, conducted a series of eight training sessions for theater staff in 2010.¹²⁹

4. *Optical Media Piracy*

The Philippines has a substantial unlicensed media industry, which is estimated to involve 100,000 Filipinos.¹³⁰ We viewed the Philippines' thriving unlicensed optical disc trade firsthand. Street vendors and malls sell low-quality unlicensed optical discs throughout Metro Manila.

The U.S. Trade Representative's (USTR) Special 301 Report and Out-of-Cycle Notorious Markets List includes several Philippine markets that sell pirated optical discs, including Quiapo and 168 Mall in Manila, Greenhills in San Juan, and the Makati Cinema Square in Makati City.¹³¹

These malls continue to sell unlicensed optical discs despite pressure from the Philippine film industry. We witnessed that although one Greenhills mall no longer sells unlicensed optical discs openly because of the demands of a nearby theater, its vendors continue to advertise the discs. Customers are ushered outside to complete the sale.

¹²⁶ OMB, *supra* note 112

¹²⁷ *Id.*

¹²⁸ Camcording Background, *supra* note 17.

¹²⁹ *Id.*

¹³⁰ Tilman Baumgartel, *The Culture of Piracy in the Philippines*, 45 *PILIPINAS: A JOURNAL OF PHILIPPINE STUDIES* 29 (2005).

¹³¹ 2011 Special 301, *supra* note 85; OFFICE OF THE U.S. TRADE REPRESENTATIVE, *OUT-OF-CYCLE REVIEW OF NOTORIOUS MARKETS* (2011) [hereinafter *Notorious Markets*].

5. *The Philippine Film Industry*

Theatergoing is popular in the Philippines.¹³² Despite this, the number of films produced by the Philippine film industry has decreased precipitously in recent years.¹³³ Industry insiders blame piracy for the decrease.¹³⁴ Since the introduction of the video compact disc in 1996, which made mass piracy easier, local film production has decreased over 75 percent from 1996 to 2004, from approximately 240 films to 53 films.¹³⁵

There is a relatively large delay between the theatrical release of Philippine films and their availability on the black market. Of 16 Philippine films camcordered during a period in 2010, no film was available on the black market until 14 to 28 days after its theatrical release.¹³⁶ This delay does not exist in the case of foreign films, which are available within days of their release.¹³⁷ This delay is significant because—as this study demonstrates—it is likely that box office revenue increases each day camcorders are delayed during the opening weekend. Interviewees suggested that covert deals with the local cartel caused this delay.¹³⁸

6. *Conclusions*

The incidence of camcording is declining in the Philippines. However, the Philippines continues to face significant challenges with respect to film piracy, including the widespread sale of unlicensed optical discs. Recently, the Philippines implemented specific anti-camcording legislation. Although no one has been convicted under the Act, interviewees reported that the Act's educational components have succeeded in raising public awareness about the harms caused by camcording. Moreover, they reported that the law itself highlighted the importance of the issue. This suggests that camcording-specific legislation may have important symbolic benefits that go beyond its provisions.

¹³² Hill & Associates, *supra* note 110; interview with Eduardo D. Sazon, Dir. Gen., Nat'l Cinema Assoc'n of the Phil., in Manila, Phil. (Mar. 10, 2011).

¹³³ Carmela Guanzon Lapeña, *Movie Industry Hails Arroyo on Anti-Camcording law*, GMANEWS.TV (June 1, 2010).

¹³⁴ *Id.*; *Local Movie Industry Earnings Down by 30 Percent Due to Piracy*, PHILIPPINES NEWS AGENCY (June 19, 2008).

¹³⁵ Optical Media Board, About OMB, <http://omb.gov.ph/ombnew/index.php?page=aboutus§ion=history3B> (last visited Aug. 15, 2011).

¹³⁶ Hill & Associates, *supra* note 110.

¹³⁷ *Id.*

¹³⁸ Interview with Anonymous, in Manila, Phil. (Mar. 8, 2011); interview with Anonymous, in Manila, Phil. (Mar. 10, 2011).

f. Russia

The Russian Federation (Russia) is the second largest market for pirated films in the world behind China.¹³⁹ Film piracy in Russia reportedly costs the film industry in the U.S. more than US\$300 million a year.¹⁴⁰ Russian camcords are popular due to their high quality and early availability, and Russian release groups and cartels distribute them internationally.¹⁴¹ While Russia is home to large optical disc factories, the trend is towards Internet distribution.¹⁴² Police reluctance and corruption allow piracy to continue in Russia.

1. Camcording

Twenty-one camcords of U.S. films were traced to Russian theaters between 2008 and 2010.¹⁴³ Russian camcords are highly valuable because of their high quality and early availability. U.S. films are often screened in Russia before they are released in the world's three largest box offices, namely the United States, Japan, and China. Russian releases normally occur one to two days in advance of other major openings.¹⁴⁴ For example, *Harry Potter and the Deathly Hallows, Part 2* was released in Russia two days prior to its North American and Japanese releases. Films are sometimes released into the Russian market as early as a week or more beforehand.¹⁴⁵ Access to these early releases provides Russian release groups with a competitive advantage because it allows them to produce the first camcords for many commercially successful films. This also allows Russian groups to distribute their pirated copies concurrently with the general theatrical release in other economies. By doing this the groups can piggyback on the studios' ongoing advertising campaigns.¹⁴⁶

¹³⁹ *Russia's Illicit Industry Booming*, MSNBC, Jul. 7, 2006, available at http://www.msnbc.msn.com/id/13617606/ns/business-world_business/t/russias-illicit-industry-booming.

¹⁴⁰ *Id.*

¹⁴¹ Interview with Nikita A. Kharinov, Intellectual Property Specialist, U.S. Commercial Serv., in Moscow, Russ. (July 7, 2011).

¹⁴² Naomi Fellows, Senior Trade Officer, U.S. Embassy Moscow, in Moscow, Russ. (July 7, 2011) [hereinafter Embassy Moscow].

¹⁴³ Memorandum, Motion Picture Ass'n, First Pirate Releases.

¹⁴⁴ Interview with Irene Usatcheva, Dir. of Foreign Affairs, Caro Premier, in Moscow, Russ. (July 11, 2011).

¹⁴⁵ *Id.*

¹⁴⁶ Interview with Vadim Ivanov, Managing Director, Universal Pictures International, in Moscow, Russ. (July 8, 2011).

2. Copyright Legislation and Enforcement

It is difficult to prevent camcording in Russia because of corruption and the reluctance of Russian enforcement officials. No Russian act specifically addresses camcording. Instead, the activity is regulated under the general copyright protections codified in Article 1301 of the Russian Civil Code. The Code states that a rights holder may demand compensation for infringement equal to an amount determined by the court or twice the cost of all unauthorized copies.¹⁴⁷ However, the lack of clarity and uniformity in the law discourages enforcement officials from responding to camcording complaints. One attorney we met with explained that Russian police tend not to act when they believe it will be difficult to obtain a conviction, since an arrest that fails to lead to a conviction can damage the arresting officer's career.¹⁴⁸ Moreover, interviewees reported that corruption is a serious problem within the Russian police force.¹⁴⁹

3. Optical Media and Internet Piracy

The majority of optical discs available in Russia are unlicensed.¹⁵⁰ Licensed Russian factories produce the majority of these discs.¹⁵¹ Generally, factories accomplish this by exceeding their authorized quotas, either by running extra off-hours shifts or by adding additional production lines.¹⁵² Because they are produced using the same technologies as legitimate discs, it is nearly impossible for consumers to determine whether they have purchased an authorized or unauthorized copy of a film. Although one government source claimed that the number of factories has been reduced significantly, at least one study claims that there are at least 50 factories in Russia still producing unlicensed optical discs.¹⁵³

¹⁴⁷ UGOLOVNIY KODEKS ROSSISKOI FEDERATSII [UK RF] [The Criminal Code of Russian Federation] art. 146 §2 (Russia).

¹⁴⁸ Interview with Anonymous, in Moscow, Russ. (July 8, 2011).

¹⁴⁹ Interview with Anonymous, in Moscow, Russ. (July 7, 2011); interview with Anonymous, in Moscow, Russ. (July 11, 2011); *see also* Transparency International, *supra* note 23 (Russia ranked 154 out of 178 countries in Transparency International's 2010 Corruption Perceptions Index, with a score of 2.1).

¹⁵⁰ Olga Sezneva & Joe Karaganis, *Chapter 4: Russia*, in *MEDIA PIRACY IN EMERGING ECONOMIES* 149 (Joe Karaganis ed., Social Science Research Council 2011) [hereinafter *Emerging Economies*].

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Compare* Embassy Moscow, *supra* note 142, with *Emerging Economies*, *supra* note 150.

Internet-based distribution networks are gradually gaining market share at the expense of the unauthorized optical disc vendors.¹⁵⁴ Five years ago optical discs were the primary means of distributing pirated copies of films.¹⁵⁵ However, this business has diminished by as much as 65 percent due to increased Russian access to the Internet.¹⁵⁶ Half of the Russian population is now able to access the Internet daily.¹⁵⁷ Other research reveals that the vast majority of Russian bandwidth is used for peer-to-peer (P2P) services.¹⁵⁸

In addition to the P2P services, interviewees claimed that VKontakte, a Russian social networking service similar to Facebook, was responsible for large amounts of Internet piracy.¹⁵⁹ VKontakte integrates file-sharing technology, enabling the sharing of films and other media by its users. Government officials we met told us that the film industry regularly complains to them about the site; however, nothing has been done to remedy the situation.¹⁶⁰ VKontakte is one of the five most-visited sites in Russia and 50 most visited sites in the world.¹⁶¹

4. *Conclusions*

Unlike Chile, which presents a high-risk, low-reward environment for pirates, Russia presents a low-risk, high-reward environment. Russian films are valuable because of their early release dates and high quality, and pirates are unlikely to face punishment. In addition, interviewees claimed that corruption is a significant problem. For these reasons, Russia is a significant exporter of camcords. Internet distribution of copies made from these camcords is increasingly common.

g. Thailand

The size of the illegal film industry in Thailand is well-documented. Thailand is listed on the Watch List of the USTR's 2011 Special 301 Report, which states that "[p]iracy

¹⁵⁴ Embassy Moscow, *supra* note 142.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ HENDRIK SCHULZE & KLAUS MOCHALSKI. IPOQUE, INTERNET STUDY 2008/2009 (2009).

¹⁵⁹ Embassy Moscow, *supra* note 142; *see also* Notorious Markets, *supra* note 131.

¹⁶⁰ Embassy Moscow, *supra* note 142.

¹⁶¹ Notorious Markets, *supra* note 131.

and counterfeiting . . . remain rampant in Thailand, and the motion picture industry has reported a significant increase in unauthorized camcording of motion pictures in theaters.”¹⁶² Industry research suggests that although the sale of licensed optical discs generates less than US\$4 million per year, the sale of unlicensed copies of films generates approximately US\$40 million.¹⁶³ The number of U.S. films camcordered in Thai cinemas increased by 50% between 2009 and 2010.¹⁶⁴

1. *The Thai Film Industry*

The legitimate Thai film industry, which provides jobs for over 300,000 Thais, has produced numerous critically acclaimed films in recent years.¹⁶⁵ For example, *Uncle Boonmee: Who Can Recall His Past Lives* won the Palm D’Or award at the Cannes Film Festival in 2010.¹⁶⁶ Despite the high quality of its films, the Thai film industry produces far fewer movies today than it did several decades ago. This year, the industry will produce about 60 films.¹⁶⁷ During the 1980s, it produced almost 300 films each year.¹⁶⁸

Nearly every Thai film is camcordered. Industry tracking discovered that at least 70 percent of Thai films had been camcordered during a period in 2009—and two industry representatives claimed that every Thai title, except one, was camcordered in 2010.¹⁶⁹ Existing research concludes that the increasing size of the illegal film industry and the decreasing number of Thai films are related. One study finds that the legitimate Thai film industry lost US\$20 million in 2008 as a result of film piracy.¹⁷⁰ This finding is consistent with the claims of industry representatives we interviewed.¹⁷¹

¹⁶² 2011 Special 301, *supra* note 85.

¹⁶³ Watchiranont Thongtep, *Distributors Struggle against Pirate DVD Industry*, THE NATION, Jun. 27, 2011.

¹⁶⁴ Camcording Background, *supra* note 17.

¹⁶⁵ News Release, Motion Picture Ass’n, Thai Film Community Celebrates World IP Day by Saying “Thank You’ to Movie Fans (Apr. 30, 2011) [hereinafter Thai Film Community].

¹⁶⁶ Other recent, internationally acclaimed Thai films that have been victimized by camcording and film piracy include *Tropical Malady*, *Syndromes and a Century*, and *Siam Square*.

¹⁶⁷ Interview with Sorajak Kasemsuvan, Sec. Gen., Nat’l Fed’n of Thai Film Ass’n (TFF), in Bangkok, Thailand. (Mar. 17, 2011) [hereinafter TFF].

¹⁶⁸ *Id.*

¹⁶⁹ MOTION PICTURE ASS’N, ILLEGAL CAMCORDING AND THE THAI FILM INDUSTRY (2009); Interview with Paisan Umpaichai, Dep. Exec. Dir., Motion Picture Ass’n Thailand, in Bangkok, Thailand. (Mar. 17, 2011) [hereinafter MPA Thailand]; Thai Film Community, *supra* note 165.

¹⁷⁰ *Keeping Pirates at Bay*, BANGKOK POST, May 25, 2009.

¹⁷¹ TFF, *supra* note 167; MPA Thailand, *supra* note 169.

Film piracy decreases retention of experienced personnel in the film industry, resulting in a loss of talent. The prevalence of film piracy has led several prominent filmmakers to shift their creative efforts to television, which they viewed as more financially stable.¹⁷² Film writers are particularly difficult to retain because they are generally underpaid.¹⁷³

2. *Camcording*

The illegal film industry in Thailand depends on a relatively small number of actors who provide the original camcordings. A large percentage of camcords taken in Bangkok theaters are recorded at the direction of a single well-known cartel boss.¹⁷⁴

This cartel depends on a larger international network, which is evidenced by patterns in the production and distribution of camcords. Local industry representatives familiar with these patterns describe them in terms of two waves. In the first wave, the cartel produces unlicensed optical discs from camcords in Bangkok labs.¹⁷⁵ These discs are then distributed to street and mall vendors.¹⁷⁶ This first wave normally occurs within days of a film's theatrical release.¹⁷⁷ The local cartel is able to produce and distribute unlicensed discs all on the same day they acquire a camcord.¹⁷⁸ However, these local labs lack the production capacity to meet sustained demand for unlicensed discs.¹⁷⁹ Consequently, the local cartel shifts its production abroad. In the second wave, the cartel exports camcords to foreign producers in China and Malaysia and then imports copies made from these camcords.¹⁸⁰ The cartel also imports discs of non-Thai films from these producers.¹⁸¹ Taken together, these two waves of production and distribution fulfill the cartel's needs for speed and quantity.

¹⁷² TFF, *supra* note 167.

¹⁷³ *Id.*

¹⁷⁴ Interview with Anonymous, in Bangkok, Thailand. (Mar. 17, 2011).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

3. Copyright Legislation and Enforcement

The Thai government has been unable to significantly reduce the size of the illegal film industry in general and to prevent camcording in particular. This is likely due, in part, to Thailand's lack of specific anti-camcording legislation. Currently, Thai authorities rely on Thailand's general copyright law to prosecute camcording. Unfortunately, Thai judges do not take camcording offenses seriously.¹⁸² Only one camcording case brought under the general statute has resulted in a conviction, and the resulting fine of approximately US\$650 was trivial.¹⁸³

Given this, the Thai film industry is united in support of the passage of specific anti-camcording legislation. National Federation of Thai Film Associations (TFF) has lobbied the government to take action and employed a legal team to assist the government in drafting potential legislation.¹⁸⁴

Former Prime Minister Abhisit Vejjajiva's government attempted reform but failed to make any progress before its dissolution. We were informed by Thai government officials that Abhisit's Ministry of Commerce drafted an anti-camcording law which was considered by the Council of State in 2010.¹⁸⁵ Council members disagreed on whether camcording should be criminalized through a stand-alone act or whether anti-camcording provisions should be integrated into the Copyright Act.¹⁸⁶ Reform stalled, and the government dissolved following the ruling party's defeat in the July 2011 elections. It is unclear, as of writing, whether the new government will resubmit for Parliamentary action anti-camcording provisions either as a specific act or as a part of a broader reform of the Copyright Act.

Furthermore, Thai enforcement efforts have been unable to curtail the distribution and production of unlicensed optical discs. Police and other enforcement officers usually ignore vendors of unlicensed discs.¹⁸⁷ When they do act, they generally do so only to solicit

¹⁸² Interview with Anonymous, in Bangkok, Thailand. (Mar. 17, 2011).

¹⁸³ *Id.*

¹⁸⁴ TFF, *supra* note 167.

¹⁸⁵ Interview with Voravut Posaganondh, Dir. of Legal Affairs, Dep't of Intellectual Prop., Thai. Ministry of Commerce, in Bangkok, Thailand. (Mar. 17, 2011); Interview with Chakra Yodmani, Chief of Directorate and Sys. Dev. Group, Office of Prevention and Suppression of IPR Violation, Dep't of Intellectual Prop., Thai. Ministry of Commerce, in Bangkok, Thailand. (Mar. 17, 2011).

¹⁸⁶ TFF, *supra* note 167.

¹⁸⁷ Interview with Anonymous, in Bangkok, Thailand. (Mar. 17, 2011).

bribes.¹⁸⁸ Few cases ever make it into the public record.¹⁸⁹ Police do occasionally raid labs where unlicensed discs are produced.¹⁹⁰ Interviewees disagreed about the effectiveness of these raids. While one industry representative believed that the sale of legitimate discs increases immediately following larger raids, another claimed the raids are only a temporary solution to the problem because they do not reduce market demand for the discs.¹⁹¹ Police must obtain a warrant before conducting a raid of a production lab. Judges are often hesitant to fulfill these requests.¹⁹² Moreover, interviewees claimed that corrupt officials often notify the targeted cartel during the warranting process, allowing the cartel to eliminate evidence or avoid the raid entirely.¹⁹³

Given the lack of effective legislation and enforcement, the legitimate film industry has undertaken efforts to reduce illegal camcording within theaters. In 2008, the MPA, the Department of Intellectual Property (DIP) and the TFF announced a multi-pronged strategy to prevent the unlicensed camcording of films in Thailand.¹⁹⁴ This strategy included the use of night vision goggles to detect camcording in theaters and training programs for theater staff.¹⁹⁵ However, even if these programs have had localized positive effects, they have not significantly affected overall trends.

Multiple industry representatives claimed that public attitudes were generally accepting of film piracy.¹⁹⁶ They insisted that in order to change behavior, educational programs are needed to instill the value that intellectual property brings to society.

4. Conclusions

Camcording is rampant in Thailand. This is particularly discouraging because Thailand has historically possessed a successful domestic film industry. Revitalizing the legitimate industry will involve the concerted action of a large number of actors given the scope of the problem, both in terms of its size as well as its transnational character. The

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ TFF, *supra* note 167; MPA Thailand, *supra* note 169.

¹⁹¹ *Compare* TFF, *supra* note 167; *with* MPA Thailand, *supra* note 169.

¹⁹² Interview with Anonymous, in Bangkok, Thailand. (Mar. 17, 2011).

¹⁹³ *Id.*

¹⁹⁴ News Release, Motion Picture Ass'n, MPA Multi-Pronged Initiative to Deter Camcord Pirates Has Full Support of Government and Industry in Thailand (Jul. 9, 2008).

¹⁹⁵ *Id.*

¹⁹⁶ TFF, *supra* note 167; MPA Thailand, *supra* note 169.

passage of specific legislative reforms, namely specialized anti-camcording legislation, would be a step in the right direction, but such legislation is unlikely to succeed in the absence of wider legal and administrative reform to ensure effective enforcement. Judges in particular need proper education on the importance of intellectual property crimes. Perhaps most importantly, the expansion of the illegal film industry at the expense of the legal film industry suggests that changing consumer attitudes is paramount. The illegal industry will persist as long as consumers continue to value the affordability of unlicensed copies over the intellectual property claims of their creators.

5. SUGGESTED EFFECTIVE PRACTICES

Based on the information we collected during the course of our review of APEC economy, we have identified a set of effective practices that we believe will help mitigate piracy and the detrimental effects of camcording.

a. Implement Specific Anti-Camcording Legislation

Enacting specific anti-camcording legislation is a critical component of any anti-piracy campaign. Although many governments prosecute camcording under general copyright laws, such laws are often ineffective. Judges may be unfamiliar with the application of general laws to the specificities of camcording or may be unwilling to apply those laws in the absence of a clear mandate. General laws may also contain loopholes that film pirates can exploit to avoid prosecution.

In order to maximize its effectiveness, anti-camcording legislation should possess several features. First, legislation should be simple, clear, and require strict compliance. Second, legislation should encourage uniformity of judicial decisions. This can be achieved through minimum penalties or penalties that scale with the degree to which criminals benefit commercially from camcording. Finally, legislation should include provisions designed to raise public awareness.

b. Provide Judicial Education and Enforcement Training

Strong rules are ineffective without strong enforcement. Enforcement, in turn, requires knowledgeable officials. Judges must understand the specific camcording rules that apply in their legal system or the how general copyright rules apply to camcording.

Other officials who make or enforce policy must understand what camcording is, how to identify it, and why they should devote resources to its elimination. Enforcement officials should understand existing laws, and they should be trained specifically on how to respond in camcording cases. They should also learn modern investigatory techniques, such as methods for identifying counterfeits. Capacity building is vital to this effort, and technical assistance will help to develop a successful enforcement regime.

c. Hold Enforcement Agencies Accountable

Economies that suffer from corruption tend to have high incidences of camcording. The case studies suggest that this is because prospective film pirates evaluate the likelihood of prosecution and punishment. Corruption, and other rule of law factors that decrease this likelihood, make camcording more attractive. Moreover, particularly egregious instances of corruption enable criminals to benefit from, rather than be harmed by, enforcement activities. Criminals who receive political protection during crackdowns can use these crackdowns as opportunities to eliminate their competition and dominate the illegal film industry.

d. Engage in Creative Public Awareness Campaigns

Generating public appreciation for copyright protection is essential to successfully combating film piracy. Increasing public awareness of the harms of camcording and related forms of film piracy reduces the supply of and demand for unlicensed recordings. Often, consumers mistakenly believe that camcording does not affect those around them. Public awareness campaigns help to dispel this myth. Such campaigns can be tailored to fit the needs of the particular economy. Campaign endorsements from movie stars or other celebrities associated with the entertainment industry generate significant public attention, and publicizing successful prosecutions deters prospective criminals. Scholarships and awards recognizing outstanding achievements by local filmmakers encourage pride in local creativity.

e. Work Cooperatively to Address the Problem

Government officials should work cooperatively with the film industry to prevent camcording. International industry representatives possess extensive experience in

capacity building and media awareness, and the local film industry also has a vested interest in combating piracy. Enforcement authorities are an essential component of effective piracy prevention, but theater staff can also play an important role in detecting and preventing camcording. Our case studies suggest that improved communication and cooperation between these groups helps to reduce camcording.