



**universitas
bandar lampung**
SOLUTION FOR PRESENT AND FUTURE
Bandar Lampung University, Indonesia

Icon-LBG 2016

**The Third International
Conference on Law,
Business and Governance**

PROCEEDINGS

Hosted by
Faculty of Law, Faculty of Economics and Faculty of Social Science
Bandar Lampung University (UBL)



Icon-LBG 2016

THE THIRD INTERNATIONAL CONFERENCE
ON LAW, BUSINESS AND GOVERNANCE 2016

20, 21 May 2016
Bandar Lampung University (UBL)
Lampung, Indonesia

PROCEEDINGS

Organized by:



Faculty of Law, Faculty of Economics and Faculty of Social Science
Bandar Lampung University (UBL)
Jl. Zainal Abidin Pagar Alam No.89 Labuhan Ratu, Bandar Lampung, Indonesia
Phone: +62 721 36 666 25, Fax: +62 721 701 467
website :www.ubl.ac.id

PREFACE

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the Third International Conference on Law, Business and Governance (3th Icon-LBG 2016) organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 46 technical papers were received for this conference.

The participants of the conference come from many well known universities, among others : International Islamic University Malaysia, Unika ATMA JAYA, Shinawatra University, Universitas Sebelas Maret, Universitas Timbul Nusantara, Universitas Pelita Harapan, Universitas Bandar Lampung, Universitas Lampung.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also grateful to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

Bandar Lampung, 21 May 2016

Mustofa Usman, Ph.D
Icon-LBG Chairman

Table Of Content

Preface.....	ii
International Advisory Board	iii
Steering Committee	iv
Organizing Committee.....	vi
Table of Content	ix
Keynote Speakers :	
1. Capability of Public Organizationstructure After Regional Extention in Way Kanan Regency (A Study on Basic Service Organization) – Yadi Lustiadi	I-1
2. Criminalisation of Copyright Piracy And International Trade: A Marriage of Convenience? The Case With Transpacific Partnership Agreement – Ida Madieha bt. Abdul Ghani Azmi	I-8
3. Legislative Measures To Prevent And Combat Sexual Violence Against Child: National and International Perspective – Antonius PS Wibowo	I-15
4. The Impact of Economic Structure Change on The Local Own Source Revenue and Its Effect Towards The Regional Income Improvement – Iskandar Ali Alam	I-25
5. The Influence Of Audit Committee and Internal Auditor Toward The Prevention of Fraud (A Survey In SOEs of Indonesia) – Angrita Denziana	I-40
Paper Presenter :	
Law :	
1. Application of Islamic Economic Law of Murabahah Funding In Islamic Banking – Nunung Rodliyah	II-1
2. Consultative Board Role of Country (BPD) in Monitoring Implementation of Government in The Country by Act Number 6 Of 2014 Concerning The Country – Rifandy Ritonga & Indah Satria	II-6
3. Identifying Criminalitor Using Face Detection on Room Security System – Robby Yuli Endra, Ade Kurniawan & Ari Kurniawan Saputra	II-14
4. Juridical Studies Mastery Mine Concept in The Approach to History and Principles of IMS (<i>Internasional Minimum Standard Of Civilization</i>) – Recca Ayu Hapsari	II-19
5. Legal Protection of Bank Customers In Cyber Crime Connected With The Internet Bankinglaw Number 11 Of 2008 Concerning Information and Electronic Transactions – Risti Dwi Ramasari	II-24
6. Legal Standing of Financial Services Authority (FSA) as Supervision of Banks Institutions in Indonesia – Zulfi Diane Zaini & Tami Rusli	II-28
7. Outlook for Tapis Fabric as Traditional Crafts Lampung Society in The Indication Geography Legal Protection – Erlina B, Recca Ayu Hapsari & Risti Dwi Ramasari	II-35

CRIMINALISATION OF COPYRIGHT PIRACY AND INTERNATIONAL TRADE: A MARRIAGE OF CONVENIENCE? THE CASE WITH TRANSPACIFIC PARTNERSHIP AGREEMENT

Ida Madieha bt. Abdul Ghani Azmi
Civil Law Department of Internasional Islamic University, Malaysia

Corresponding email : imadieha@iium.edu.my

Abstract

The signing of the Transpacific Partnership Agreement (TPPA) between twelve member countries, with Malaysia included, has set a new, higher benchmark for copyright enforcement. In three ways, the landscape of copyright law has been changed significantly. First, TPPA expand the coverage of the kinds of Intellectual Property recognised. Secondly, what constitute copyright violations has been expanded. Thirdly, sanctions for copyright piracy has been made tougher and sentencing lengths for such piracy has been lengthened. The usage of trade agreements to compel countries to improve copyright domestic policy is not a new strategy. The antecedent to TPPA is the TRIPs Agreement that was concluded on the basis that copyright piracy and counterfeiting has grown from just mere domestic nuisance to an effective barrier to free trade. This paper addresses the TPPA and analyses the rationale to the introduction of more stringent measures under TTPA. It seeks to understand the shift in the discourse of the policy makers regarding the 'severity' of copyright offences. It examines questions such as to what extent should copyright infringement be criminalised? Even if it is criminalised, why must it be imposed with more severe penalties than an ordinary economic crime?

1. INTRODUCTION

Copyright piracy has been the impetus behind the conclusion of a number of international treaties in the world. Starting from Berne Convention, we have seen the growth of treaties which specifically aim to force reform in domestic copyright policy in order reduce copyright piracy such as TRIPS Agreement, ACTA and the latest TPPA. The use of such international treaties is to push for adoption of copyright measures which are far more restrictive than what the domestic policy of the particular country would require. If not of external forces, the said country would not have been compelled to introduce reforms in domestic policy to arrest copyright policy effectively. The reason could be that it is not in the country's trade interest to tighten copyright rules because it is not a major producer of information intensive products and services which are heavily reliant on copyright.

TPPA seeks to rewrite the global rules on copyright law in three ways; first by ensuring that the member countries accede to the specified global treaties on copyright so that member countries abide by the same international rules. Secondly, member countries abide by the same minimum binding commitments. The minimum binding obligations can be further classified into several categories. The first are obligations in the form of TRIPS-plus standards that are actually US standards on IP rights. Second are obligations on areas not traditionally classified as IP rights under existing treaties, such as domain names, clinical data and Internet retransmission. This entails the extension of the above subject matters protected under IP under the proposed TPPA. The third category comprises obligations relating to the administration and management of IP which are of interest to all Contracting Parties, such as registration systems, adjudication of disputes or enforcement of rights.

The paper seeks to explore the minimum binding commitments on copyright enforcement. It seeks to examine how through trade agreements, US has been able to export their intellectual property standards to the rest of the world through free trade agreements in the name of fighting piracy. These trade agreements compels member countries to set a new, higher benchmark for enforcement. This is followed with an examination of the justifications for and against the imposition of stronger punishment and penalties for copyright offences.

2. PIRACY AND TRADE AGREEMENTS.

Copyright piracy and counterfeit goods are nothing new in the world, more so in ASEAN. In the area of music, whilst physical piracy shows no sign of being abated, online piracy continues to grow exponentially with new forms of online sharing and swapping of music tracks. Among the forms of online piracy are illegal websites, P2P networks and Bit Torrents. As reported by IFPI, supporting piracy dampens the growth of the music industry which may be the driver of a country's economy. The argument is that the suppression of piracy brings immeasurable benefits to the country.

The relationship between copyright piracy and domestic economy is obvious. But the relationship between copyright piracy and international trade is even more difficult to establish. Yet, many international treaties have been entered into as a means to control copyright piracy. Copyright, being intangible, can be infringed across borders. Hence, the wanton and indiscriminate piracy in one country as a result of weak copyright law may constitute trade barriers against free trade. The uneven standards of copyright from one country to another prompted the copyright industries in the US to lobby for the inclusion of intellectual property rights into a trade agreement by the World Trade Organisation. The resulting agreement known as TRIPS Agreement was meant to harmonize national systems of IPRS. TRIPS is the first multilateral treaty on intellectual property that profess the link between domestic policies on intellectual property and external policies on international trade.

Copyright can also be one of the main economic driver of a country which compels that country to monitor piracy across its border. The United States for example keep a vigilant watch or surveillance of global piracy by listing country's piracy performance in the U.S. Trade Representatives annual "Special 301" Reports from as early as 1980s. In this list, many of the ASEAN countries are classified as either under the Watch List or more serious the Priority Watch List. The covert method to enforce legal reform through Special 301 measures has been an effective US foreign policy against developing countries particularly that require some form of disciplining for lack of strong rules and enforcement of copyright policies.

The table below illustrates the ranking of ASEAN countries in the United States Trade Representative Reports (USTR) Special 301 Report.

Table 1: The ranking of ASEAN countries in the USTR Special 301 Report

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Brunei				WL	WL	WL	WL			
Cambodia										
Indonesia	PWL	*WL	WL	*PWL	PWL	PWL	PWL	PWL	PWL	PWL
Laos										
Malaysia	WL	WL	WL	WL	WL	WL	*	WL		
Myanmar										
Philippines	WL	WL	WL	WL	WL	WL	WL	WL	*	
Singapore										
Thailand	WL	*PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL
Vietnam	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL

Source: USTR Special 301 Report (2006-2015)

In the above table, it can be seen that Malaysia has been listed under the Watch List since 2006 and was phased off in 2014 as a result of more stringent copyright measures introduced in the 2012 copyright amendment. Indonesia, in the meantime has been listed in the Priority Watch List since 2006 and has been there until now. According to the 2015 USTR Special 301 Measures¹, US is particularly concerned with piracy in Indonesia which it considers as market access barriers affecting US businesses that depends on intellectual property protection. Among factors cited are lack of enforcement, lack of cooperation between relevant ministries that has led to rampant piracy and counterfeiting in Indonesia. Indonesia is a member of WTO and would have been in compliance with the TRIPS Agreement.

¹ 2015 Special 301 Report, available online at <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>

TRIPS Agreement was considered to be an ambitious multilateral agreement at the time of its conclusion, i.e. 1994. It seeks to harmonize global standards on intellectual property protection, developed countries and developing countries alike. Among the strong measures introduced by TRIPS Agreement are the mandatory protection of copyright to lifetime plus fifty, copyright to be granted automatically, the recognition of computer program as the subject matter of protection and the acceptance of exceptions to exclusive right but subject to the three step test.

Despite the success of TRIPS Agreement in regulating copyright piracy between member countries, it soon transpired that the TRIPS standards are not effective enough to stem piracy. This leads to the inclusion of more stringent copyright measures through free trade agreement either at bilateral, regional or pluri-lateral level.

Malaysia, despite having graduated from the USTR Watch List find itself having to agree for more stringent copyright measures through the Trans Pacific Partnership Agreement. This paper moves into examining the measures introduced by TPPA to hit hard on piracy.

3. TRANSPACIFIC PARTNERSHIP AGREEMENT.

Transpacific Partnership Agreement (TTP) has been hailed as the 21st century trade rules that has rewritten the rules for global trade. By creating a single set of trade and investment rules on trade areas, TPPA promises to provide greater certainty and predictability for business by creating harmonisation of standards enabling parties to compete on a more level playing field. TPP is quite comprehensive in its coverage, extending on traditional trade issues such as market access, technical barriers to trade, sanitary and phytosanitary measures to non traditional trade issues such as labour standards and capacity building. The harmonisation of intellectual property rules is established through the intellectual property chapter, one of the biggest chapters in the TPPA. In particular, TPPA aims to rewrite global rules on copyright enforcement. The list of these new rules can be found in table (2) below.

Table 2: Copyright enforcement provisions under the TPPA

	Presumptions	The validity of copyright, trade mark and patents that have been substantively examined by the competent authority
	Enforcement practices	Judicial decisions and administrative rulings shall preferably in writing, and published Publish information on enforcement of IPR
	Damages	Damages may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price Availability of pre established damages or additional damages Damages may not be available against a non profit library, archives, educational institution, museum, or public non commercial broadcasting entity
	Criminal liability for aiding or abetting	Member States to provide for criminal liability for aiding and abetting copyright infringement.
	Border measures	Judicial authorities have the authority to order for infringing goods to be destroyed without any compensation of any sort Availability of court order to obtain relevant information regarding person, means of production or channels of distribution of infringing goods Border measures available for imported goods, export and goods in transit Goods detained or suspended as a result of border measures - the right holder must be informed of the names of the parties involved as well as of the details of the goods Ex officio border measures available also for

		imports, exports and goods in transit Border measures also applicable to goods of commercial nature sent in small consignments
	Criminal procedures and penalties	On a commercial scale includes acts carried out for commercial advantage or financial gain and significant acts, though not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the right holder Also applicable to willful importation
Trade Secrets	Criminal procedures and penalties	Availability of criminal procedures and penalties for unauthorized, willful access and disclosure of trade secrets
Protection of encrypted programs-carrying satellite and cable signals	Criminal offences	Manufacture, assemble, modify, import, export, sell, lease or distribute devices used to decode an encrypted program-carrying satellite signals
	Civil and criminal remedies	Availability of such remedies in specified circumstances

Source: Extracted from Chapter 18 of the Trans-Pacific Partnership Agreement

The TPPA contains provisions on criminal offences which originates from the US law (Margot Kaminsky, 2013-2014). In the US, the shift in the policy discourse on the severity of copyright offences triggered the enactment of No Electronic Theft (NET) Act in 1997. The Act marks the beginning of treating copyright offences as criminal offences. The analogy is that copyright offences are equivalent to theft and should be treated like other offences that cause grave harm to the public. The process of copyright criminalisation entails that a major paradigm shift from civil to criminal copyright. (Eldar Haber, 2015)

Article 18.77(1)(b) of TPPA requires Member States to provide for copyright offences in respect of acts which are not carried out for commercial advantage or financial gain but have a substantial prejudicial impact on the interests of the copyright owner. The article provides:

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale. In respect of wilful copyright or related rights piracy, "on a commercial scale" includes at least:

- a). acts carried out for commercial advantage or financial gain; and
- b). acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.

With this provision, TPPA has substantially changed the rationale behind the criminalisation of copyright offences. Previously, the international standard is to impose criminal penalty when piracy occurs at a commercial scale as set by Article 61 of the TRIPS Agreement. The rationale is that civil suits are available to the right holders and criminal procedures should only be available if the piracy is so widespread that it harms the society. In the words of Article 61, strong criminal penalty should be made available when the piracy is 'committed willfully and on a commercial scale'.

The scope of Article 61 has been the subject of review in a WTO Dispute Settlement Body's decision in China-Intellectual Property Rights. In the estimation of the Panel, both 'willful' and 'on a commercial scale' constitute a major limitation to the provision of criminal penalties. The two phrase which comes before and after the phrase 'trademark counterfeiting or copyright piracy' defines the types of cases of that of grave consequences that they deserve maximum penalty. Fundamental to the issue is to what extent would copyright piracy or trade mark counterfeiting be considered to be "on a commercial scale"? On this the Panel viewed that "commercial scale" refers to the magnitude or extent of typical or usual commercial activity, i.e. the piracy must occur at a magnitude that it will harm the commercial interest of the copyright owner.

The WTO Panel decision in China-Intellectual Property Rights, was a major turning point for the United States as they lost their endeavour to impose their jurisprudence on copyright criminal provisions on the rest of the world. With the intention to shift the discourse of policy makers regarding the 'severity'

of copyright piracy and counterfeit trade marks, the US champions the imposition of more stringent penalties in trade negotiations, hence the conclusion of the Trans-Pacific Partnership Agreement.

The imposition of stringent copyright measures under TTPA is also seen as a measure to export rules from the Anti Counterfeiting Trade Agreement (ACTA), a multinational treaty signed by twelve member countries comprising of Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea, United States, Mexico and the European Union. As the Agreement focuses on global trade of counterfeit goods and copyright infringing goods, a number of new criminal provisions were introduced. Among them are provisions criminalising willful trade mark counterfeiting, copyright piracy, or "willful importation and domestic use" of counterfeit labels and packaging in the course of trade on a commercial scale". Under ACTA 'commercial scale is defined to include acts "carried out as commercial activities for direct or indirect economic or commercial advantage". which may include online infringement. To determine whether certain goods are infringing, the relevant law is the law of the country where procedures are revoked. This entitles developed countries with higher intellectual property rights to take action in accordance to their domestic law even if such activities are lawful in the country where the goods originate.

ACTA also mandates for the imposition of criminal penalties for aiding and abetting criminal conduct'. Equally criminal is the act of cam cording movies in theaters, online copyright piracy and anti-circumvention measures. Finally, the border measures is extended for in transit and exports of copyright infringing and counterfeit goods. The powers of the custom authorities are also strengthened by conferring them with an ex officio powers to take action regardless of complaint or notice from the right holders. These are the exact provisions that are brought in by TPPA in its intellectual property chapter.

ACTA has been criticised heavily by many quarters as being ' global one way IP ratchet" or 'having he features of the scheme of a Vaudeville Villain' (Kimberlee Weatherall, 2011). Table 3 below illustrates how the TRIPS, ACTA and TPP progressively introduce new copyright crimes and increase the severity of the penalty for such offences.

Table 3: The ratcheting of copyright criminalisation through trade agreements.

	TPP	TRIPS	ACTA
SPECIAL MEASURES RELATING TO ENFORCEMENT IN THE DIGITAL ENVIRONMENT			
Special requirements for digital enforcement	/	X	X
Legal incentives for ISPS in restraining the unauthorized storage and transmission of copyrighted materials	/	X	/
Safe harbour for ISPs	/	X	X
Detailed notification and counter-notification procedures for right holders, ISPs and subscribers.	/	X	X
TECHNOLOGICAL PROTECTION MEASURES			
Criminalisation of unauthorized acts against the circumvention of effective technological measures	/	X	/
Make circumvention a distinct cause of action, independent of infringement.	/	X	/
CRIMINAL ENFORCEMENT			
criminal procedures and penalties must be applicable for willful trademark counterfeiting or copyright on a commercial scale	/	/	/
Provide for criminal procedures on unauthorised transmission or copying of motion picture or other audiovisual work (TPP) or unauthorized copying of cinematographic works (ACTA)	/	X	/
Criminal liability for aiding and abetting is available under its law.	/	X	/
Provides penalties that include sentences of imprisonment as well as monetary fines sufficiently high to provide a deterrent to future infringements	/	/	/
Seizure of suspected counterfeit or pirated goods	/	/	/
Forfeiture and destruction of all counterfeit or pirated goods	/	/	/
Forfeiture or destruction of materials and implements	/	/	/
Seizure or forfeiture of assets the value of which corresponds to that of the assets derived from, the infringing activity.	/	X	/

	TPP	TRIPS	ACTA
Ex officio action without the need for a formal complaint.	/	X	/

The paper proceeds with a discussion as to the justifiability of the paradigm shift in copyright offences.

4. JUSTIFICATIONS OVER CRIMINALISATION OF COPYRIGHT OFFENCES

The traditional justification for more severe penalties for copyright piracy is that they are necessary in response to the increase in global trade in counterfeit goods and copyright infringing materials. The copyright industries suffer continued financial loss which is unprecedented given the evolution of new technologies to facilitate copying (Isabella Alexander, 2007). The widespread use of file sharing for example necessitates the prosecution of file sharing operator that openly defy civil enforcement actions (Benton Martin & Jeremiah Newhall, 2013). As there is no longer social stigma associated with downloading and file sharing, enforcing obedience by way of criminal offences is therefore justifiable (Cheng Lim Saw, 2010). Unlike civil suits which aim to compensate the author for the unauthorised use of his work, the aim of criminal enforcement is to enforce obedience (Benton Martin & Jeremiah Newhall, 2013). As the criminal powers is to aim deterrence, the range of penalty and punishment imposed must be severe enough to stop the offenders from repeating the offence. The continuous campaign against piracy is taking up a significant amount of cost. The amount of harm caused to the interests of the right holders are substantial (Timothy D. Howell, 1996). This is a classic situation where John Stuart Mill's theory of harm is neatly applicable. The premise of the argument is that where the conduct of the individual causes harm to others in society, the State is justified to restrict individual liberty (Cheng Lim Saw, 2010). Further, taking other's right is a morally wrong behaviour. Considered that intellectual property belongs to the one who creates it, it is ethically wrong for someone else to reap it without sowing the seeds, so to speak (Cheng Lim Saw, (2010); Jeff Vinall, (2013).

Another oft repeated claims is that the organizations behind the copyright piracy are somehow connected with syndicates and organised crimes and are actually channeling the funds to terrorist activities. With criminal proceeding, the assets of the infringers can be frozen and the instruments used for the commission of the offence be seized and the proceeds of the criminal activity can be forfeited. The operation of the syndicates can be paralysed if their financial sources are stemmed. More fundamentally, the collection of crucial evidence can be facilitated through search warrant by the enforcement agencies. Enforcement agencies can scourge the computer systems of the copyright infringer for evidence or even wire tap their communication system surreptitiously for evidence gathering (Jeff Vinall, 2013)

5. CRITICISMS AGAINST THE CONTINUED PROGRESSION OF CRIMINALISATION OF COPYRIGHT OFFENCES

Despite those assertions, critics point out that copyright infringement lacks the moral force to be criminalised unlike theft. Many does it with no financial motive, or at a small scale and even those that encourage sharing for purpose of learning and education. As a result, many feels that the extension of property concepts to intellectual property which is intangible is difficult to digest. The public does not regard the harm caused by the commission of copyright offences to be as severe as theft.

More fundamentally, most of the claims on harm caused by copyright piracy has been criticised as being based on dubious statistics. In reality, there is no accurate measurement of the actual cost caused by copyright piracy. The assumption each copy of counterfeit constitute a potential loss of sale for an original piece of copyright work. Such assumption is clearly misplaced as those who indulge in file sharing may not necessarily be willing to purchase the original copyright material in the first place. The same goes with counterfeit goods.

The nature of intellectual property which is non rivalrous and non excludable further departs it from tangible goods. Whilst the taking of tangible good results in the deprivation of the original owner of his ownership, intellectual property piracy involves making more copies of the work while retaining the original copy intact. There is this' no deprivation of ownership of the property right, so to speak, unlike physical property. Due to this, commentators feel that copyright crimes should be less damaging than stealing of a physical property (Margot Kaminsky, 2013-2014).

Critics also raised a number of human rights issue with heightened enforcement. For example, monitoring of the internet to reduce online piracy might chill freedom of expression. As the conduct of online sharing and downloading is so widespread, it is next to impossible to enforce it effectively. This might give rise to selective prosecution with indiscriminate suits again certain target groups instead of targeting the offenders at large. The gap in the enforcement of the criminal offences have been attributed to many reasons. Whilst the industry lobbyist are responsible for the introduction of criminal offences but

they were not successful in forcing prosecution of cases (Elder Haber, 2015). Not surprisingly, many critics argues against TPP provisions on the basis that they are skewed to favour copyright owners interest without sufficient balance to legitimate users of the copyright goods (Jessica Litman, 2007).

The correlation between the severity of the punishment imposed and the offences committed has also been questioned. In the context of online policing for file sharing, the basic assumption is that copyright is unrelated to freedom of expression (Margot Kaminski, 2013-2014). The concern is whether the range of punishment imposed is proportional to the harm copyright piracy caused to the society (Diane L. Killpatrick-Lee, 2005-2006). In addition, the problems with online piracy is a regurgitation of the problems faced with music piracy in the physical world. The only difference is the scale of the operation. Regardless, the failure to stem piracy effectively may suggest that the problem could be more complicated than that (Isabella Alexander, 2007).

6. CONCLUSION

The Trans Pacific Partnership Agreement pushes for a paradigm shift in the discourse relating to the criminality of copyright piracy. The push for punitive damages and longer imprisonment indicates that copyright piracy is no longer considered just economic harm but blameworthy act that harms the society. The widespread of online piracy warrants aggressive use of criminal prosecution, again, to force obedience and compliance. The penalties include a range of punishment including imprisonment as well as monetary fines sufficiently high to deter future acts of infringement. In the online environment, the concern is whether online policing is warranted as it brings the fear of a police state. Above all, it is really questionable whether copyright law can really be able to keep up with piracy. (Stephanie Minnock, 2014) It is understandable that indulging in piracy is a blameworthy act, however the bigger issue is whether the imposition of severe penalties, much higher than other economic crimes is justifiable or not. What is more worrying is that these imposition of higher standards of intellectual property rights are done in the name of free trade when it has very little to do with trade.

REFERENCES

- [1] Alexander, I., Criminalising Copyright: A Story of Publishers, Pirates and Pieces of Eight, *The Cambridge Law Journal*, 66 [2007], 625-656.
- [2] Bitton, M. 2012. Criminal Law: Rethinking the Anti-counterfeiting Trade Agreement's Criminal Copyright Enforcement Measures, *102 Journal of Criminal Law & Criminology* 67.
- [3] Flynn, S.M. , Brook Baker, Margot Kaminski & Jimmy Koo (2012), the U.S. Proposal for an Intellectual Property Chapter in the Trans-Pacific Partnership Agreement, *28 American University International Law Review*, 105.
- [4] Manta, I.D., 2011 The Puzzle Of Criminal Sanctions For Intellectual Property Infringement *Harvard Journal of Law & Technology*, Volume 24, Number 2 Spring 2011
- [5] Haber, H., Copyright's Technological Technologies Interdependencies, *18 Stan. Tech. L. Rev.* 247.
- [6] Howell, T.M., 1996. Intellectual Property Pirates: Congress Raises the Stakes In the Modern Battle To Protect Copyrights and Safeguard the United States Economy, *27 St. Mary's L.J.* 613.
- [7] Martin, B., & Newhall, J., Criminal Copyright Enforcement Against File sharing, *North Carolina Journal of Law and Technology*, Vol 15, Issue 1: October 2013
- [8] Kaminski, M., Copyright Crime and Punishment: The First Amendment's Proportionality Problem, *73, Md L. Rev.* 587 2013-2014.
- [9] Killpatrick-Lee, D.L., Criminal Copyright Law: Preventing A Clear Danger to the US Economy or Clearly Preventing the Original Purpose of Copyright Law? *14 U. Balt. Intell. Prof. L.J.* 87 2005-2006.
- [10] Litman, M. 2007. Frontiers of Intellectual Property: Lawful Personal Use, *85 Tex. L. Rev.* 1871.
- [11] Minnock, S., Should Copyright Laws Be Able to Keep Up With Online Piracy, *12 Colo. Tech. L.J.* 523 2014.
- [12] Saw C.H, 2010. The Case for Criminalising Primary Infringements of Copyright- Perspectives from Singapore, *Int J Law Info Tech* (2010) 18 (2): 95.
- [13] Vinall, J., The Criminal law's treatment of twenty-first century copyright pirates: A treacherous new frontier for property offences, *2013 Oxford U. Undergraduate L.J.* 57 2013.
- [14] Weatherall, K., Intellectual Property Law Enforcement and the Anti-Counterfeiting Trade Agreement (ACTA), *American University International Law Review*, 26 Am. U. Int'l L. Rev. 839

**CRIMINALISATION OF COPYRIGHT PIRACY AND
INTERNATIONAL TRADE:
A MARRIAGE OF CONVENIENCE? THE CASE WITH
TRANSPACIFIC PARTNERSHIP
AGREEMENT**

Ida Madieha bt. Abdul Ghani Azmi
Civil Law Department
Ahmad Ibrahim Kulliyah of Laws
IIUM.

Malaysia fact file

- Middle income country
- Main exports- electronics, oil and gas, palm oil and rubber
- GDP (\$326.9 billion)
- Growth rate 6%



Malaysia's FTA

Regional

- AFTA
- ASEAN-Australia-New Zealand
- ASEAN-China
- ASEAN-India
- ASEAN-Japan
- D-8 FTA
- TPPA
- TPS-OIC

Bilateral

- Malaysia- Australia
- Malaysia- Chile
- Malaysia-India
- Malaysia – Japan
- Malaysia-Pakistan
- Malaysia-Turkey

Indonesia's FTA

Regional

- Trade Preferential of OIC
- ASEAN Free Trade Area
- ASEAN-Australia and New Zealand FTA
- ASEAN-India Comprehensive Economic Cooperation Agreement
- ASEAN-Japan Comprehensive Economic Cooperation Agreement
- ASEAN-PRC Comprehensive Economic Cooperation Agreement
- ASEAN – Korea Comprehensive Economic Cooperation Agreement
- Preferential Tariff Arrangement-Group of Eight Developing Countries

Bilateral

- Japan-Indonesia Economic Partnership Agreement
- Pakistan-Indonesia FTA

FTA & RTAs that Malaysia has signed...

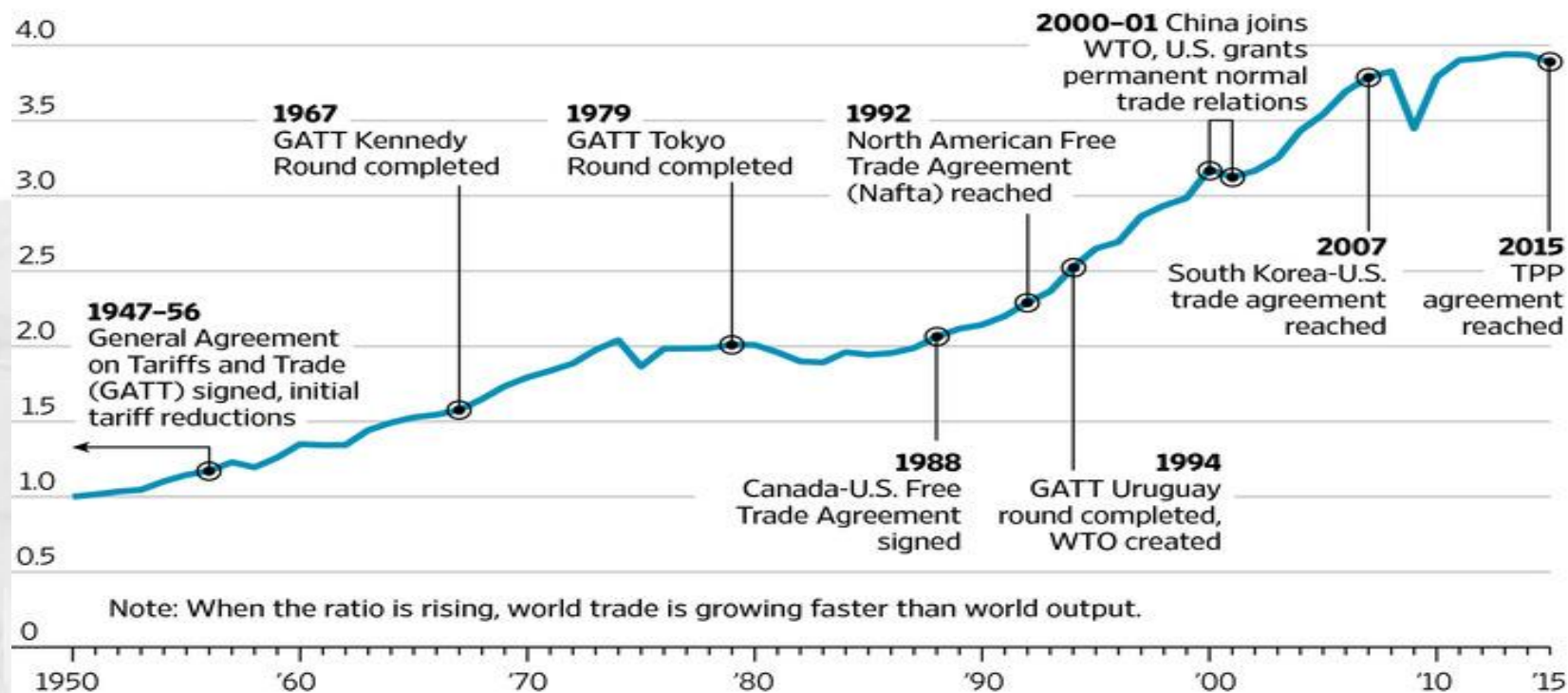
ASEAN-Australia-New Zealand Free Trade Area	27 Feb 2009
ASEAN-Korea Free Trade Area	13 Sept 2005
Malaysia- Australia	30 March 2012

WITH EXPLICIT IP CHAPTER

The Long, Steep Path to Freer Trade

Sweeping trade agreements fueled trade expansion from 1950 to 2007, but agreements and trade have made less headway lately.

Ratio of global trade to global gross domestic product, adjusted for inflation (1950=1)



Source: WSJ analysis of World Trade Organization data, 1950-13; Netherlands Bureau for Economic Policy Analysis data, trade data 2014-15; IMF, actual GDP 2014, projected GDP 2015.

THE WALL STREET JOURNAL.

Factfile



Standard legal chapters	Traditional trade issues	New issues/scopes
1 – Initial provisions	2 – National treatment and market access for goods	15 – Government procurement
27 – Administrative and institutional provisions	3 – Rules of origin and origin procedures	17 – State-owned enterprises and designated monopolies
28 – Dispute settlement	4 – Textiles and apparel	18 – Intellectual property
29 – Exceptions and general provisions	5 – Customs administration and trade facilitation	19 – Labour
30 – Final provisions	6 – Trade remedies	20 – Environment
	7 – Sanitary and phytosanitary measures	23 – Development
	8 – Technical barriers to trade	24 – Small and medium-sized enterprises
	9 – Investment	25 – Regulatory coherence
	10 – Cross border trade in services	26 – Transparency and anti-corruption
	11 – Financial services	
	12 – Temporary entry for business persons	
	13 – Telecommunications	
	14 – Electronic commerce	
	16 – Competition policy	
	21 – Cooperation and capacity building	
	22 – Competitiveness and business facilitation	

TPPA presents net economic benefits to Malaysia, but there will be adjustment costs to firms from increased competition and cross-sectoral TPPA obligations

Key findings:

Overall Economy: Net Gains	Sectoral Analysis: Increased Output & Competition	Thematic Issues: Some Concessions; Extensive Safeguards
<ul style="list-style-type: none"> • Higher GDP by USD107~211 bn¹ <ul style="list-style-type: none"> ➢ Increase in GDP growth by 0.60~1.15 ppt² • Additional investment of USD136~239 bn¹ • Narrower trade surplus of 4.3~5.2% of GDP² <ul style="list-style-type: none"> ➢ Higher export growth by 0.54~0.90 ppt² ➢ Higher import growth by 0.65~1.17 ppt² • >90% of economic gains driven by reduction in NTMs¹ 	<ul style="list-style-type: none"> • Sectors contributing over 20% of Malaysia's GDP in 2014 are expected to register higher output growth • Export-oriented firms to benefit from increased market access (<i>e.g. textiles, automotive components, E&E</i>) • Firms in more liberalised sectors post-TPPA to face increased competition (<i>e.g. oil & gas, construction, retail</i>) • Existing pharmaceutical manufacturers to be minimally impacted by stronger intellectual property protection for drugs 	<ul style="list-style-type: none"> • Bumiputera & SME flexibilities largely preserved; compromises made by Malaysia should hasten improvements in competitiveness • SOEs' mechanisms to support nation building agendas may change • Investor state dispute settlement ("ISDS") may increase cost to the Government; safeguards in place to mitigate nuisance suits and preserve policy space in health, security and environment • Adoption of International Labour Organisation ("ILO") rights could increase risk of production disruptions due to labour disputes

Structural reforms and a period of adjustment by firms will be required
to maximise realisation of potential benefits and mitigate potential costs

¹ Results reflect cumulative gains over 2018-2027 for the simulations where TPPA participation eliminates tariffs and reduces NTMs by 25~50%.

² Results reflect impact in 2027 for the simulations where TPPA participation eliminates tariffs and reduces NTMs by 25~50%.

Source: PwC analysis

Why intellectual property?



Membership to international treaties

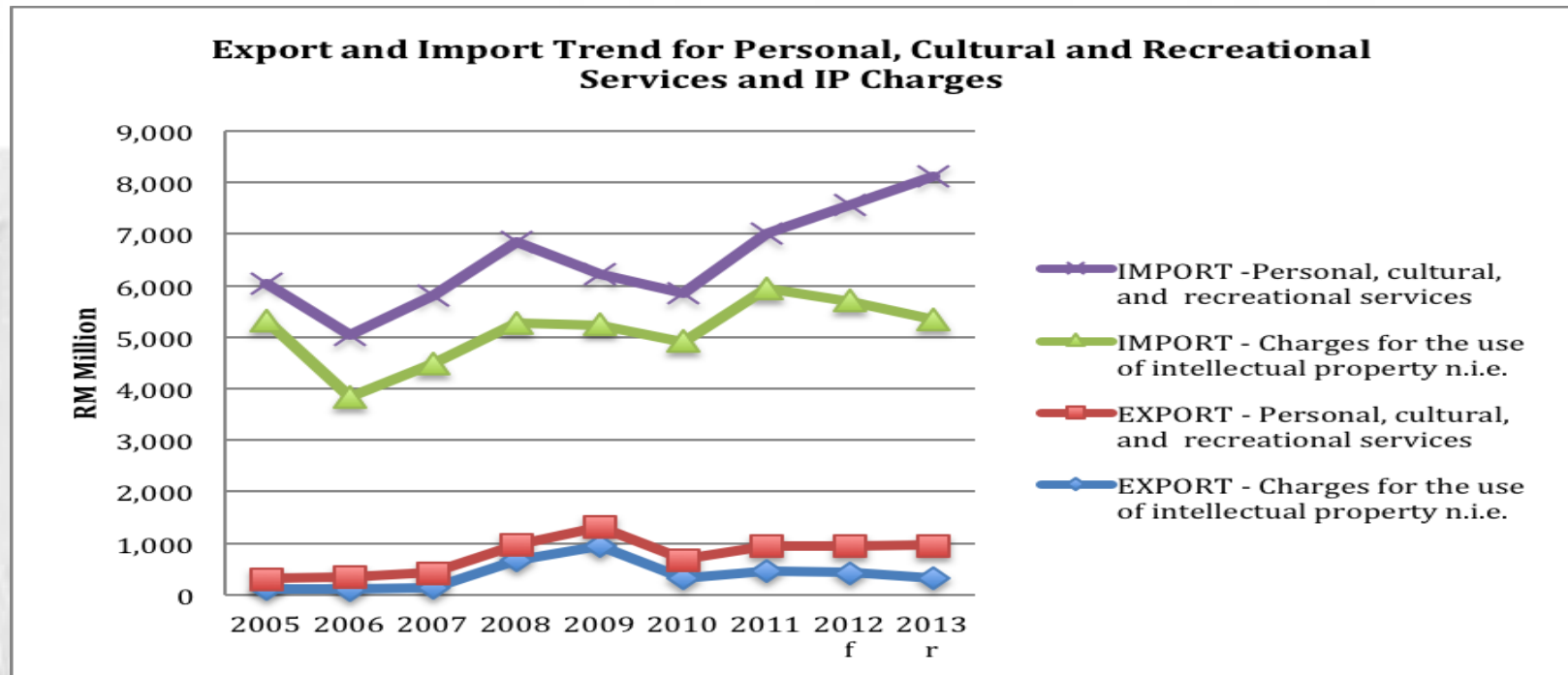
Name of Treaties	Date of accession
Berne Convention	June 28, 1990
Paris Convention	June 23, 1988
NICE Agreement	Sep 28, 2007
Patent Cooperation Treaty	Aug 16, 2006
WIPO Copyright Treaty	Sept 27, 2012
WPPT	Sept 27, 2012

Why copyright enforcement?

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Brunei				WL	WL	WL	WL			
Indonesia	PWL	WL	WL	PWL	PWL	PWL	PWL	PWL	PWL	PWL
Malaysia	WL	WL	WL	WL	WL	WL		WL		
Philippines	WL	WL	WL	WL	WL	WL	WL	WL		
Thailand	WL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL
Vietnam	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL

Source: USTR Special 301 Report (2006-2015)

Malaysia- Export and Import of Personal, Cultural and Recreational Services and IP Charges, 2005-2013



Widening trade gap

Export, Import and Trade Balance for Charges for the Use of Intellectual Property and personal, cultural and recreational services, 2005-2013 (RM Million)

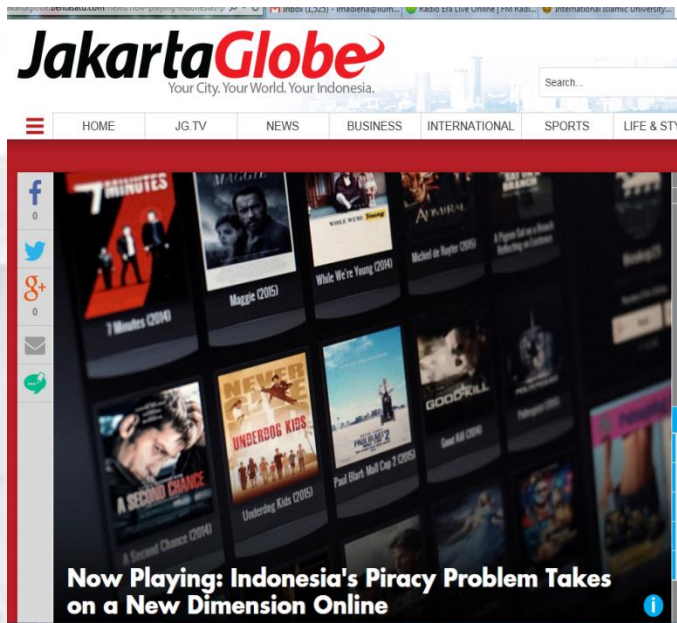
		2005	2006	2007	2008	2009	2010	2011	2012 f	2013 r
Charges for the use of intellectual property n.i.e.	Exports	102.8	95.9	127.0	657.0	937.0	320.1	455.2	417	319
	Imports	5,021.6	3,497.7	4,067.1	4,316.0	3,940.0	4,239.9	5,012.4	4,767	4,393
	Trade Balance	-4,918.8	-3,401.8	-3,940.1	-3,659.0	-3,003.0	-3,919.8	-4,557.2	-4,350.2	-4,073.6
Personal, cultural, and recreational services	Exports	200.5	235.6	296.1	305.0	368.0	358.2	486.7	521	637
	Imports	702.5	1,210.1	1,311.4	1,580.0	971.0	934.4	1,063.4	1,868	2,771
	Trade Balance	-502.0	-974.5	-1,015.3	-1,275.0	-603.0	-576.2	-576.7	-1,346.3	-2,134.7

Widening trade deficit: RM502 mil (2005) – RM2 bil (2013)

Membership to international treaties

Name of Treaties	Malaysia (Date of accession)	Indonesia (Date of accession)
Berne Convention	June 28, 1990	September 5, 1997
Paris Convention	June 23, 1988	Dec 24, 1950
NICE Agreement	Sep 28, 2007	
Patent Cooperation Treaty	Aug 16, 2006	Sept 5, 1997
WIPO Copyright Treaty	Sept 27, 2012	March 6, 2001
WPPT	Sept 27, 2012	February 15, 2005
Convention Establishing the WIPO	Jan 1, 1989	Dec 18, 1979
Trademark Law Treaty		Sep 5, 1997
Vienna Agreement Establishing the International Classification of Goods and Services for the Purposes of the Reg of Marks	Sep 28, 2007	

PIRACY IN INDONESIA



Rayda)

Haven for piracy

But with the absence of stringent and consistent enforcement, along with double-digit growth in Internet connectivity, Indonesia has become a haven for online piracy, the International Intellectual Property Alliance wrote in its latest annual report on copyright protection and enforcement, released on Feb. 6.

Google searches of key words like "free movie streaming" and "free download" yield hundreds of thousands of results, with sites offering both camcorder and high-definition copies of the latest blockbuster films such as "Avengers 2: Age of Ultron" (released in Indonesia on April 22) and "Mad Max: Fury Road" (May 15).

Some operators even promote the content on social media platforms like Facebook, where users can ask the operators when a particular movie will be available to download or stream, or whether the movies featured are still the camcorder version or in high definition.

The discussion threads, in Indonesian, suggest that the users are well aware that the content being provided is pirated and the operators are offering their illegitimate services without fear of prosecution.

An investigation by the Globe into Indonesian sites offering such content found that the majority were hosted in countries like the United States and Canada, well beyond Indonesian authorities' jurisdiction.

Some sites simply embed pirated content from external video-hosting sites, which is harder to trace and which allows them to more easily remove the illegal content before law enforcers can pin them down.

To further avoid lawsuits and prosecution, these sites offer disclaimers saying that "we only provide embedded content from foreign servers and we just import video metas from other sites. We do not host or upload copyrighted content on our server."

But the Globe's investigation reveals that the exact same disclaimer (word for word, grammatical errors and all) is shared among at least 700 similar sites from all over the world.

The Indonesian sites also feature ads from popular Indonesian brands and companies, suggesting that with enforcement absent, even well-established advertisers are not afraid of being associated with such illegal activities.

The Globe tried to contact the sites' owners and their advertisers repeatedly, but none responded to requests for an interview.

FILIPINO HOSTAGE SITUATION CONTINUES?

HEALTH

Seperti Apa Tulang Punggung yang Sehat?

Kesehatan tulang punggung dapat menjadi cerminan kesehatan Anda keseluruhan.

Cara Lelaki Paruh Baya Hindari Kanker

Aktivitas fisik merupakan solusi alami untuk menurunkan risiko kanker.

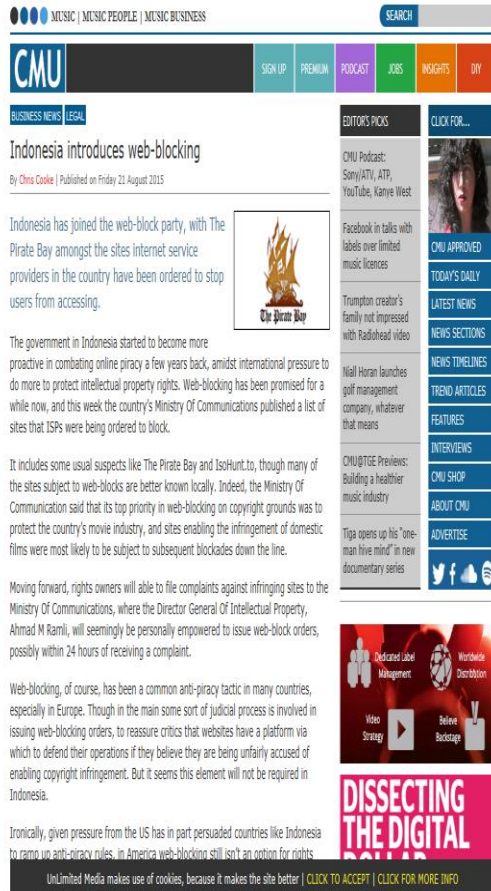
VIDEO: Lakukan Ini Saat Tersiram Air Panas

Ketahui cara yang tepat saat tersiram air panas.

Ini Manfaat Tidur Saat Hamil

Tidur memberikan manfaat yang banyak bagi ibu hamil.

INDONESIA IN THE LIMELIGHT...



MUSIC | MUSIC PEOPLE | MUSIC BUSINESS

SEARCH


CMU SIGN UP PREMIUM PODCAST JOBS INSIGHTS DIY

BUSINESS NEWS LEGAL

Indonesia introduces web-blocking

By Chris Cooke | Published on Friday 21 August 2015

Indonesia has joined the web-block party, with The Pirate Bay amongst the sites internet service providers in the country have been ordered to stop users from accessing.



The government in Indonesia started to become more proactive in combating online piracy a few years back, amidst international pressure to do more to protect intellectual property rights. Web-blocking has been promised for a while now, and this week the country's Ministry Of Communications published a list of sites that ISPs were being ordered to block.

It includes some usual suspects like The Pirate Bay and IsoHunt, though many of the sites subject to web-blocks are better known locally. Indeed, the Ministry Of Communication said that its top priority in web-blocking on copyright grounds was to protect the country's movie industry, and sites enabling the infringement of domestic films were most likely to be subject to subsequent blockades down the line.

Moving forward, rights owners will be able to file complaints against infringing sites to the Ministry Of Communications, where the Director General Of Intellectual Property, Ahmad M Ramli, will seemingly be personally empowered to issue web-block orders, possibly within 24 hours of receiving a complaint.

Web-blocking, of course, has been a common anti-piracy tactic in many countries, especially in Europe. Though in the main some sort of judicial process is involved in issuing web-blocking orders, to reassure critics that websites have a platform via which to defend their operations if they believe they are being unfairly accused of enabling copyright infringement. But it seems this element will not be required in Indonesia.

Ironically, given pressure from the US has in part persuaded countries like Indonesia to ramp up anti-piracy rules, in America web-blocking still isn't an option for rights

Unlimited Media makes use of cookies, because it makes the site better | [CLICK TO ACCEPT](#) | [CLICK FOR MORE INFO](#)

EDITORS PICKS

CMU Podcast: Sony(AT), ATP, YouTube, Kanye West

Facebook in talks with labels over limited music licences

Trumpet creator's family not impressed with Radiohead video

Nial Horan launches golf management company, whatever that means

CMU@TCE Previews: Building a healthier music industry

Tiga opens up his "one-man hive mind" in new documentary series

CLICK FOR...

CMU APPROVED

TODAY'S DAILY

LATEST NEWS

NEWS SECTIONS

NEWS TIMELINES

TREND ARTICLES

FEATURES

INTERVIEWS

CMU SHOP

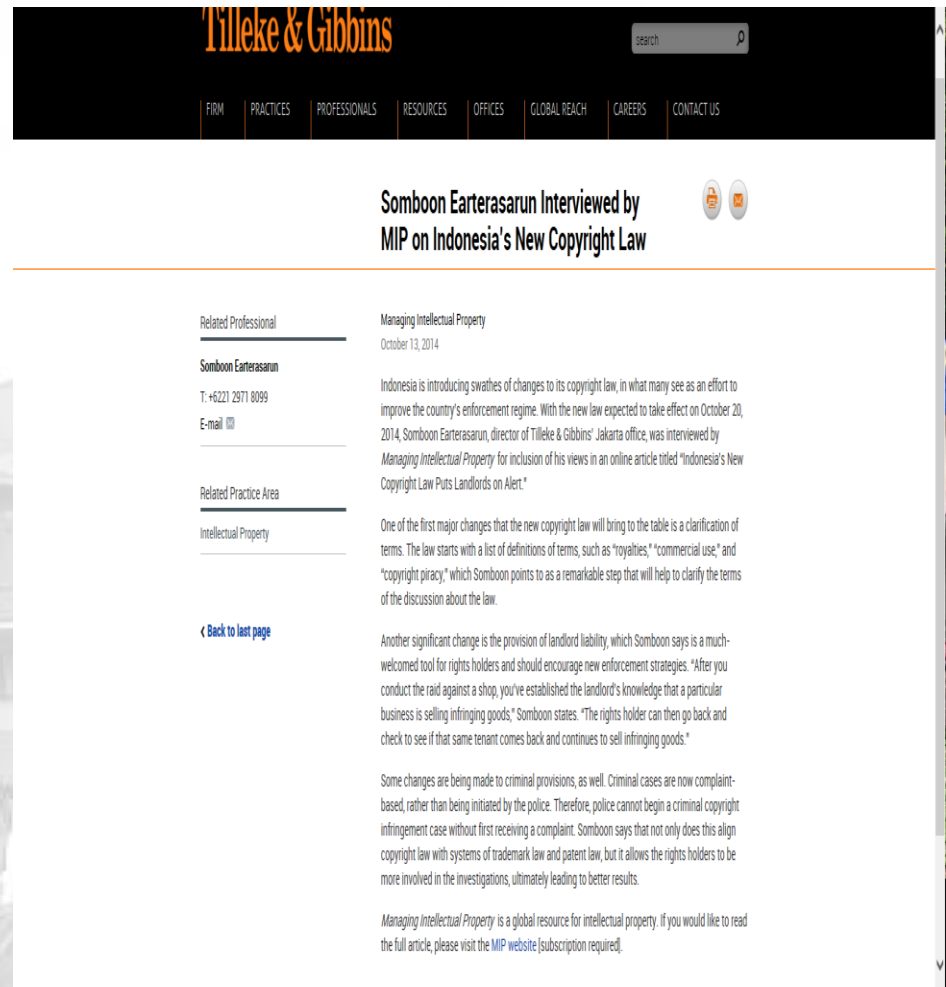
ABOUT CMU

ADVERTISE

Video Strategy

Before Bookings

DISSECTING THE DIGITAL



Tilleke & Gibbins

SEARCH

FIRM PRACTICES PROFESSIONALS RESOURCES OFFICES GLOBAL REACH CAREERS CONTACT US

Somboon Earterasarun Interviewed by MIP on Indonesia's New Copyright Law

Related Professional

Somboon Earterasarun

T: +6221 2971 8099

E-mail

Related Practice Area

Intellectual Property

Managing Intellectual Property

October 13, 2014

Indonesia is introducing swathes of changes to its copyright law, in what many see as an effort to improve the country's enforcement regime. With the new law expected to take effect on October 20, 2014, Somboon Earterasarun, director of Tilleke & Gibbins' Jakarta office, was interviewed by *Managing Intellectual Property* for inclusion of his views in an online article titled "Indonesia's New Copyright Law Puts Landlords on Alert."

One of the first major changes that the new copyright law will bring to the table is a clarification of terms. The law starts with a list of definitions of terms, such as "royalties," "commercial use," and "copyright piracy," which Somboon points to as a remarkable step that will help to clarify the terms of the discussion about the law.

Another significant change is the provision of landlord liability, which Somboon says is a much-welcomed tool for rights holders and should encourage new enforcement strategies. "After you conduct the raid against a shop, you've established the landlord's knowledge that a particular business is selling infringing goods," Somboon states. "The rights holder can then go back and check to see if that same tenant comes back and continues to sell infringing goods."

Some changes are being made to criminal provisions, as well. Criminal cases are now complaint-based, rather than being initiated by the police. Therefore, police cannot begin a criminal copyright infringement case without first receiving a complaint. Somboon says that not only does this align copyright law with systems of trademark law and patent law, but it allows the rights holders to be more involved in the investigations, ultimately leading to better results.

Managing Intellectual Property is a global resource for intellectual property. If you would like to read the full article, please visit the [MIP website](#) (subscription required).

[Back to last page](#)

Indonesian music sales now 95.7 percent piracy

The Jakarta Post
thejakartapost.com

Jakarta | Fri, September 18 2015 | 07:28 pm



Most Viewed Most Shared

1. Indonesia's tax amnesty - An equity issue
2. UNIDO to develop tempe, seaweed industries in Indonesia
3. A portrait of a gay Indonesian
4. Indonesia reports unexpected spike in bird flu cases
5. Cancer patient receives first penis transplant in US
6. Jokowi to sign seven business deals in South Korea
7. Philippines welcomes Indonesian-made biggest vessel to date

MUSIC PIRACY!!!!

SHARING CARING????



INSIDE Indonesia

Home About Contribute Editions Topics Fiction & Essays Reviews Archive

Home • Topics • Article • A culture of sharing

A culture of sharing

Written by Alexandra Crosby and Ferdiansyah Thajib

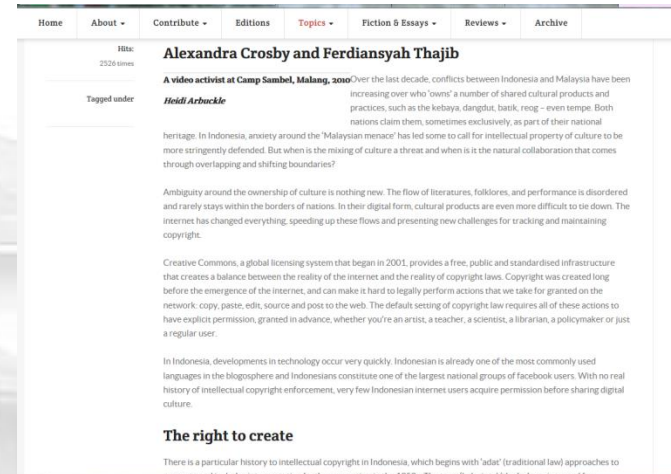


Latest Articles

Beyond categorisation
May 17, 2016 - Cheryl Gordon

An Indonesian transsexual movement faces challenges from within, as well as from without.

'No more money for our needles'
May 16, 2016 - Sari Damar Razi



Home About Contribute Editions Topics Fiction & Essays Reviews Archive

PR: 2526 times

Alexandra Crosby and Ferdiansyah Thajib

A video activist at Camp Sambel, Malang, 2009

Over the last decade, conflicts between Indonesia and Malaysia have been increasing over who "owns" a number of shared cultural products and practices, such as the kebaya, dangdut, batik, reog - even tempe. Both nations claim them, sometimes exclusively, as part of their national heritage. In Indonesia, anxiety around the 'Malaysian menace' has led some to call for intellectual property of culture to be more stringently defended. But when is the mixing of culture a threat and when is it the natural collaboration that comes through overlapping and shifting boundaries?

Heidi Arbuckle

Ambiguity around the ownership of culture is nothing new. The flow of literatures, folklores, and performance is disordered and rarely stays within the borders of nations. In their digital form, cultural products are even more difficult to tie down. The internet has changed everything, speeding up these flows and presenting new challenges for tracking and maintaining copyright.

Creative Commons, a global licensing system that began in 2001, provides a free, public and standardised infrastructure that creates a balance between the reality of the internet and the reality of copyright laws. Copyright was created long before the emergence of the internet, and can make it hard to legally perform actions that we take for granted on the network: copy, paste, edit, source and post to the web. The default setting of copyright law requires all of these actions to have explicit permission, granted in advance, whether you're an artist, a teacher, a scientist, a librarian, a policymaker or just a regular user.

In Indonesia, developments in technology occur very quickly. Indonesian is already one of the most commonly used languages in the blogosphere and Indonesians constitute one of the largest national groups of facebook users. With no real history of intellectual copyright enforcement, very few Indonesian internet users acquire permission before sharing digital culture.

The right to create

There is a particular history to intellectual copyright in Indonesia, which begins with 'adat' (traditional law) approaches to resolve and includes interpretation by the new nation in the 1950s. The page <http://www.insideindonesia.org>

Analysis of Copyright Enforcement Provisions in the TPPA

- TRIPS plus obligations
- In some instance exceeds even ACTA
- Safeguards under TRIPS taken out
- Focus on punishment as 'deterrence' not as punishment
- Imposition of heavy enforcement burden on member countries
- Liberalisation of trade? Or strengthening of IPRs?

Malaysia Doesn't Need Another 20 Years of Copyright

The following is a guest post from Dr Shawn Tan, CEO of Aeste Works, a Malaysian software and hardware engineering firm.



Reading the Copyright Act 1987 of Malaysia, the duration of protection extended to copyright holders is presently enumerated by several provisions under Part III of the Act.

The general duration of protection for literary, musical or artistic works is 50 years after the death of the author. This may be extended for posthumous publications by up to another 50 years if the work was only published well after the death of the author.

If copyright extensions were allowed, this could effectively render a work as protected under copyright for a period of more than 100 years after the death of the author. To say that such an extended period of protection is excessive for a country that is only celebrating its 58th year of independence this year, is an understatement.



SEARCH

HOME

ABOUT

OUR WORK

DEEPLINKS BLOG

PRESS ROOM

TAKE ACTION

SHOP

FEBRUARY 10, 2015 | BY JEREMY MALCOLM



A Few Global Cultural Treasures We Will Lose For 20 Years Under the TPP

What do Japan's Blue Sky Library, Malaysia's answer to John Wayne, and the first recorded composer from New Zealand, all have in common? They could all disappear from their countries' public domain for the next 20 years, if the [current agreement on copyright term extension](#) in the [Trans-Pacific Partnership \(TPP\)](#) holds.

You may have read in the news over the past year about how the public domain has recently been enriched with some exciting new additions, such as [Sherlock Holmes](#) and—in countries with shorter copyright terms, such as Canada—[James Bond](#), passing out of copyright, freeing them for reissue, adaptation, and remix.

But what you probably haven't heard before is that six of the countries presently negotiating the TPP, and who have reportedly caved in and agreed on copyright term extension, would have been about to contribute cultural icons of their own to the public domain, enriching their own countries and the world with home-grown art, music, and film that is otherwise at risk of being forgotten.

These countries are Brunei, Canada, New Zealand, Malaysia, Japan, and Vietnam. Each of these

Donate to EFF

Stay in Touch

Email Address

Postal Code (optional)

SIGN UP NOW

NSA Spying



eff.org/nsa-spying

EFF is leading the fight against the NSA's illegal mass surveillance program. [Learn more](#) about what the program is, how it works, and what you can do.

permission from his estate. Hill was the very first antipodean composer to have a chamber work committed to record, and some of those same precious **early recordings** have been preserved by the National Archive of Australia, and brought to the world free of copyright restrictions.

Although these crackly old recordings may not seem to be of wide interest in themselves, imagine the potential for these works to be brought back to life in another medium such as film, as the songs of Annette Hanshaw were in Nina Paley's masterful *Sita Sings the Blues*.

Malaysia and Brunei

Actor, director, writer and composer P. Ramlee is truly a **Malaysian superstar**, who starred in over 60 movies during Malay filmmaking's golden age in the 1950s and 1960s. He remains a cult figure in Malaysia, Brunei and Singapore—John Wayne may have a star on Hollywood's Walk of Fame, but Ramlee has an **entire street** in central Kuala Lumpur. Although he died in 1973, many of his films have already come out of copyright in Malaysia and Brunei, and others continue to do so. An example is *Seniman Bujang Lapok* (*The Three Worn Out Actor Bachelors*), a metafictional comedy from 1961 that Ramlee also wrote, directed, and composed for.

A point of note is that in most of the TPP countries (Canada a notable exception), films are protected from the date of publication, not from the death of the author. That makes an enormous difference, when the “author” of a film can include whoever is the longest-lived of the the principal director, the author of the screenplay, the author of the dialogue, and the composer of its soundtrack. This is why so few European films have ever reached the public domain, and why Malaysian and Bruneian film lovers are far more fortunate—for now.

Japan

Just as the United States has its well-known **Project Gutenberg** that digitizes and distributes public domain literature, so too other TPP countries such as **Australia**, **Canada** and **New Zealand** have sister projects that focus on works from local authors, as well as those that can legally be made available sooner to residents of those countries that have shorter copyright terms. Japan has such an archive also; the **Aozora Bunko**, which translates as Blue Sky Library.

Over the last three years, Aozora Bunko **has celebrated** the release of classic works from

[Takedown Hall of Shame](#)

[Teaching Copyright](#)

[Transparency Project](#)

[Trolling Effects](#)

[Ways To Help](#)

Copyright enforcement provisions under TPPA

Enforcement	Presumptions	The validity of copyright, trade mark and patents that have been substantively examined by the competent authority
	Enforcement practices	Judicial decisions and administrative rulings shall preferably in writing, and published Publish information on enforcement of IPR
	Damages	Damages may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price Availability of pre established damages or additional damages Damages may not be available against a non profit library, archives, educational institution, museum, or public non commercial broadcasting entity
	Criminal liability for aiding or abetting	Member States to provide for criminal liability for aiding and abetting copyright infringement.
	Border measures	Judicial authorities have the authority to order for infringing goods to be destroyed without any compensation of any sort Availability of court order to obtain relevant information regarding person, means of production or channels of distribution of infringing goods Border measures available for imported goods, export and goods in transit Goods detained or suspended as a result of border measures - the right holder must be informed of the names of the parties involved as well as of the details of the goods Ex officio border measures available also for imports, exports and goods in transit Border measures also applicable to goods of commercial nature sent in small consignments
	Criminal procedures and penalties	On a commercial scale includes acts carried out for commercial advantage or financial gain and significant acts, though not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the right holder Also applicable to willful importation

Trade Secrets	Criminal procedures and penalties	Availability of criminal procedures and penalties for unauthorized, willful access and disclosure of trade secrets
Protection of encrypted programs-carrying satellite and cable signals	Criminal offences	Manufacture, assemble, modify, import, export, sell, lease or distribute devices used to decode an encrypted program-carrying satellite signals

The ratcheting of copyright criminalisation through trade agreements

	TPP	TRIPS	ACTA
Special requirements for digital enforcement	/	X	X
Legal incentives for ISPS in restraining the unauthorized storage and transmission of copyrighted materials	/	X	/
Safe harbour for ISPs	/	X	X
Detailed notification and counter-notification procedures for right holders, ISPs and subscribers.	/	X	X
TECHNOLOGICAL PROTECTION MEASURES			
Criminalisation of unauthorized acts against the circumvention of effective technological measures	/	X	/
Make circumvention a distinct cause of action, independent of infringement.	/	X	/
CRIMINAL ENFORCEMENT			
criminal procedures and penalties must be applicable for willful trademark counterfeiting or copyright on a commercial scale	/	/	/
Provide for criminal procedures on unauthorised transmission or copying of motion picture or other audiovisual work (TPP) or unauthorized copying of cinematographic works (ACTA)	/	X	/
Criminal liability for aiding and abetting is available under its law.	/	X	/
Provides penalties that include sentences of imprisonment as well as monetary fines sufficiently high to provide a deterrent to future infringements	/	/	/
Seizure of suspected counterfeit or pirated goods	/	/	/
Forfeiture and destruction of all counterfeit or pirated goods	/	/	/
Forfeiture or destruction of materials and implements	/	/	/
Seizure or forfeiture of assets the value of which corresponds to that of the assets derived from, the infringing activity.	/	X	/
Ex officio action without the need for a formal complaint.	/	X	/

Justifications over criminalisation of copyright offences

Financial loss

Widespread online sharing and downloading

Piracy no longer social stigma/ need to enforce obedience

Harm to the society

Ethically moral behaviour

Syndicates and organised crimes/ terrorist

Freeze proceeds of criminal activity

Evidence gathering through search warrant

Scourge computer system/ wire tapp communication

Criticisms against over criminalisation of copyright offences

Copyright piracy lacks moral force

Dubious statistics

IP non rivalrous/non excludable

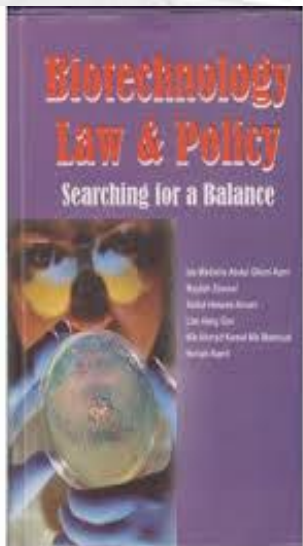
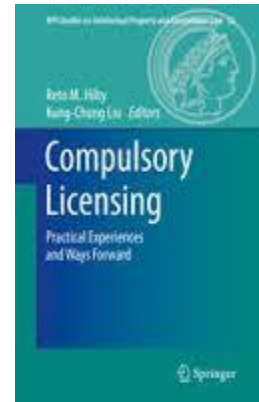
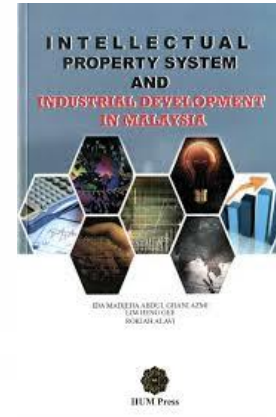
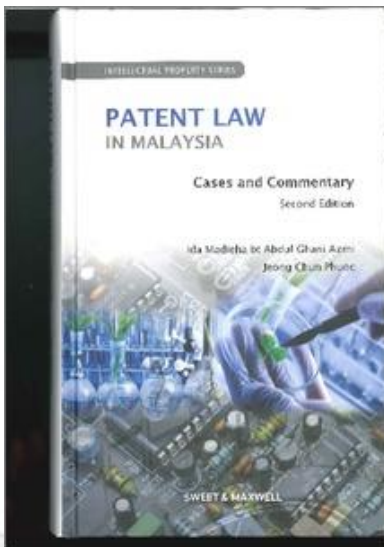
Chill freedom of expression

Might lead to indiscriminate suits

Insufficient balance to legitimate users

Punishment not proportional to offences

Would severe punishment deter piracy?



Sekian. Terima kasih. Wassalam

imadieha@iiu.edu.my