

IP ENFORCEMENT AND COUNTERFEITING IN SOUTH AND SOUTHEAST ASIA: A WESTERN PERSPECTIVE BASED ON THE USTR 301 REPORT

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ABSTRACT

In the rapidly changing world backed with technological advancement, need for innovation, rising economic growth and international trade call for an informed intellectual property (IP) protection. Rich and developing nations implement and enforce these IP rights and rules in various manners which often results in disputes. The countries in global south, particularly in South and Southeast Asia, highlight the presence of challenges around IP, where counterfeit markets are accepted and widely spread which in turn attracts criticism from the western nations. Countries such as China, India, Indonesia and Vietnam are one of the major producers and distributors of counterfeited goods. They are often flagged, and these products undermine global IP framework and create hindrances for legitimate businesses and pose risk to consumer safety. The present study underscores how the IP practices of South and Southeast Asia are perceived by the western countries with a special focus on counterfeit market by using the United States Trade Representative [USTR] Special 301 Report as the basis for analysis. The Report recognizes nations with inadequate protection to their Intellectual Property or which have barriers to market access. The paper accesses the factors that sustain such markets inclusive of weak enforcement mechanisms, economic incentives, community stance and cultural determinants. While doing so, it also criticizes the USTR report as a tool for advancing western economic interest and imposing IP measures that surpasses the basic requirement of the TRIPS agreement. The research questions the ability of nations in South and Southeast Asia to balance domestic interests and global IP requirements. It presses for a more equitable and non-discriminatory approach to IP

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governance that takes into account the varying geo-specific socio-economic realities in every region as it addresses the new issue of counterfeiting.

KEYWORDS: Intellectual Property Governance, Counterfeit Markets, USTR Special 301 Report, South and Southeast Asia, Global Trade Practices.

INTRODUCTION

In today's world of innovation, increased economic growth and global trade is based on Intellectual property (IP) rights. These IP protections have facilitated global advancements by providing artists, creators and innovators with exclusive rights over their work. There are, however, wide discrepancies across nations in the enforcement and application of these IP laws, highlighting differences in governance framework, economic advancements and culture attitude. These variations tend to bring about disputes between developed and developing countries, as they compete and struggle to set priorities in the global IP landscape.

Prevalent in South and Southeast Asia these issues draw global attention for being hubs for major counterfeit markets, which are often seen as economic and geopolitical threats to the Western world's interest. These counterfeited goods which range from everyday items to luxury goods, not only decrease the value of genuine and legitimate businesses but also pose risks to the health and safety of the consumer. Frequently found at the centre of these debates are countries like China, India and Vietnam, as these are often labelled as primary producers and distributors of counterfeit goods.

The United States Trade Representative (USTR) Special 301 Report²²³ acts as a mean to make or break the global perception around a countries' IP enforcement policies. The annual report highlights nations with inadequate IP protections or market access barriers and acts as a central mechanism for the purpose of documenting and addressing these issues. However, the report has been criticized for being biased to favouring the Western economic interest, by upholding IP standards which are often above the minimum limits of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement²²⁴. This complicated dynamic reveals an inherent tension between the enforcement of global IP norms and the specific socio-economic conditions of the developing nations.

LEGAL AND GEOPOLITICAL ISSUES IN CROSS-BORDER IP PROTECTION

²²³ United States Trade Representative, 2023 *Special 301 Report* (USTR, 2023) <<https://ustr.gov/issue-areas/intellectual-property/special-301>> accessed 20 December 2024

²²⁴ Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement 1994, WTO Agreement, Annex 1C

Cross-border IP protection raises several legal and geopolitical issues due to the non-uniformity in legislative frameworks across nations. Because of the geographical character of IP rights, degrees of protection and enforcement vary, resulting in discrepancies in the preservation of IPR. These disparities often lead to geopolitical tensions, particularly between developed and developing nations, as nations with strong IP protection systems exert pressure on others to improve their laws and enforcement mechanisms. One key issue lies in the differing interpretations of territoriality in cross-border IP disputes. For example, the disagreement between the U.S and Canadian courts in *Equustek Solutions Inc. v. Google Inc.*²²⁵ case over the territorial extent of a remedy for infringement demonstrates the hardships arising from varying national perspectives on IP enforcement.²²⁶ This issue is further worsened since there is a lack of a uniform international adjudicatory body that would provide legal clarity to the parties involved in trans-national IP disputes.²²⁷

On the other hand, the technology transfer issue between the two countries often gets connected with the theft of Intellectual Property as governments are wary of disclosing the technical advancements because they fear infringement in jurisdictions that lack adequate IP protection²²⁸. This limits international collaboration and stifles innovation. IP protection disparities result in trade imbalances, as developed nations claim that their innovations are exploited by others without providing them sufficient IP protection. As highlighted in the *Westerngeco LLC v. ION Geophysical Corp.*,²²⁹ the Hon'ble Supreme Court allowed a patent owner to recover lost profit for foreign infringement, raising doubts on the extent of the US patent monopolies to the international market and challenging the territorial concept laid down in IP.²³⁰

Finally, IP protection has increasingly become an issue in cross-border caught up in the complexities of geopolitics. IP remains a vital part of the international trade setup, resulting in

²²⁵ *Google Inc v Equustek Solutions Inc* [2017] SCC 34

²²⁶ Jennifer Daskal, 'Google Inc v Equustek Solutions Inc [2017] 1 SCR 824' [2018] 112(4) *American Journal of International Law* 727, <<https://www.jstor.org/stable/26568998>> accessed 20 December 2024

²²⁷ Marketa Trimble, 'The Territorial Discrepancy Between Intellectual Property Rights Infringement Claims and Remedies' [2019] <<https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=2276&context=facpub>> accessed 15 February, 2025

²²⁸ Tongchang Ma, 'Intellectual Property Protection in Cross-Border E-Commerce' [2024] 68(1) *Advances in Economics Management and Political Sciences* 47, DOI: 10.54254/2754-1169/68/20241345

²²⁹ *WesternGeco LLC v ION Geophysical Corp* 138 S Ct 2129 [2018]

²³⁰ Graeme W Austin, 'A Conflicts of Law Approach to Intellectual Property Research' in Irene Calboli and Maria Lilla Montagnani (eds), *Handbook of Intellectual Property Research: Lenses, Methods, and Perspectives* (Oxford, 2021; online edn, Oxford Academic, 23 September 2021)

economic inequalities, which tend to bring commercial conflicts due to IP infringements, which in turn amplify geopolitical rivalries.

IP LAW AND PRACTICES AROUND COUNTERFEITING AND PIRACY IN SOUTH AND SOUTHEAST ASIA

A combination of local economic factors, international influences, and cultural factors provide a dynamic picture of legal landscape of IP in South and Southeast Asia. Countries such as Vietnam, Malaysia, Indonesia and India have been strengthening and implementing broad IP frameworks that are in line with international agreements like the TRIPS. In India for instance, the Copyright Act 1957 and the Trademark Act 1999 have laid down the foundation for strong copyright and trademark laws. These acts have tightened their enforcement mechanisms in the face of digitalisation over the year through amendments.

In like manner, Indonesia had recently passed the Law on Copyrights in 2014 to combat piracy especially from the entertainment and software industry.²³¹ The above measures notwithstanding, the implementation of this law remains unbalanced by factors such as a shortage of resources, legal loopholes, and the widespread social acceptance of counterfeited and pirated products. Counterfeiting pharmaceutical and luxury goods, for instance, and piracy of media and software, poses severe challenges to the protection laws meant to safeguard IP rights while making these available to the public.²³²

South and Southeast Asia, in enforcing its IP laws, reflects a kind of a fine balancing act between acceding to global economic standards and attending to local realities. Countries like Thailand have set up specialized IP courts for streamlined dispute resolution as evidence of their intent on tightening up IP regulations, as well as the Philippines.²³³ Vietnam has strengthened its enforcement with amendments to the Law on Intellectual Property in 2022; it is also collaborating with various international agencies to strengthen such enforcement²³⁴. Real-world practicalities, however, include the fact that many people lack awareness of IP laws and informal economies often rely on counterfeit goods to survive. Advocacy groups have complained about the social cost of an overly strict approach, which hits mostly low-income

²³¹ Peggy Chaudhry and Alan Zimmerman, *The Economics of Counterfeit Trade: Governments, Consumers, Pirates and Intellectual Property Rights* [Springer-Verlag Berlin Heidelberg 2009]

²³² Alexander S. Dent, 'Intellectual Property, Piracy, and Counterfeiting' [2016] 45 *Annual Review of Anthropology* 17 <<https://doi.org/10.1146/annurev-anthro-102215-100127>> accessed 15 February, 2025

²³³ Susan Sell, 'The Global IP Upward Ratchet, Anti-Counterfeiting and Piracy Enforcement Efforts: The State of Play' [2010] Joint PIJIP/TLS Research Paper Series, American University Washington College of Law Digital Commons.

²³⁴ Vivencio O. Ballano, *Sociological Perspectives on Media Piracy in the Philippines and Vietnam* [2017] <https://doi.org/10.1007/978-981-287-922-6_8> accessed 15 February, 2025

communities, given that they use more available and affordable options. Programmes such as the ASEAN Intellectual Property Rights Action Plan are also being conducted to enhance regional cooperation, but significant gaps exist between different nations. It will become challenging to address this to protect the rights of creators and guarantee access to innovation and inclusivity of culture and economy.

WESTERN VIEWS ON SOUTH AND SOUTHEAST ASIAN IP REGULATION IN COUNTERFEITING AND PIRACY MARKETS AS PER USTR REPORT 301

WHAT IS USTR?

The Office of the United States Trade Representative (USTR) prepares an annual report called the Special 301 Report, mandated by the Congress under Section 182 of the Trade Act of 1974, as modified by the Trade and Competitiveness Act, 1988. The report was the result of growing concerns over the adverse effect of weak IP protection abroad on U.S economic interests.

The US trading partners view the Special 301 Report as an instrumental tool for assessing the state of Intellectual Property (IP) and enforcement. The report identifies the countries limiting fair and equitable access to their markets to the US Citizens relying on protection over Intellectual Properties or failing to provide sufficient protection over their intellectual rights. Nations are categorized based on how serious their deficiencies in IP regimes are.

The USTR's Special 301 report lists down three divisions namely, "Priority Foreign Country" [PFC], "Priority Watch List," and "Watch List" and classifies countries on the criteria of IP protection, their enforcement practices, and barriers to market access. Through this practice, the US government focuses on addressing the problems associated with intellectual property, however, this action may result in extreme trade actions. These categories of classifications assist in shaping the reaction of US government to IP issues, which may include punitive trade sanctions. Section 182 of the Trade Act, 1974, draws the categorization procedure, defining PFC as a legislative category.

When the IP policies of a country obstruct protection or fair market access to US business, it is classified as a PFC which looks at "onerous or egregious" IP policies. This classification can occur when a government fails to engage in good-faith discussions about the problems associated with intellectual property or shows little advancement in those talks. Tariffs and import restrictions along with decreasing trade benefits come under the imposition of PFC. Additionally, the President can instruct the USTR to pursue further punitive measures in line with US international relations. The "Priority Watch List" is a non-statutory group of countries that have significant IP shortcomings, though not as severe as those in the PFC category.

These countries continue to encounter significant intellectual property challenges that need to be addressed, though they are not as critical at times. The “Watch List” includes nations with IP concerns that are less severe than those on the Priority Watch List. These nations are free to become more prestigious either by engaging in bilateral discussions or conducting significant reforms on their IP policies. Countries on the Watch List or Priority Watch List can change its status as they make progress. Hong Kong was deleted from the Watch List, for example, in 1999 when its copyright piracy matters were addressed. Conversely, one that does not make improvements shall be downgraded. India, for example, was downgraded from the Priority Watch List to PFC in 1991 for lacking proper measures in keeping patents protected. The process of classification by the USTR considers consultations from concerned stakeholders such as industry associations, the Department of Commerce, and the USPTO.

The most damaging is the Priority Foreign Country (PFC). More commercial and diplomatic pressure are applied to countries to modify policies by categorizing countries under the Watch List (WL) and the Priority Watch List (PWL) other than PFC.²³⁵ However, the trouble of countries does not end with their removal from these lists, upon removal nations may still be subjected to Out-of-Cycle Reviews or Section 306 monitoring. These are more thorough examinations to address specific IP challenges and to ensure that the report remains responsive to emerging concerns.

This shows that the Special 301 Report is often used as a tool to push countries to develop stronger IP rights which goes beyond the minimum standards set by the World Trade Organization’s TRIPS Agreement to protect American Companies Intellectual Property rights overseas, the Omnibus Trade and Competitiveness Act of 1988 was passed.²³⁶

The process involves the public since the USTR solicits submissions and holds hearings to gather input from foreign governments, industries, and NGOs. The USTR examines countries on individual basis, considering such factors as their level of development, observance of international commitments, and concerns expressed by rights holders. The process ensures a comprehensive, informed assessment of global IP issues, shaping U.S. trade policy.

The idea for the report sparked after the U.S. International Trade Commission estimated that overseas IP infringement cost American firms between \$43 and \$61 billion back in 1986. An ITC investigation from 1984 examined the effects of counterfeiting foreign products and found

²³⁵ Poppy Winanti and Alasdair Young, ‘Complying with Unwelcome Rules? Developing Countries and the TRIPS Agreement’ [2009] 2 *Indian Journal of International Economic Law*, art 10

²³⁶ Viviana Muñoz-Tellez, Nirmalya Syam and Thamara Romero, ‘Time for a Collective Response to the United States Special 301 Report on Intellectual Property’ [Policy Brief 65, July 2019]

that in 1982, it resulted in the loss of 131,000 employment in five of the US manufacturing sectors²³⁷.

While the report reflects U.S government's dedication towards protecting IP of its citizens and businesses, the report is also criticized for championing the interests of American firms and has raised questions about fairness and sovereignty and seen as a tool for limiting ability to shape independent IP frameworks, raising questions about fairness and sovereignty.

HISTORY OF USTR

The Office of the United States Trade Representative is an institution which influences and drives forward the United States trade policy significantly. The institution traces its history to the Reciprocal Trade Agreements Act of 1934, wherein authority to negotiate reciprocal tariff reductions was authorized for the President. More authority under the Trade Expansion Act of 1962 expanded its powers in handling communist economic influence as well as in the improvement of exports from the country. Sections 201 and 252 of the Act vested the President with the authority to negotiate and enter into trade agreements, as well as to eliminate foreign import restrictions that were determined to impede the commerce of the United States. Section 301 of the Trade Act of 1974 further broadened those powers by allowing the President to take retaliatory action against countries that, in his opinion, were unreasonably raising trade barriers. These follow-up enactments improved the chapter and consisted of Omnibus Tariff and Trade Act 1984, and the Omnibus Trade and Competitiveness Act of 1988 that created "Super 301" with the authority and powers to possess the right of conducting investigations on unfair trade practice and retaliation by the USTR. As the level of complexity involved in conducting global trade continues to escalate so too, was the development of USTR's role.

As a response to inefficiencies in the U.S. governmental system, Congress established in 1962 the office of Special Representative for Trade Negotiations. The post, initially advisory, began to take on greater stature, and by the 1970s, had become a cabinet-level post. The office was officially known as the United States Trade Representative in 1980. In 1988, the Omnibus Trade and Competitiveness Act of 1988 further solidified the mandate of the USTR, in this respect, transforming it into the principal trade advisor to the President while centralizing the US's international trade negotiations. This increased accountability through periodic reports by the USTR to the President and the Congress. The Uruguay Roundtable Agreement Act 1994 also furthered the role of the USTR as a leader in international trade negotiations with the

²³⁷ Gary M. Hoffman and George T. Marcou. (1989, November 5). Law and Society
<<https://www.washingtonpost.com/archive/opinions/1989/11/05/law-and-society/8309c64a-4349-418e-823e-8c3056a67a0b/>> accessed 20 December 2024

WTO. This made way for the expansion of the role of USTR in other crucial trade agreements such as NAFTA and the WTO. The Trade and Development Act 2000 further created new offices that including the Chief Agriculture Negotiator and Assistant U.S Trade Representative for African Affairs within USTR.

These offices facilitated negotiations of agricultural interests to be centred on trade with Africa. The USTR negotiates bilaterally as well as multilaterally and collaborates with all other agencies of the government involved in trade policy and international trade issues such as intellectual property and dispute resolution. As for now, Katherine Tai currently serves as the U.S. Trade Representative, where she continues to lead USTR to advance the Nation's Trade Interests.

UNDERSTANDING THE ISSUE OF COUNTERFEITED GOODS AND PIRACY IN SOUTH AND SOUTHEAST ASIA

Counterfeit goods can pose serious risks to people, businesses, and the economy because they are often made without proper oversight or safety checks²³⁸. These products are usually of poor quality, may contain harmful materials, and can fail to work as required. For example, counterfeit medicines might not treat illnesses effectively, similarly car parts could malfunction, and fake electronics might overheat or cause electrical shocks²³⁹. These products not only endanger health and safety but also damage trust in brands, cause loss to honest businesses, and take money away from genuine industries. Tackling the problem requires stronger regulations, better public awareness, and cooperation between governments and companies to keep people safe.

Piracy and counterfeit products continue to be a significant concern in South and Southeast Asia, harming both local and global economy. These issues are highlighted year after year in the annual reports by the U.S. Trade Representative (USTR), underscoring their continuing nature. On January 30, 2024, the USTR published its 2023 Notorious Markets List, which lists 39 online and 33 physical marketplaces engaged in large-scale trademark counterfeiting and copyright piracy. Out of the total, 72 markets, 25 markets are situated in this region, the number goes even higher when other countries in Asia are counted as well²⁴⁰. These markets act as crucial hubs for the distribution of fake and pirated products, undermining the value of

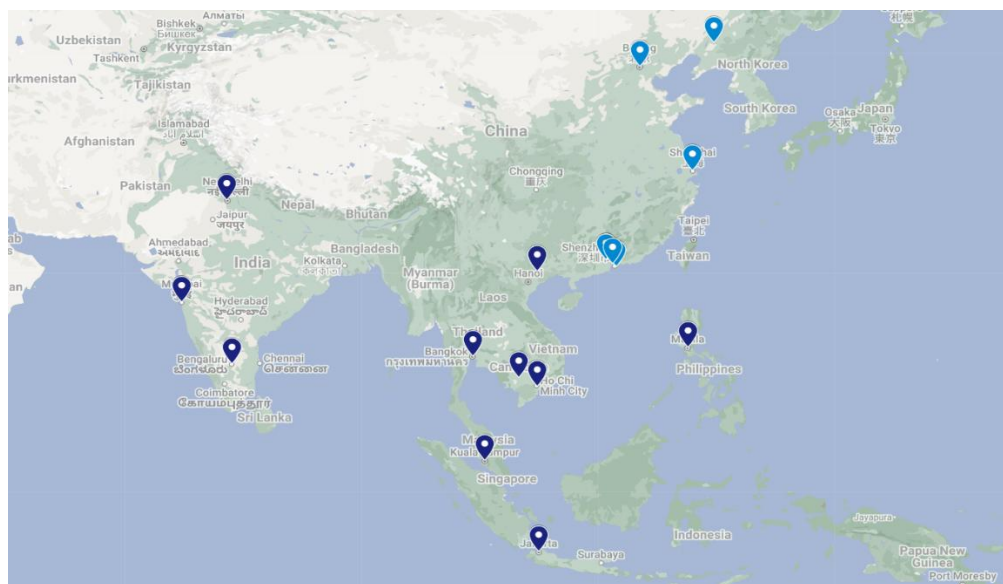
²³⁸ OECD/EUIPO, 'Global Trade in Fakes: A Worrying Threat' [OECD Publishing 2021]

²³⁹ US Immigration and Customs Enforcement, 'Counterfeit Goods: A Danger to Public Safety' [2024] <<https://www.ice.gov/features/dangers-counterfeit-items> > accessed 15 February, 2025

²⁴⁰ Office of the United States Trade Representative, '2023 Review of Notorious Markets for Counterfeiting and Piracy' [2023]

legitimate trade and intellectual property rights. Among the listed nations, China stands out as the leading contributor, with the highest number of both virtual and physical markets being engaged in piracy and counterfeiting activities.

PHYSICAL MARKET



MAP 1: Locations of Counterfeit and Piracy Markets in South and Southeast Asia, with China

The South Asia and Southeast Asian Physical markets form one of the largest hubs/marketplaces for the counterfeited goods. From car parts to medicines and everyday items, almost everything can be found in duplicate. Out of 33 Physical Markets enumerated in the 2023 Review of Notorious Markets for Counterfeiting and Piracy, 10 belong to this region. China dominates the market of Counterfeited goods, accounting for 60% of total share with 7 physical markets. This creates a matter of concern as Chinese counterfeit sellers have revamped by using their storefronts as key contact points, testing locations, and centres for fulfilling online sales. Notorious markets with reduced foot traffic remain vital hubs for counterfeit sales across South and Southeast Asia, with sellers employing strategies such as offsite inventory storage and transitioning to online platforms to evade law enforcement raids.

Counterfeit poses a major threat in countries like India, which includes a wide range of products such as pharmaceuticals, electronics, luxury goods, and food items. While only three markets are officially noted in reports, many more function such as where counterfeited products are sold. By 2020, the counterfeit market in India was valued at approximately 2.6 trillion rupees and has shown rapid growth in recent years. Commonly counterfeited items include electronics, watches, and fashion products. Similarly, Criminal networks play a significant role in the

production and distribution of counterfeit products, throughout the regions of Southeast Asia, driving a billion-dollar black market. The problem is fuelled by inadequate IP protection, corruption, and weak enforcement measures that exacerbate the issue with serious consequences, including loss of revenue to genuine businesses, decreased government tax revenue and compromised consumer safety. Several attempts have been made to curb counterfeiting in the region by strengthening IP laws, increasing public awareness, and expanding enforcement mechanisms, but the problem continues.

The following table lists the region's physical marketplaces.

COUNTRIES AND COUNTERFEIT PRODUCT MARKETS			
Sno	Country	Market	Goods Sold
1	Cambodia	Central Market, Phnom Penh	Apparel, shoes, handbags, watches, sunglasses, and other items, as well as pirated media
2	India	Heera Panna, Mumbai	Watches, footwear, accessories, and cosmetics
3		Sadar Patrapa Road Market, Bengaluru	Electronic products
4		Tank Road, Delhi	Apparel, footwear, watches, and beauty products
5	Indonesia	Mangga Dua Market, Jakarta	Handbags, wallets, toys, leather goods, and apparel
6	Malaysia	Petaling Street Market, Kuala Lumpur	Apparel, shoes, and accessories
7	Philippines	Greenhills Shopping Center, San Juan, Metro Manila	Electronics, perfumes, watches, shoes, accessories, and fashion items
8	Thailand	MBK Center, Bangkok	Handbags, clothing, watches, and shoes
9	Vietnam	Tan Thanh Market, with Viet Trung Trade Center, Lang Son Province	Apparel, shoes, luxury goods, and electronics

10		Saigon Square Shopping Mall, Ho Chi Minh City	Handbags, wallets, jewellery, and watches
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Despite constant efforts from the past years, the data as per the latest reports show that counterfeiting remains a significant concern. It has been noted that Cambodia's Central Market in Phnom Penh remains a major hub for counterfeit clothes, accessories, and pirated media, despite intensified searches by the local officials and authorities. Similarly, in India, counterfeit products, including cosmetics, electronics, and clothes marketplaces can be found at locations like Heera Panna in Mumbai and Tank Road in Delhi, and they frequently serve as wholesale suppliers to other regions. Enforcement activities in these markets are still uneven, with penalties not being effective in deterring counterfeit sellers. Weak enforcement is a key problem in Indonesia, where raids are uncommon and warning letters are not very effective in markets such as Mangga Dua in Jakarta. Even with large numbers of raids by police at Malaysia's Petaling Street Market, counterfeit products remain openly available. These markets highlight the growing regional danger of counterfeit trade, with many products traced to Chinese sellers.

Counterfeiting in Southeast Asia is characterized by heterogeneity with some countries showing improvement through strengthened enforcement and cooperation. Philippines' Greenhills Shopping Mall in Metro Manila set stringent example by catching repeat offenders red-handed and joining regulators in reorganizing itself into a respectable marketplace. In neighboring Thailand, Thailand's MBK Center in the capital city, Bangkok, strengthened enforcement and established public educations programs in response, although the ubiquity of counterfeit products also warrants frequent raids and unbending stance such as prohibiting the renewal lease of erring vendors. Within Vietnam, frequent government raids were unable to stem even Tan Thanh market and Saigon Square, where much junk comes from mainland China. Insufficiently large fines and internal protectionism there still baffled progress. Among these, other examples in all corners of this region represent some of the complexity in dealing with counterfeiting, something which requires not only more meaningful laws but firm enforcement and cooperation between governments as well as between private actors.

ONLINE MARKET

The 2023 Notorious Markets List (NML) focusses on the growing complexity of online piracy and counterfeiting networks, with South and Southeast Asia emerging as the notable centres for these operations. The fast expansion of e-commerce and social commerce in these locations has provided fertile ground for illegal activities. Cyberlockers, which are widely used to host

and distribute stolen content, play an important role by providing revenue-sharing schemes that reward uploaders of popular copyrighted material. However, these sites frequently lack proactive monitoring, allowing copyrighted content to be published and re-shared even after removal requests. Furthermore, “bulletproof” ISPs in the region allow piracy sites to operate with minimal accountability, further complicating enforcement efforts. Social media influencers in these regions also contribute by promoting counterfeit goods, particularly luxury items, driving traffic to these illegal markets.

Asia remains the largest contributor to the global online piracy market, accounting for nearly half of its activity. Many piracy sites in South and Southeast Asia hide their locations using proxy servers or anonymous hosting services, making them difficult to trace. Reports suggest that a significant number of these operations are based within the region itself, with at least 15 specific online markets identified in the latest NML report. Although some platforms in these regions have started adopting AI tools and stricter anti-counterfeiting policies, the lack of consistent standards and insufficient collaboration with rights holders and authorities hinder progress.

The proliferation of websites and platforms facilitating copyright infringement highlights the challenges of combating digital piracy on a global scale. Sites such as **1337X** and **The Pirate Bay**, among the oldest and most well-known torrent indexing platforms, rely on reverse proxy services and a network of alternative domains to evade enforcement. These platforms, widely blocked across multiple countries, demonstrate resilience against takedown efforts, enabling continued access to pirated movies, television shows, and software. Similarly, **YTS.MX**, specializing in high-quality film torrents, highlights the advanced capabilities of piracy sites by integrating synchronized subtitles, further enhancing the user experience and perpetuating global content theft. These services undermine the creative industry and create significant obstacles in the legal enforcement due to their decentralised and adaptive nature.

Emerging forms of piracy are new ways that go beyond simple torrenting. Sites such as **2EMBED** and **WHMCS Smarters** depicts “piracy-as-a-service” ideas, enabling individuals to install and monetize illegal operations with minimal expertise. 2EMBED, for instance, has a content management system available to other pirate streaming sites that monetize by displaying adverts, while WHMCS Smarters offers solutions for illegal IPTV companies. Such services support the proliferation of piracy by lowering the barrier to entry for new players, leading to an interdependent network of unlawful platforms. In addition, platforms like **Aniwatch** and **Vegamovies**, which are focused on niche markets like anime or local content,

serve very specific audiences, and their popularity is retained despite enforcement actions against their URLs.

Finally, e-commerce sites like **Bukalapak** and **IndiaMART** exemplifies the ways in which online markets unintentionally promote counterfeiting. Despite improved takedown processes, many platforms continue to host counterfeit products due to inadequate deterrents for repeat offenders and a lack of proactive monitoring. The existence of services such as **SSYouTube**, which allows for stream-ripping of music and video downloads, demonstrates the scope of piracy activities across different sectors. These instances highlight the complexities of combating piracy in a digital context where adaptation and technological innovation can surpass enforcement methods.

ROLE OF CHINESE MARKETS IN THE EXPANSION OF THE COUNTERFEIT MARKET

China is a major driver behind the huge amount of counterfeit goods across South and Southeast Asia, holding the title of the world's largest exporter of fake products²⁴¹. Over 75% of all counterfeit goods globally come from China, where a combination of low manufacturing costs, massive production capacity, and big logistics networks make it easy for counterfeiters to operate²⁴². Although China has laws in place to tackle counterfeiting, weak enforcement and a vast, unregulated supplier ecosystem allow this economy to thrive. The growth of e-commerce platforms like AliExpress and DHGate has made the problem even harder, as these platforms enable small parcels of counterfeit items to be shipped directly to consumers or in bulk with little risk of detection. In Southeast Asia, countries like the Philippines, Indonesia, Thailand, Vietnam, and Singapore have become hotspots for counterfeit goods, with studies suggesting that as much as 40% of items sold in these markets may be fake²⁴³. These products are often shipped by sea from China's ports or smuggled across land borders, passing through cracks in customs systems weakened by corruption, underfunding, and unregulated Free Trade Zones. In markets like Malaysia and Myanmar, low-cost counterfeit items such as shoes and textiles dominate, making it tough for local producers to compete. Meanwhile, countries like

²⁴¹ 'Chinese Counterfeit Products Dominate the Worldwide Fakes Industry' (Daxue Consulting, 9 February 2023)

²⁴² OECD and European Union Intellectual Property Office, 'Global Trade in Fakes: A Worrying Threat' [22 June 2021]

²⁴³ 'Counterfeit Goods in South-East Asia: Saving Money May Risk Your Health' (European Union Intellectual Property Helpdesk, 27 August 2021) <<https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/counterfeit-goods>> accessed 15 February, 2025

Singapore serve as major transshipment hubs for these fake goods, while only Thailand has shown some success in seizing counterfeits, though much more needs to be done.²⁴⁴

ANALYSING THE CULTURAL DYNAMICS AND UNDERLYING FACTORS DRIVING COUNTERFEITING

Understanding the dynamics of the counterfeit market demands a thorough examination of the factors driving demand for counterfeit goods. Several behavioral characteristics influence both the manufacture and consumption of counterfeit items. Income is a crucial motivator, since those with lower incomes are more likely to be open to buying counterfeit items. For instance, in Singapore and China, research reflects that people from low-income group are more inclined towards buying pirated media and software. Similarly, low-income households in impoverished nations are particularly vulnerable to counterfeit pharmaceutical products, owing to the subsidised prices they are available at. The World Health Organization has highlighted that counterfeit drugs constitute 10% of the global pharmaceutical market, with a disproportionate 25% being sold in low-income regions.²⁴⁵

Demographic factors also play a significant role in shaping counterfeit consumption patterns. According to research conducted in Hong Kong, women and younger visitors are more prone to purchase counterfeit things than males and older folks. Education level appears to impact these decisions, with more education associated with a decreased risk of purchasing counterfeit items. Other factors, such as travel habits and emotional states, further impact counterfeit buying behaviours. Tourists traveling in organized groups or those not on business trips are more likely to purchase counterfeit goods, while positive emotional experiences during travel can also increase the tendency to buy counterfeit items.

Counterfeit proneness (CP) is a distinct psychological trait that influences consumer attitudes and behaviours toward counterfeit products. Consumers with high CP exhibit a preference for counterfeit goods, often rationalizing their purchases by perceiving counterfeits as beneficial or comparable in quality to genuine products.²⁴⁶ These people are less inclined to examine the legal or ethical ramifications of purchasing counterfeit goods. CP includes emotional,

²⁴⁴ Helen Sloan, 'Beyond China: The Counterfeiting Challenge in Southeast Asia' World Trademark Review [2012]

<https://www.worldtrademarkreview.com/article/63B324B0BC66116B4ABA256A534B75B439CA92F9/download> accessed 15 February, 2025

²⁴⁵ *Supra* note 17; World Health Organization, '1 in 10 Medical Products in Developing Countries is Substandard or Falsified' [28 November 2017] <<https://www.who.int/news/item/28-11-2017-1-in-10-medical-products-in-developing-countries-is-substandard-or-falsified>> accessed 15 February 2025

²⁴⁶ P Sharma and RYK Chan, 'Counterfeit Proneness: Conceptualization and Scale Development' [2011] 27 (5 &6) Journal of Marketing Management

behavioral, cognitive, and socio-normative characteristics that represent a consumer's natural predisposition to choose counterfeit items over genuine ones. Such traits contribute to their disregard for public welfare concerns or legal risks associated with counterfeiting.²⁴⁷

Price sensitivity and brand sensitivity further shape consumer preferences for counterfeit goods. Price-sensitive consumers often perceive counterfeit products favourably due to their affordability²⁴⁸, linking price sensitivity to factors such as income, perceived risk, and value consciousness²⁴⁹. Conversely, brand sensitivity can drive consumers toward counterfeits as they offer the semblance of prestige associated with luxury brands²⁵⁰. Many consumers purchase counterfeit luxury items to project social status while balancing authenticity and affordability.²⁵¹ These behaviours are influenced by subjective norms and personal attitudes, as outlined in the **theory of reasoned action**, which suggests that counterfeit proneness can significantly impact consumer decision-making norms and behaviors.²⁵² Together, these factors highlight the complex interplay of socio-economic and psychological influences driving the counterfeit market.

ANALYSING THE BIAS CREATED BY WESTERN PERSPECTIVES

The 2024 Special 301 Report, despite presenting itself as an in-depth review of the worldwide enforcement of intellectual property (IP), continues to show a historically Western-centric and politically charged stance of the U.S. Trade Representative. It often favors the interests of the United States over economic interests, while the sovereignty of developing countries in the setting of IP policies suitable for their specific socio-economic context is overlooked.²⁵³ The strategy by focusing on issues like counterfeit goods and bad-faith trademark registrations bypasses the core responsibility of the right holders under the TRIPS Agreement and fails to build evidence or a critical study of the existing enforcement structures.²⁵⁴ The approach of

²⁴⁷ Amir Nia and Judith L Zaichkowsky, 'Do Counterfeits Devalue the Ownership of Luxury Brands?' [2000] 9 (7) *Journal of Product & Brand Management*

²⁴⁸ *Ibid*

²⁴⁹ Ludovica Cesareo, Alberto Pastore, and Fabrizio Cesaroni, 'Counterfeiting and Culture: Consumer Attitudes Towards Counterfeit Products' [2015] *Journal of Marketing Trends*

²⁵⁰ *Supra* note 230

²⁵¹ *Supra* note 238

²⁵² M Fishbein and I Ajzen, 'Belief, Attitude, Intention, and Behavior: An Introduction to Theory and Research' (Addison-Wesley 1975)

²⁵³ Stephen S Roach, 'America's Weak Case Against China' (Project Syndicate, 24 April 2018) <https://www.project-syndicate.org/commentary/america-case-against-china-trade-deficit-by-stephen-s-roach-2018-04> accessed 15 February, 2025

²⁵⁴ Viviana Muñoz-Tellez, Nirmalya Syam, and Thamara Romero, *Time for a Collective Response to the United States Special 301 Report on Intellectual Property* (Policy Brief No. 65, South Centre 2019)

copyright in the report also illustrates the narrow view, focusing a lot on enforcement without contributing to a more balanced regime for global IP.

It neglects the experience with fair use, which could serve as a model for developing flexible copyright frameworks elsewhere. Instead of encouraging multilateral discussions on exceptions and limitations that support public access and innovation, the report emphasizes alleged deficiencies without offering actionable solutions, further reinforcing its political motivations²⁵⁵. The report is also flawed because of its repetitious nature and inability to progress in its analysis. It does not appear relevant since it repeats information from past years and simply delivers small changes, failing to present new viewpoints or inventive answers to the most pressing issues, such as online piracy. The OECD is another institution that offers more in-depth and useful knowledge. The report's analysis of indigenous innovation programs and technology transfer requirements demonstrates a bias toward US economic interests by neglecting developing nations' attempts to strengthen domestic innovation capacity and solve socioeconomic inequities. This promotes a limited, Western-centric narrative, undermining global attempts to promote inclusive and fair intellectual property governance.

SOLUTIONS

To address the issues raised by cross-border intellectual property protection, it is necessary for harmonization of legal regimes and de-escalation of geopolitical tensions. It can be achieved through bilaterally and multilateral agreements such as FTAs and IP treaties that make for common standards of protection of IP²⁵⁶. These acts may serve as instruments for aligning national legislation with international norms and decreasing disparities in intellectual property protection between jurisdictions. Efforts, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), have already begun to unify worldwide IPs, but more effort will be required to satisfy evolving global requirements.

Furthermore, the establishment of international authorities or regulations for resolving cross-border intellectual property issues may minimize the uncertainty that plaintiffs face. For instance, an adjudicatory body could demand the setup of a united international organisation to establish transparency and clarity on issues pertaining to the territorial extent of IP rights and infringement remedies. This will result in resolution of disagreements like the one seen in

²⁵⁵ *Supra* note 50

²⁵⁶ Ashmika Agrawal and Paramita Choudhury, 'TRIPS-Plus Regulations in Bilateral and Statewide Trade Agreements: Their Bearing on Intellectual Property Rights and International Trade' [2023] *Alliance Journal of Intellectual Property Law*

*Equustek Solutions Inc. v. Google Inc.*²⁵⁷ by setting up international standards concerning the scope of enforcement in the Cross-border IP disputes.

Diplomacy and dialogue between nations play a crucial role in establishing mutual confidence and trust which pave the path for technology transfer. Negotiations through diplomatic channels can help harmonise the IP law and enforcement system, leading to more international collaborations and innovative advancements. In the events of technology transfer, the government and corporate authorities can engage in public dialogues to eliminate threats concerning IP theft while making channel for knowledge exchange.

At last, countries such as the United States which possess strong IP protection systems should come forward and engage in diplomatic efforts to improve compliance within weaker nations. For example, while utilizing Special 301 sanctions, the United States might exert diplomatic and economic obligations on trade partners to advance their intellectual property laws and compliance system²⁵⁸. But such pressure tactics must be accompanied by equal levels of negotiations to avoid worsening international tension and balance trade distortions.

By standardizing legal norms, promoting diplomatic discourse, and establishing clear methods for enforcement, the international community may discover solutions to cope with the complications in cross-border IP protection and promote a more conducive climate for global innovation and collaboration.

CONCLUSION

In conclusion we observe that intellectual property (IP) enforcement presents difficult issues in South and Southeast Asia, where counterfeiting and piracy are still pervasive. These concerns originate from socioeconomic differences, cultural attitudes, and enforcement discrepancies, which are frequently criticized by Western nations. While the USTR Special 301 Report aims to address these issues, its approach is mainly based on Western goals, frequently going beyond international accords such as TRIPS. This causes tension because emerging nations must balance global IP aspirations with their local developmental and socioeconomic requirements. Addressing these difficulties requires a more inclusive and balanced approach to IP governance. Instead of focusing just on penalties, joint efforts should prioritise solutions that take into consideration each nation's specific circumstances. Strengthening international relationships, aligning legislative norms, and cultivating mutual

²⁵⁷ *Google Inc v Equustek Solutions Inc* [2017] SCC 34

²⁵⁸ Graeme W Austin, 'A Conflicts of Law Approach to Intellectual Property Research' in Irene Calboli and Maria Lilla Montagnani (eds), *Handbook of Intellectual Property Research: Lenses, Methods, and Perspectives* (Oxford, 2021; online edn, Oxford Academic, 23 September 2021)

understanding can help to build a framework that safeguards innovation while also promoting long-term growth. By overcoming these gaps, the global community may achieve more equitable and effective IP enforcement, benefiting artists, enterprises, and societies globally.

