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Key Outcomes of the Pre-Workshop Questionnaire – Summary

Submitted by: Russia



**Workshop on Protection of Intellectual
Property Rights in Digital Content Trade
20-21 April 2021**

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Protection of Intellectual Property Rights in Digital Content Trade

Key Outcomes of the Pre-Workshop Questionnaire

The questionnaire was based on close and open-ended questions and serves as a starting point for the online Workshop dedicated to the protection of intellectual property rights in the digital content trade, which will be held on 20-21 April 2021. The materials were prepared by the Russian State Academy of Intellectual Property (RSAIP).

Please note, that this is a draft overview and it will be reviewed in the final APEC publication upon the completion of the Virtual Workshop.

Note

From 12 to 31 March 2021 the Pre-Workshop Questionnaire was circulated to gather information from APEC economies on existing domestic regulation and applied practices in the field of intellectual property rights (IPR) protection in digital content trade, views of APEC economies on most critical challenges to the IPR protection in digital content trade, as well as APEC economies' examples on how to tackle such challenges.

Background Information

The digital economy is a key phenomenon at the current stage of global development. The use of digital technologies contributes to economic development and trade facilitation and ensures the inclusive nature of regional production and trade. The information technology (IT) sphere has opened opportunities to lower distribution costs and enlarge the market for content-related businesses.

Recently, there has been a surge in the ability of consumers and businesses to reach the Internet and to engage in digital content trade and e-commerce. However, the inadequacy or worse, lack of IPR protective mechanisms leads to higher vulnerability of created products on the Internet. The processes of copying or altering digital information have become easier and more available with IT development. In this regard, violation of IPRs is one of the key impediments to digital content trade. There are challenges to protecting intellectual property in the digital environment that need to be tackled timely at both domestic and international levels. APEC economies' individual and joint efforts should also be focused on the development of a transparent and efficient regulatory environment which enables trade in digital content and related business activities while ensuring that intellectual property rights are respected.

This project directly relates to the following APEC General Project Account (GPA) core priorities: (1) Digital Society; (2) Strengthening Inclusive Growth through Structural Reform and by Increasing Opportunities for Women and MSMEs; (3) Improving Connectivity and Deepening Regional Economic Integration (Integration 4.0). The project also directly supports the APEC goals set in the APEC Action Agenda on Advancing Economic, Financial and Social Inclusion in the APEC Region by "capitalizing on opportunities and overcoming challenges presented by the Fourth Industrial Revolution", as well as the goals set out in the APEC Cross-Border Electronic Commerce Facilitation Framework (including the creation of a favorable regulatory eco-system for e-commerce, facilitation of business participation in global e-commerce). The proposed project also contributes to the implementation of the APEC Internet and Digital Economy Roadmap.

The main objective of the questionnaire was to examine existing challenges APEC economies are facing in the field of IPR protection in digital content trade; to gain a deeper understanding among APEC economies of how the issues relating to IPR protection in digital content trade are regulated on the international, regional and domestic level; and to review APEC economies' best practices and exchange experiences in promoting more effective protection of IPR in digital content trade.

Key Outcomes

The survey analysis has shown that at the international level as well as at the domestic level, most APEC economies do not have any harmonized definition of digital content trade or digital trade, however, the vast majority indicated the importance of such term and definition. That proves the necessity to elaborate an agreed definition of the digital content trade. At the same time, most of the APEC economies do not keep statistics on the share of digital content trade in total GDP. Some respondents reported the share of e-commerce, and the share of creative works. Some economies are working on the approach to calculating detailed statistics concerning the digital content trade.

In regard to the legal regulation, the most economies indicated a lack of legal frameworks governing the digital content trade. However, some economies indicated that they protect the digital content as a part of Copyright that grants the protection upon creation of a work, including a digital one. Some economies indicated that they have a general framework for commerce, including electronic commerce.

As per registration of digital content, some economies provide optional registration of such works with local IP offices, however, it is not an obligation due to the copyright well-established practice that covers digital works as well.

In the case of a federal state or trade union, some economies have harmonized rules and legislation relating to digital trade across their economies. A few concerned economies provided recent updates of their domestic legislation in terms of copyright regulation and e-commerce.

Regarding cross-border transactions, most economies indicated that IP rights have territorial nature, therefore they apply the territorial principles. However, they do not have any specific regulation for cross-border transactions covering the digital content trade directly. Concerning cross-border disputes related to the digital content trade, a number of economies indicated that parties can independently choose the way of legal protection and enforcement of their rights, including the court system, that also might depend on terms and conditions specified within the contracts signed between those parties. Some respondents also indicated alternative dispute resolution, such as arbitration and mediation. Some economies reported that they are parties to several bilateral or multilateral agreements concerning cross-border trade related to copyright-protected works, as well as the cross-border trade overall, such as TRIPS, WIPO's agreements, ASEAN, as well other regional bilateral and multilateral agreements between the economies.

As legal barriers the responding economies see the complexity and uncertainty in legal protection of digital content, particularly on Internet that is not specifically regulated in most economies. However, some of them mentioned mechanisms of Internet control and regulation as well as fighting piracy, for example, blocking websites that infringe the copyright or contain pirate content. Partially, accessibility is also one of the key issues along with the uncertainty and lack of legal regulation, as well as lack of trust or qualified professionals in that area. Some respondents expressed their concerns relating to the fee and tax payments that are unclear for the digital environment.

More than half of respondents highlighted their activities focused on the digital content trade and its protection, including raising awareness among the population. Some economies engage both public and private sectors to elaborate on the issues relating to the regulatory framework and collective management of rights. A few respondents have relevant working groups and communities to address such issues and to finding out possible solutions that would be acceptable for everybody. Some respondents highlighted their domestic programs dedicated to the Digital Economy. Most economies allow the collective management of rights in terms of copyright-protected works, such as literature, movies, music, etc.

Due to the COVID-19 pandemic and its consequences, the vast majority of the responded economies reported a significant increase in the digital environment that boosted digital activity, including trade. Some respondents recognized the transition of some industries into the digital environment, such as education and creative industries. Thus, most of them had to rapidly adapt to the digital transformation process taking into account the epidemiological situation across the globe. However, most economies did not face any infringement boost, perhaps due to enhanced measures focused on legal protection and raising public awareness.

Conclusions and Recommendations for the Upcoming Workshop

Taking into account the received responses and the outcomes of the survey, it is recommended to the APEC economies to elaborate on a common definition of the digital content trade that would be mutually agreed at the international level.

Since most respondents indicated IPR protection in the digital environment as one of the key issues it would be reasonable to discuss the regulation and governance of the digital content trade at the international level as well as the approaches to the IPR protection in the digital environment.

Among the respondents, the vast majority of statistics agencies do not separate the share attributed to the trade in content transmitted and consumed in digital format due to definitional and measurement challenges and the absence of uniform or consistent methodology. Thus, it seems to be reasonable to determine a common methodology for collecting and estimating such statistic data.

Among others key aspects for further discussion with the international community are rights infringement and piracy fighting, as well as regulation of e-commerce. Nowadays, the lack of such regulatory frameworks is obvious, therefore enforcement measures for cross-border infringements is another important topic. Finding out appropriate solutions that might help in resolving the said issues would be of great benefit to the international community.