



**Asia-Pacific
Economic Cooperation**

2021/CTI/WKSP2/006

Day 1 Session 1

Intellectual Property and e-Commerce in APEC

Submitted by: Policy Support Unit, APEC Secretariat



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



IP and e-commerce in APEC

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20-21 April 2021 • Moscow

Advancing Free Trade
for Asia-Pacific Prosperity



Multiple factors are coming together to drive digitalization

- Improved access to infrastructure
 - 60 percent in the region connected to the internet
 - 25.7 per 100 inhabitants have broadband subscriptions
- Continued advancements in technology and offerings
 - 5G, cloud, e-payment, etc.
- Increased awareness and changing mindset
 - Coding courses in schools, digital skills for seniors, work-life balance, etc.
- COVID-19 measures
 - Work-from-home, safe distancing



However, important to recognize more work need to be done to optimize its benefits

A. Electronic transactions framework

B. Openness and cross-border related issues

C. Consumer protection and privacy issues

D. Cybersecurity/ network security

E. Infrastructure-related aspects

F. Market access



IP and intermediary liability

- Digitalization and IPR protection:
 - Increased use of marketplace and social media platforms.
 - Rise in online piracy and counterfeiting.
- Need for clarity on where and who liability rests, especially for third-party use or content:
 - Internet service providers (ISPs)?
 - Platforms (e-commerce, social media, etc.)?
- Liability/IP enforcement.
- IP issues in WTO e-commerce negotiations.

Two complementary components

Database of relevant laws and regulations

- Provides a snapshot of where members are on areas with implications on digital trade.
- Understands variation in situations and approaches pertaining to these areas.

Case studies

- Captures in more details approaches by economies to promote digital trade.
- Showcases examples of specific laws, regulations and initiatives that could facilitate digital trade.

Approaches to intermediary liability in APEC

By legal model

Little to moderate liability

- Lack of relevant legislation.

Conditional liability

- Often rely on safe harbors.
- Exempt from liability if intermediary adopts certain policy.

Greater liability

- Require active steps/monitoring by intermediary.
- Content deemed illegal can be broad.
- Insufficient response can lead to various penalties.

Approaches to intermediary liability in APEC

By subject matter

General/broad

- Apply to different kinds of content.

Targeted

- Apply to specific IP rights (e.g., copyright).
- Underlying laws/regulations clearly specifying coverage and circumstances where safe harbors apply.
- Notice-and-takedown approach:
 - Variation in requirements and process (e.g., document, time).
 - Alternatives include notice-and-notice, notice-and-trackdown, and notice-and-staydown.

Approaches to intermediary liability in APEC

Definition of intermediaries

- Varies considerably among economies

Intermediary liability in FTAs

- Some FTAs contain rules on intermediary liability (e.g., limiting liability).

Case study – IP enforcement through stakeholder cooperation in the Philippines

Background:

- Limited applicability of safe harbor provisions to some intermediaries.
- 2018 proposed amendments to IP Code requiring online platforms to assume responsibility for ensuring that products are genuine.

Actions:

- Focus group discussions to understand approach taken by platforms.
- 2020 proposed amendments require platforms to comply with notice-and-takedown measures, but stop short at holding intermediary accountable for counterfeit products listed by third parties.
- Arrangement with online platforms to recognize IPOPHL Enforcement Office (IEO) report as basis for takedown.
- Exploring MoU to create a uniform notice-and-takedown mechanism.

Capacity building needs

1. Encouraging the adoption of international standards, practices, guidelines and recommendations in economies' laws and regulations.
2. Improving mutual recognition and interoperability among the laws, regulations and initiatives.
3. Strengthening international cooperation with regards to specific aspects of digital trade.
4. Instituting new approaches to regulations, including the use of technology to facilitate process.
5. Ensuring that laws, regulations and initiatives are practical, reasonable and can be operationalized efficiently.

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