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## **NABA LEGAL COMMITTEE – INFORMATION ABOUT PIRACY DEVICES AND APPS**

Online digital piracy has become an ongoing battle for IP creators and artists, content owners, and broadcasters and other content distributors, among many others. Consumers are increasingly purchasing streaming devices, including set-top boxes (STBs) and media app players that are designed and marketed to facilitate access to pirated content (“piracy devices and apps”). Piracy devices and apps have made it increasingly easy for consumers to access live channel and on-demand pirated content and watch it on the television set.

NABA’s members are concerned with the impact piracy devices and apps may have on the legitimate content distribution system. Devices preloaded with piracy apps that utilize Kodi open source software are a major concern, as the number of users had increased to over 38 million worldwide as of late 2016.

### **Recent Legal Developments**

Some important recent cases with respect to piracy devices and apps include:

- In the U.S., a federal district judge recently granted a preliminary injunction against the seller of a popular pre-loaded piracy device known as Tickbox. The members of the Alliance for Creativity and Entertainment (which comprises the major Hollywood studios plus Netflix and Amazon) sued Tickbox for intentionally inducing users to access and stream illegal copyrighted content without authorization. The district court granted the plaintiffs’ motion for a preliminary injunction. Central to the court’s decision was the defendant’s marketing which encouraged users to access the latest movies and TV shows through Tickbox without having to pay any subscription for that content and to “cut the cord” from their TV providers. The court concluded that the plaintiffs were likely to succeed on the merits of their inducement claims and ordered Tickbox to cease providing access or support to apps that facilitate piracy

- In Canada, a group of media companies including Bell Canada, Rogers, and Videotron, sued the operator of TVAddons, a website that was then the world's most popular source or "repository" of Kodi piracy add-ons. In February of this year, the Federal Court of Appeals upheld an earlier lower court decision to grant the plaintiffs an Anton Piller order and TRO restraining the defendant from offering piracy addons (or apps). The Court of Appeal rejected the defendant's argument that the site was a neutral conduit, noting that the site claimed to be the world's best source for infringing addons. The Court concluded that the site was clearly designed to facilitate access to infringing material, and therefore, the Anton Piller order and TRO were properly granted.
- In Mexico, a Civil Court last year prohibited the sale of Roku devices due to their widespread use in that market for streaming pirated content through the use of "private channels." This case is an important step toward the punishment of illegal activities consistent with intellectual property laws in Mexico. As of today, many of Roku's illegal channel subscriptions have been canceled by Roku.
- In Europe, in the "*Filmspeler*" case, the European Court of Justice stated that the sale of a multimedia player which enables films that are available illegally on the internet to be viewed easily and for free on a television screen could constitute an infringement of copyright. The judges ruled that the app player is indisputably sold to make a profit, in particular to obtain direct access to protected works available on streaming websites without the consent of the copyright holders. Therefore, they supported the local court's interpretation that this activity constituted a "*communication to the public*" without consent of the copyright holders, according to the European Union Copyright Directive.
- In the UK, sellers of STBs that have pre-installed apps to watch unauthorized content could face up to ten years in prison. Several criminal cases have been brought against sellers, who have received sentences as long as four years' imprisonment. Piracy devices and apps are coming under increased pressure, with many of the UK's ISPs, government agencies, broadcasters and rights holders joining forces to disrupt the streams being pushed out across the internet. Recently, a major supplier of Kodi boxes loaded with the ability to watch Premier League football matches illegally has been fined thousands of pounds. As part of the same crackdown, users are now having their accounts deleted by the corresponding authorities.

### Actions

There are various approaches that are being explored to address this issue, including:

- Direct, *voluntary* collaboration from Platform owners, seeking that they take unilateral, proactive action (e.g., taking down illegal private channels on Roku devices, removing social media profiles advertising sale of piracy devices, ceasing payment processing for such devices, banning the sale of devices on e-commerce platforms such as Amazon, etc.). Working jointly with platform owners can be helpful and beneficial.
- Enforcement actions through administrative, civil, or criminal actions where appropriate.

- Gaining a deeper understanding of the piracy devices and apps ecosystem, including the flow of money, how and where the content is sourced, and how and which third party hosting providers are used.
- Coordinating best efforts and joint strategies with other stakeholders (such as content owners, other broadcasters, CMOs, associations, sports-rights holders, coalitions, and ISPs).
- Raising public awareness of the risks associated with piracy devices and apps. Piracy devices and apps raise cybersecurity and even potentially health and safety issues. Independent cybersecurity experts are finding vulnerabilities in Kodi piracy apps that enable malware to be installed on users' devices. In addition, many devices may not meet local minimum requirements for electrical safety and/or appropriate registration with local regulatory authorities for WiFi devices.

## **NEXT STEPS**

Collaboration amongst industry stakeholders is important. NABA members should share information about new strategies in order to combat the use of piracy devices and apps for illegal streaming of copyrighted content.

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