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Development of
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Centre for Development of Intellectual Property and Research



South Asian
GLOBAL
INTELLECTUAL
PROPERTY
SUMMIT

2024

SOUTH ASIA'S JOURNEY THROUGH INNOVATION AND COLLABORATION

Insights from the **South Asian Global
Intellectual Property Summit 2024**

Edited by

Prof. (Dr.) Syamala Kandadai

Prof. (Dr.) M. R. Sreenivasa Murthy

Mr. Dipendu Das



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South Asia's Journey through Innovation and Collaboration

Insights from the South Asian Global Intellectual Property Summit 2024

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Centre for Development of Intellectual Property and Research
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The *Centre for Development of Intellectual Property and Research (CDIPR)* is a premier institution established as *India's First Non-Governmental Research Organisation dedicated to Intellectual Property Rights (IPRs)*. Operating under the *Naovina Development of Intellectual Property and Research Foundation* as a registered Non-Governmental Organisation, CDIPR is dedicated to promoting and protecting Intellectual Property Rights within India, thereby fostering a conducive environment for innovation and creativity. In today's rapidly evolving global landscape, intellectual property has emerged as a critical asset that drives economic growth, technological advancement and cultural development. Recognizing the immense value and potential of IP, the CDIPR was established. With a mission to promote and protect Intellectual Property Rights in India, CDIPR is dedicated to fostering innovation and safeguarding creativity across various sectors. The primary objective of CDIPR is to promote and protect Intellectual Property Rights within India, thereby fostering a conducive environment for innovation and creativity. We are a community, Connecting 2200+ Members & 12,300+ Global Academicians on Intellectual Property Rights. Please visit our website (<https://cdipr.ac.in>) for more details.

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CHAPTER 07

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

- Shivani Singh* and Khushi Kesari**

ABSTRACT

Intellectual property protections are essential for promoting innovation, supporting economic growth, and regulating international trade. However, considerable variations in how rich and developing nations implement and enforce intellectual property rules frequently result in disputes. These challenges are particularly evident in South and Southeast Asia, where counterfeit markets are widespread and attract criticism from Western nations. This study examines how Western countries perceive the IP practices of South and Southeast Asia, focusing on counterfeit markets and using the United States Trade Representative (USTR) Special 301 Report as the basis for analysis. The Special 301 Report identifies nations with inadequate IP protections or barriers to market access. Countries such as China, India, and Vietnam are often flagged for their role in producing and distributing counterfeit goods, which undermine global IP frameworks, harm legitimate businesses, and pose risks to consumer safety. The analysis explores the socio-economic and cultural factors that sustain counterfeit markets, including economic incentives, weak enforcement mechanisms, and societal attitudes toward IP rights. It also critiques the USTR Special 301 Report, which is often seen as a tool for advancing Western economic interests, imposing IP standards that may go beyond the requirements of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

By examining these issues, this study highlights the challenges faced by developing nations in balancing domestic priorities with global IP expectations. It argues for a more equitable approach to IP governance that considers the unique socio-economic conditions of each region while addressing the global problem of counterfeiting.

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

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INTRODUCTION

Intellectual property (IP) rights are critical in promoting innovation, facilitating economic growth, and enabling international commerce. These safeguards enhance global advancement by guaranteeing artists and innovators exclusive rights to their work. However, the implementation and enforcement of IP laws vary significantly across countries, reflecting disparities in economic development, governance structures, and cultural attitudes. These differences often result in tensions, particularly between developed and developing nations, as they navigate conflicting priorities in the global IP landscape. These issues are particularly prominent in South and Southeast Asia. The region is home to large counterfeit marketplaces, which have drawn worldwide attention, notably from Western nations who see these activities as a threat to their economic and geopolitical interests. Counterfeit goods, ranging from luxury items to pharmaceuticals, not only undermine legitimate businesses but also pose significant risks to consumer safety and trust. Countries like China, India, and Vietnam frequently find themselves at the center of these debates, as they are often identified as major hubs for the production and distribution of counterfeit goods.

The United States Trade Representative (USTR) Special 301 Report¹⁷⁸ has become a central mechanism for documenting and addressing these issues. The report, published yearly, highlights nations with insufficient intellectual property protections or market access hurdles and serves as an important instrument for altering global views and policies on intellectual property enforcement. However, the report has encountered criticism for its alleged bias toward supporting Western economic interests, enforcing IP standards that frequently exceed the limits of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement¹⁷⁹. This dynamic underscores a broader tension between the global enforcement of IP norms and the unique socio-economic conditions of developing nations.

LEGAL AND GEOPOLITICAL ISSUES IN CROSS-BORDER IP PROTECTION

Cross-border intellectual property (IP) protection poses a number of legal and geopolitical issues due to the disparity in legislative frameworks across nations. Because of the geographical character of IP rights, degrees of protection and enforcement vary, resulting in discrepancies in the protection of

¹⁷⁸ *The United States Trade Representative (USTR) Special 301 Report* USTR Report <https://ustr.gov/issue-areas/intellectual-property/special-301>

¹⁷⁹ *Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement* (15 April 1994) WTO Agreement, Annex 1C.



intellectual property rights (IPR). These disparities often lead to geopolitical tensions, particularly between developed and developing nations, as countries 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 Canadian and U.S. courts in the *Equustek Solutions Inc. v. Google Inc.*¹⁸⁰ case over the territorial scope of a remedy for infringement demonstrates the challenges arising from varying national perspectives on IP enforcement¹⁸¹. The lack of a uniform international adjudicatory body exacerbates this issue, diminishing legal clarity for parties participating in transnational intellectual property disputes.¹⁸²

Furthermore, the technology transfer issue between nations frequently becomes entangled with concerns about intellectual property theft, with governments hesitating to share technical developments due to fears of infringement in jurisdictions with insufficient IP protection¹⁸³. This creates barriers to international collaboration and stifles innovation. Disparities in IP protection also lead to trade imbalances, with developed countries accusing others of exploiting their innovations without providing adequate protection. The *Westerngeco LLC v. ION Geophysical Corp.*¹⁸⁴ case highlights such concerns, where the U.S. Supreme Court let a patent owner retrieve lost earnings for abroad infringement, raising doubts about the extend of US patent monopolies to global markets and questioning the territorial concept of IP¹⁸⁵.

Finally, cross-border intellectual property protection is becoming increasingly caught in geopolitical disputes. Intellectual property, as a critical component of international trade, leads to economic disparities. These disparities can lead to commercial conflicts, with charges of intellectual property abuse intensifying geopolitical tensions.

¹⁸⁰ *Google Inc v Equustek Solutions Inc* [2017] SCC 34.

¹⁸¹ 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

¹⁸² 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>

¹⁸³ 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.

¹⁸⁴ *WesternGeco LLC v ION Geophysical Corp* 138 S Ct 2129 (2018).

¹⁸⁵ 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)



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

The legal landscape of intellectual property (IP) in South and Southeast Asia gives a dynamic picture owing to a combination of local economic factors, international influences, and cultural factors. Several countries, including Vietnam, Malaysia, Indonesia, and India, have been implementing comprehensive IP frameworks in accordance with international agreements like the TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights. For instance, the Copyright Act of 1957 and the Trademarks Act of 1999 for India have strong copyright and trademark laws, with amendments over the years to tighten its enforcement in the face of digitalization. In like manner, Indonesia had recently passed the Law on Copyrights in 2014 to combat piracy especially from the entertainment and software industry¹⁸⁶. 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.¹⁸⁷

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 Philippines¹⁸⁸. 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 enforcement¹⁸⁹. Real-world practicalities, however, include the fact that many people lack awareness of IP laws and informal economies often rely on counterfeit

¹⁸⁶ Peggy Chaudhry and Alan Zimmerman, *The Economics of Counterfeit Trade: Governments, Consumers, Pirates and Intellectual Property Rights* (Springer-Verlag Berlin Heidelberg 2009).

¹⁸⁷ Alexander S. Dent, 'Intellectual Property, Piracy, and Counterfeiting' (2016) 45 *Annual Review of Anthropology* 17, first published online as a Review in Advance 6 April 2016 <https://doi.org/10.1146/annurev-anthro-102215-100127>
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.

¹⁸⁸ 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.

¹⁸⁹ Vivencio O. Ballano, *Sociological Perspectives on Media Piracy in the Philippines and Vietnam* (original version revised, erratum available at https://doi.org/10.1007/978-981-287-922-6_8)

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.



goods to survive. Advocacy groups have complained about the social cost of an overly strict approach, which hits mostly low-income 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 amended 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 Special 301 Report as a critical 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 regime are.

The USTR's Special 301 report divides countries based on their IP protection, their enforcement practices, and barriers to market access. There are three categories of countries: "Priority Foreign Country" (PFC), "Priority Watch List," and "Watch List." Classification helps the US government to focus on addressing intellectual property problems; yet, it may result in extreme trade actions. These categories assist to shape the US government's reaction to IP issues, which may include punitive trade sanctions. Section 182 of the Trade Act of 1974 outlines the categorization procedure, defining PFC as a legislative category.

A nation is designated as a PFC if its "onerous or egregious" intellectual property policies restrict appropriate protection or fair market access to US enterprises. This designation can be made when a government has not showed good faith in discussing intellectual property problems or has made insufficient progress in discussions. Trade sanctions on a PFC include tariffs and import restrictions, as well as the loss of trade incentives. The President may also direct the USTR to take further punitive



actions within the scope of US international relations. The "Priority Watch List" is a non-statutory category of nations with major IP deficiencies, but not as severe as those in the PFC category.

These countries still face major intellectual property issues that require attention but are not extreme. The "Watch List" contains countries with IP issues that are less severe than those listed on the Priority Watch List. These countries can improve their standing by entering bilateral negotiations or making significant reforms to their IP systems. Classification of countries on the Watch List or Priority Watch List can change with improvement. For instance, Hong Kong was taken off the Watch List in 1999 when it addressed its copyright infringement issues. On the other hand, a country that fails to improve will be demoted. India, for instance, was moved from the Priority Watch List to PFC in 1991 for not having sufficient measures in place to protect patents. The classification process by the USTR involves consultations with various stakeholders, including industry groups, 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 PFC¹⁹⁰. 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 way 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 Agreement on Trade Related Aspects of Intellectual Property Rights to protect American Companies Intellectual Property rights overseas, the Omnibus Trade and Competitiveness Act of 1988 was passed¹⁹¹.

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 a case-by-case 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.

¹⁹⁰ 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.

¹⁹¹ 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).



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 that in 1982, it resulted in the loss of 131,000 employment in five of the US manufacturing sectors¹⁹².

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 empowered the President to enter into trade agreements and to remove foreign import restrictions found to be interfering with United States commerce. 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. In 1980, the office was officially known as the United States Trade Representative. The Omnibus Trade and Competitiveness Act of 1988 further strengthened the mandate of the USTR in this regard, making it the principal trade

¹⁹² Gary M. Hoffman and George T. Marcou. (1989, November 5). LAW AND SOCIETY. Retrieved from <https://www.washingtonpost.com/archive/opinions/1989/11/05/law-and-society/8309c64a-4349-418e-823e-8c3056a67a0b/>



advisor to the President and centralizing US international trade negotiations. Moreover, this legislation increases accountability by requiring regular reports by the USTR both to the President and the Congress. The Uruguay Round Agreements Act of 1994 further reinforced the role of the USTR as leader in international trade negotiations particularly with the WTO. This marked the further expansion of the role of USTR in key trade agreements such as NAFTA and the WTO Agreement. The 2000 Trade and Development Act further established new offices within USTR, which included the Chief Agricultural Negotiator and Assistant U.S. Trade Representative for African Affairs. These roles helped ensure that the negotiations of agricultural interests were focused 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 checks¹⁹³. 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 shocks¹⁹⁴. 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,

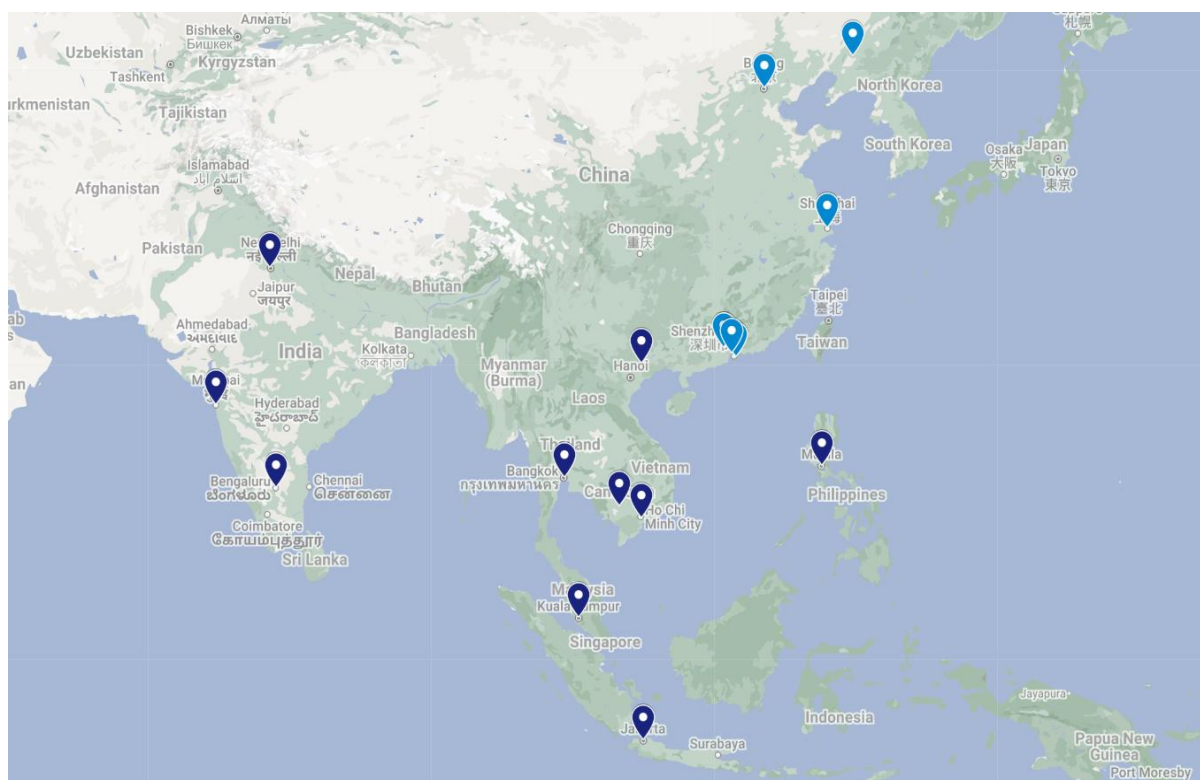
¹⁹³OECD/EUIPO, *Global Trade in Fakes: A Worrying Threat* (OECD Publishing 2021)

¹⁹⁴ US Immigration and Customs Enforcement, 'Dangers of Counterfeit Items' (ICE, 2024)
<https://www.ice.gov/features/dangers-counterfeit-items>



72 markets, 25 markets are situated in this region, the number goes even higher when other countries in Asia are counted as well¹⁹⁵. These markets act as crucial hubs for the distribution of fake and pirated products, undermining the value of legitimate trade and intellectual property rights. Among the listed nations, China stands out as the leading contributor, with the highest number of both online and physical markets engaged in piracy and counterfeiting activities.

PHYSICAL MARKET¹⁹⁶



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 listed 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

¹⁹⁵ Office of the United States Trade Representative, '2023 Review of Notorious Markets for Counterfeiting and Piracy' (2023)

¹⁹⁶ The Source of the Analysis is the USTR Special report 301



Chinese counterfeit sellers have adapted 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 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, throughout Southeast Asia, criminal networks play a significant role in the creation and distribution of counterfeit products, driving a billion-dollar underground industry. Weak intellectual property protection, corruption, and inadequate enforcement worsen the problem, with serious repercussions such as financial losses for legitimate businesses, reduced government tax income, and dangers to consumer safety. There have been attempts in the region to combat counterfeiting, such as enhancing intellectual property legislation, raising public awareness, and extending law enforcement, yet the problem persists.

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

The data as per the latest reports show that despite constant efforts from the past years counterfeiting remains a significant concern. Despite intensified searches by local officials, Cambodia's Central Market in Phnom Penh remains a major hub for counterfeit clothes, accessories, and pirated media. Similarly, in India, marketplaces like as Heera Panna in Mumbai and Tank Road in Delhi are major hubs for counterfeit products, including cosmetics, electronics, and clothes, and they frequently serve as wholesale suppliers to other regions. Enforcement efforts in these areas remain inconsistent, with penalties failing to dissuade counterfeit sellers effectively. In Indonesia, markets like Mangga Dua in Jakarta showcase the challenge of inadequate enforcement, as raids are rare and warning letters are largely ineffective. Meanwhile, at Malaysia's Petaling Street Market, despite significant number of raids by police, counterfeit items are still openly accessible. These marketplaces emphasize the expanding regional threat of counterfeit commerce, with many items traced back to Chinese vendors.

Efforts to combat counterfeiting in Southeast Asia vary, with some markets showing promise through increased enforcement and cooperation. In the Philippines, Greenhills Shopping Center in Metro Manila has taken drastic measures such as suspending repeat violators and collaborating with the authorities to transition into a legal shopping destination. Thailand's MBK Center in Bangkok has launched high-profile enforcement and public education programs, but the continued presence of counterfeiting in the market underscores the need for additional large-scale raids and tighter lease termination measures for noncompliant businesses. In Vietnam, markets like Tan Thanh and Saigon Square remain major distributors of counterfeit goods, particularly Chinese-made products, despite some government raids and enforcement actions. However, low penalties and local protectionism continue to hinder progress. Across the region, these examples illustrate the complexities of



addressing counterfeiting, requiring stronger legal frameworks, consistent enforcement, and collaboration between governments and private stakeholders.

ONLINE MARKET¹⁹⁷

The 2023 Notorious Markets List (NML) emphasizes the growing complexity of online piracy and counterfeiting networks, with South and Southeast Asia becoming as key hubs 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. Additionally, "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 not only

¹⁹⁷ The Source of the Analysis is the USTR Special report 301



undermine the creative industries but also pose significant barriers to legal enforcement due to their decentralized and adaptive structures.

Emerging types of piracy represent emerging methods that extend beyond basic torrenting. Platforms like as *2EMBED* and *WHMCS Smarters* demonstrate "piracy-as-a-service" concepts, allowing people to set up and commercialize illegal operations with little knowledge. *2EMBED*, for example, offers a content management system to other pirate streaming sites that monetize through adverts, whilst *WHMCS Smarters* provides solutions for illegal IPTV firms. Such services facilitate the growth of piracy by decreasing the entrance hurdles for new operators, resulting in an interconnected ecosystem of unlawful platforms. Furthermore, sites like *Aniwatch* and *Vegamovies*, which specialize on niche markets such as anime or regional material, cater to very particular audiences, maintaining their appeal despite enforcement efforts against their domains.

Finally, e-commerce sites like *Bukalapak* and *IndiaMART* demonstrate how online markets can 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 products.¹⁹⁸ 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 operate¹⁹⁹. 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

¹⁹⁸ Chinese Counterfeit Products Dominate the Worldwide Fakes Industry' (Daxue Consulting, 9 February 2023) <https://daxueconsulting.com>

¹⁹⁹ OECD and European Union Intellectual Property Office, Global Trade in Fakes: A Worrying Threat (22 June 2021)



goods, with studies suggesting that as much as 40% of items sold in these markets may be fake.²⁰⁰ 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 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.²⁰¹

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 example, research in Singapore and China shows that low-income people are more likely to buy pirated media and software. Similarly, low-income households in impoverished nations are particularly vulnerable to counterfeit pharmaceutical products, driven by their lower cost. 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.²⁰²

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

²⁰⁰ 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>

²⁰¹ Beyond China: The Counterfeiting Challenge in Southeast Asia' World Trademark Review (2012)

²⁰² US Immigration and Customs Enforcement, The Dangers of Counterfeit Items <https://www.ice.gov/features/dangers-counterfeit-items>

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>



in organised 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 products²⁰³. These people are less inclined to examine the legal or ethical ramifications of purchasing counterfeit goods. CP includes emotional, 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.²⁰⁴

Price sensitivity and brand sensitivity further shape consumer preferences for counterfeit goods. Price-sensitive consumers often perceive counterfeit products favourably due to their affordability²⁰⁵, linking price sensitivity to factors such as income, perceived risk, and value consciousness.²⁰⁶ Conversely, brand sensitivity can drive consumers toward counterfeits as they offer the semblance of prestige associated with luxury brands.²⁰⁷ Many consumers purchase counterfeit luxury items to project social status while balancing authenticity and affordability.²⁰⁸ 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 behaviors²⁰⁹. Together, these factors highlight the complex interplay of socio-economic and psychological influences driving the counterfeit market.

ANALYSING THE BIAS CREATED BY WESTERN PERSPECTIVES

²⁰³ P Sharma and RYK Chan, 'Counterfeit Proneness: Conceptualization and Scale Development' (2011) *Journal of Marketing Management* Vol 27 (No5&6)

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

²⁰⁴ Amir Nia and Judith L Zaichkowsky, 'Do Counterfeits Devalue the Ownership of Luxury Brands?' (2000) 9(7) *Journal of Product & Brand Management*

²⁰⁵ *Ibid* 25

²⁰⁶ Ludovica Cesaro, Alberto Pastore, and Fabrizio Cesaroni, 'Counterfeiting and Culture: Consumer Attitudes Towards Counterfeit Products' (2015) *Journal of Marketing Trends*

²⁰⁷ *Ibid* 27

²⁰⁸ *Ibid* 25

²⁰⁹ M Fishbein and I Ajzen, *Belief, Attitude, Intention, and Behavior: An Introduction to Theory and Research* (Addison-Wesley 1975)



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 overlooked²¹⁰. 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 structures²¹¹. The approach of 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 motivations²¹². 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

²¹⁰ 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>

²¹¹ 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)

²¹² 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>



of protection of IP²¹³. 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 example, an adjudicatory body may require a united international organization to establish clarity on matters such as the geographical extent of intellectual property rights and sanctions for infringement. This would resolve disagreements like those in *Equustek Solutions Inc. v. Google Inc.*²¹⁴ by setting up a clear international consensus over the scope of IP enforcement in cross-border disputes.

Diplomacy and dialogue between countries are also important to instill mutual trust and pave the way for technology transfer. Countries can negotiate and align their intellectual property laws and enforcement systems through diplomatic channels, enabling for more international collaboration and innovation. In the case of worries about technology transfer, the government and corporations can open up discussions to dispel concerns about IP theft while allowing knowledge exchange.

Finally, countries with strong IP protection systems, such as the United States, might engage in diplomatic efforts to improve compliance among weaker states. For example, while utilizing Special 301 sanctions, the United States might exert diplomatic and economic obligation on trade partners to advance their intellectual property laws and compliance system²¹⁵. But such pressure tactics have to 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.

²¹³Ashmika 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*

²¹⁴ *Google Inc v Equustek Solutions Inc* [2017] SCC 34.

²¹⁵ 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)



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 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.

