

# Copyright Infringement and the Availability of Licensed Audiovisual Content in the English-speaking Caribbean



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# **COPYRIGHT INFRINGEMENT AND THE AVAILABILITY OF LICENSED AUDIOVISUAL CONTENT IN THE ENGLISH-SPEAKING CARIBBEAN**

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**STUDY COMMISSIONED BY THE BUILDING RESPECT FOR IP DIVISION  
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<sup>1</sup> The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.



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# COPYRIGHT INFRINGEMENT AND THE AVAILABILITY OF LICENSED AUDIOVISUAL CONTENT IN THE ENGLISH-SPEAKING CARIBBEAN

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## EXECUTIVE SUMMARY

1. This research paper examines the possible causal relationship between the availability of English language audiovisual content in the Caribbean and piracy levels in the region. Given the lack of consistent, hard data across the region, the research relies on individual accounts of the situation from various stakeholders – from intellectual property offices to regulators and key commercial players.
2. One exception to the above-mentioned anecdotal sources has been an *ad hoc* piracy demand report<sup>3</sup> providing the following key findings:
  - Caribbean countries rank high for TV streaming domain visits per internet user - Barbados was the second highest in the world, followed by the Virgin Islands (6<sup>th</sup>), Trinidad and Tobago (13<sup>th</sup>) and the Bahamas (15<sup>th</sup>).
  - The most popular TV and film domains in each country reflect the dominant language in that country (English, Spanish and French).
3. One recurring observation is that “lack of English language” audiovisual content is no longer perceived as severe. The general feeling is that the situation has improved noticeably over the past three to five years.
4. The arrival of subscription-based online services (in the consumer’s language and with a choice of subtitles) partly accounts for that impression – account access-sharing with relatives living in the United States is also reported as a feature enjoyed by some.
5. Observers (as well as the author, through direct visits to relevant websites) report the existence of a large assortment of licensed content from high street satellite or cable operators.
6. However, frustration is vehemently expressed regarding the prominence of Spanish language (in advertising, forward programming information, interstitials, subtitling) in content licensed to the Caribbean region’s English-speaking territories. Those packages offend English-speaking Caribbeans as visibly not tailored for them, a sort of a best effort to satisfy local demand – this applies to pay-TV<sup>4</sup> packages, too (the extra cost only exacerbating the frustration).
7. Over-the-top (OTT) services (such as subscription-based online services) are not financially affordable by all, especially in the less privileged corners of the Caribbean region. Those services, in terms of cost, come on top of an Internet connection, and do not carry live content such as news and sports, which are described as strong TV audience drivers in the region.

<sup>2</sup> The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

<sup>3</sup> MUSO. The geographical scope of the MUSO report differs slightly from that of the present research.

<sup>4</sup> Pay TV - Refers to terrestrial multichannel TV services such as cable TV, Internet protocol television (IPTV), digital terrestrial TV (DTT) and direct-to-home (DTH) satellite antenna multichannel TV receiving broadcasting directly from satellites. Pay TV is also known as subscription TV ([tatt.org.tt](http://tatt.org.tt)).

8. Access to pirate sources of content (often illegal Internet protocol TV (IPTV) packages) is considered as normal and commonplace. The general feeling is that the problem has been allowed to fester and is, today, very difficult to eradicate.
9. Examples of content protection efforts by IPOs, regulators and commercial players are visible in a number of territories (e.g. Belize, Bermuda, Cayman Islands, Jamaica, and Trinidad and Tobago). Those go from educational public campaigns to cable retransmission takedown orders, legal proceedings, including cease-and-desist letters.
10. A deficit in homegrown Caribbean content has been underlined by various sources. Obstacles to its production and distribution is generally attributed to costs. That type of content, currently confined to user-generated-content services (sometimes with large followings), is viewed as regrettably lacking from Caribbean television services, thus making audiences turn towards foreign (mostly US) content.
11. One outstanding issue is that of the unlicensed retransmission of free-to-air<sup>5</sup> channels by cable operators. Those channels are typically of US-origin and their pick-up is facilitated by satellite footprint overspill. This is unresolved to date and escalated a long time ago to government level.
12. Local authorities have exercised forbearance regarding those channels, arguing that ordering their takedown by cable operators would fuel piracy to an inordinate extent.
13. There is a confusing amalgamation of issues between the unlicensed retransmission of discretionary/copyrighted channels (“cable channels” in the U.S.), and the unlicensed retransmission of free-to-air channels. The former has been tackled through enforcement –although not everywhere in the region – but also through wholesale purchasing solutions such as that provided by the Caribbean Cable Cooperative. The unlicensed retransmission of free-to-air channels, however, has led to a stalemate between cable operators and licensors. The former have historically contested what they consider to be prohibitive fees or non-licensing, while the latter find themselves locked into obligations tied to a US-only exploitation of their networks (obligations which notably involve complex agreements with the Guilds regarding residuals for foreign reuse of the content).
14. Compulsory licensing is regularly suggested as a possible solution to the problem – drawing on the Canadian/US 1988 free trade agreement-induced solution, and steering clear of the Bahamas’ compulsory license experience, regarded as disastrous by rights holders.
15. In the meantime, piracy is strong, but amendments to improve local copyright legislation are underway in certain countries in the region (e.g. Trinidad and Tobago, Belize).
16. Action against piracy not only needs to be robust, but also to be coordinated to be simultaneous between commercial players, authorities, and the courts so that violations cease to find easy and safe refuge.

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<sup>5</sup> Relates to television and radio services, broadcast in clear (unencrypted) form on standard public or commercial networks, for which viewers do not have to subscribe or pay (tatt.org.tt).

# ANALYSIS OF ISSUES SURROUNDING THE AVAILABILITY OF LICENSED AUDIOVISUAL CONTENT IN THE ENGLISH-SPEAKING CARIBBEAN

## INTRODUCTION

1. Public statements and press reports have for a number of years lamented market friction and disparity between the supply and demand of audiovisual, mostly linear, English-speaking content in several English-speaking jurisdictions of the Caribbean, leading to the piracy of content.<sup>6</sup>
2. Some observers have described the legal supply of content as being very limited or off-target, mainly addressing Spanish-speaking audiences in majority English-speaking jurisdictions. This research is intended to gauge the situation and inform reflection, including possibly further research, on the matter.
3. It should be noted that this subject matter was already analysed and discussed in much depth in 2005 through thirteen sessions of a Government Cabinet-appointed advisory committee on cable and video piracy in Trinidad and Tobago, leading to the production of a report laying out specific, laudable recommendations. Much of its reflection and avenues are still valid today, sixteen years later. Notwithstanding, technology and the market have changed, and with them, piracy, too, for the worse. This report's objective is to take stock of the market's regional situation in 2021, and allow reflection, but also action, to continue on the basis of updated intelligence.

## METHODOLOGY

4. The bulk of this project was conducted through online contacts – interviews, instant messaging, as well as email communication – complemented by public domain information, with the exception of a commissioned piracy study – further details can be obtained from WIPO upon request.
5. Several major data and market analytics vendors were unable to provide hard data that was either specific to the jurisdictions in focus or up-to-date. Similarly, several regulators were unable to provide up-to-date information as they await the tabling of their annual reports in Parliament or are – at the time of drafting – engaged in their audit processes, or failed to answer requests. The same scarcity of information is also regrettable around certain prevalent types of piracy such as that of illegal retransmission devices – it has been assumed, from the sheer number of times it was mentioned during interviews, that that type of piracy is rampant in the region (see Appendix 2).
6. Interviewees for this research have been encouraged to answer questions candidly in their various professional capacities, and to also answer from a consumer's standpoint. Most if not all have gladly obliged. The author is grateful to all interviewees for their assistance throughout the project.
7. The full geographic scope of this research has comprised the following territories: Antigua and Barbuda, Anguilla, the Bahamas, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, Saint-Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and Turks and Caicos.

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<sup>6</sup> Green and Williams.

## HISTORY, GEOGRAPHY AND CULTURE

8. Researching the English-speaking territories of the Caribbean immediately reveals the distinct cultural identity of the region and invites the necessary factoring of its unique geography and history in any analysis of its situation from an economic and trade point of view.

9. The diaspora of Caribbean populations in the United States should not be overlooked in this analysis. According to the Migration Policy Institute's tabulation of 2017 data from the U.S. Census Bureau, 4,415,000 immigrants from the Caribbean live in the United States. Aggregate figures for Jamaica, Trinidad and Tobago, Barbados, Grenada, Dominica, the Bahamas, and St. Vincent and the Grenadines alone nearly match the individual figures for Cuba and the Dominican Republic. More precisely, Jamaican immigrants and Trinidadians and Tobagonians account respectively for 16.9% and 5.3% of all Caribbean immigrants living in the United States. Testimonies oftentimes underline the fact that US-based relatives of Caribbean-based nationals have easier access to audiovisual content than the latter, while being located so close to each other geographically. Furthermore, that family connection is highlighted in the aforementioned section.

10. "The Caribbean is on the doorsteps of the United States"<sup>7</sup>. The diaspora factor is compounded by geographic proximity and thus even the sharing of the same time zones.

A critical element appears to be the length of time that it has taken from the inception of the distribution of the first signals to the permeation of piracy (whatever its form or shape) through society, and the first licensed distribution of content, albeit imperfect at times. Caribbean nationals interviewed emphasise that they have grown up with U.S. content<sup>8</sup> (see *Exacerbating Elements* below), and that in the absence of any straightforward sources over the years, turning to illegal sources has become the norm, the convenient, and even reliable source, without second thoughts. We will see further that information campaigns aim to remedy this situation. In other words, legally or illegally, U.S. content has always been the content of choice that Caribbeans turn to. The Internet has compounded the situation by offering a window on to the full array of content available in the US, with one key characteristic being that it is made up of "fast and flashy (...) content that stimulates consumer demand".<sup>9</sup>

11. Notwithstanding, once those elements are acknowledged and understood, considering the English-speaking Caribbean (let alone the entire Caribbean) as a homogeneous block would be a serious error. A mere comparison of GDP data across a section of those countries<sup>10</sup> shows very clear disparities between those countries in terms of wealth and thus purchasing power of their citizens. Demographics also account for significant differences, which translate in demand for specific types of audiovisual content – e.g. the Cayman Islands have a significant affluent, expatriate population from the United Kingdom, the United States and Canada, among others.

Differences also translate in the powers of the authorities – for example, the Guyana National Broadcasting Authority "does not monitor audiovisual programs with respect to them being licensed/pirated or not" while recognising however that "a broadcast license does not condone/authorize the broadcast of pirated/unlicensed programs"<sup>11</sup>. Conversely, the Telecommunications Authority of Trinidad and Tobago (TATT), monitors and enforces licenses (with caveats that are discussed below).<sup>12</sup> In short, there are different levels of compliance in different countries, and thus no harmonized enforcement as a region.

12. The population (and market) size of each territory, as further discussed herein, gets in the way of each country's access to the international visibility that it deserves when it comes to market economics and bargaining power.

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<sup>7</sup> Spence.

<sup>8</sup> Rochester and Grant.

<sup>9</sup> Spence.

<sup>10</sup> See Appendix.

<sup>11</sup> Boyal.

<sup>12</sup> Douglas and Moore.



13. The matter discussed in this report cannot be dissociated from the socio-cultural aspects of the region. The sensitivities around access to audiovisual content often draw on the history of at least an entire generation, on exposure to said content during childhood, and on the feeling and vocal claim of not being Central American, North American, South American, but indeed, Caribbean.<sup>13</sup>

14. The emotions oftentimes expressed by interviewees of this study must be acknowledged as objectively as possible and should not be ignored, both in order to understand the genesis of the situation, and going forward, in the contemplation of solutions or improvements.

## TELEVISION BROADCASTING

15. The historically prevalent means of distributing television content in the Caribbean has been by satellite (with a pan-regional footprint) and cable (through networks developed at national level). Satellite offers direct-to-the-consumer, licensed content requiring receiving/decrypting technology (e.g. a “set-top box” at the point of consumption) from the satellite service provider, but satellites are also used to feed licensed content to local cable networks who in turn distribute it to their individual customers. Some channels, both terrestrial and cable, are specific to each country and viewed locally, usually carrying local content<sup>14</sup>. Today, cable operators double up as Internet service providers, with distinct economics: while cable TV retransmission is financially constrained by the purchase of rights or licenses (a fixed cost that operators cannot reduce – unless they reduce their offer), the Internet service typically does not have the same cost constraint, thus allowing wide fluctuation in prices, at the operator’s discretion, depending on how aggressive operators want to be in any given market.<sup>15</sup>

16. Currently, licensed content is typically distributed by satellite (e.g. DIRECTV Caribbean), or by cable (e.g. FLOW, Digicel, etc.). Channels are licensed directly, on a per-country basis, or are sublicensed by a Latin American licensee (hence, usually in that case, presence of Spanish language subtitling, ads, interstitials, etc.) Some channels, including premium, are distributed non-exclusively by satellite and cable in the same territory<sup>16</sup>.

17. Television broadcasting has historically been the main medium supplying audiovisual content in the region. This content has largely been of foreign, and specifically U.S., origin. U.S. content is the lead driver for demand.

18. At this point, an important distinction must be made between free-to-air<sup>17</sup> or over-the-air television (e.g. ABC, CBS, NBC, Fox) and services more commonly referred to as subscription channels or pay-TV<sup>18</sup> channels (e.g. HBO).

19. An essential concept is that of satellite signal overspill, as illustrated in Fig.1 below. The satellite transmission of television signals within the United States is at the genesis of the unlicensed retransmission of said signals in the Caribbean basin, since the region is within the footprint of the satellites in question.

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<sup>13</sup> Graham.

<sup>14</sup> <https://www.broadcastingcommission.org/services/radio-tv-cable-services/licensees> /.  
<https://tatt.org.tt/RadioandTV/ListofTelevisionBroadcasters.aspx>.

<sup>15</sup> Hather.

<sup>16</sup> <https://www.hbocaribbean.com/>.

<sup>17</sup> TATT September 2020.

<sup>18</sup> Ibid.

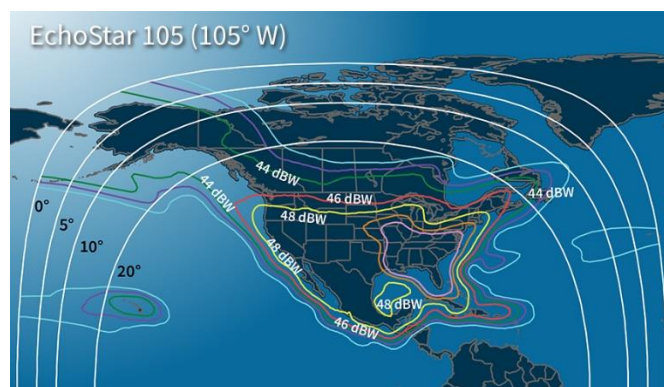


Fig. 1. Footprint of satellite Echostar 105<sup>19</sup> / SES11 carrying the Dish Network offer<sup>20</sup>.

20. Excerpt from SES's press release upon the successful positioning of the satellite (emphasis supplied):

*SES-11 is designed to accelerate the **development of the U.S. prime video neighbourhood and the delivery of high definition (HD) and ultra-high definition (UHD) channels.** It offers comprehensive coverage over North America, including Hawaii, Mexico and the **Caribbean**. The satellite's C-band capacity is optimised for digital television delivery, and will join SES-1 and SES-3 at the centre of SES's North American orbital arc which reaches more than 100 million TV homes and has 100% penetration in the US.*

21. While satellite transmission has played a pivotal part in the discussions around the unlicensed retransmission of television signals since the 1980s, that point is increasingly moot given the ease of access to unlicensed Internet retransmissions, all the more so given the high penetration of broadband Internet in certain territories – e.g. 84% of households in Trinidad and Tobago in September 13, 2020, i.e. identical to that of the United States<sup>21</sup>). While in the past satellite decoders used to be carried by individuals from the United States to the Caribbean, today in some areas there appears to be a decoder market sometimes operated in broad daylight through brick-and-mortar stores<sup>22</sup>. As to Internet protocol devices, their small size is thought to enable discreet smuggling in large amounts. Some observers predict that before long they will dematerialise in the form of apps<sup>23</sup>.

22. In the context of unauthorized consumption, it is also necessary to mention virtual private networks (VPNs). VPNs allow sensitive data to be safely transmitted over the Internet – hence their wide use in corporate environments – but also allow their users to hide their IP address or use one belonging to another jurisdiction, thus offering the possibility of circumventing geographic restrictions applied to the access of audiovisual content over the Internet. Hence, VPN users in the Caribbean stand a good chance of being able to access content available in the United States by using an US-based Internet protocol address.

## PIRACY IN THE CARIBBEAN

23. As mentioned above, the theory under examination in this study is a seeming vicious circle in which consumers consume infringing content by reason of a lack of licensed content, whereas

<sup>19</sup> Echostar.

<sup>20</sup> [https://my.dish.com/cms-files/channelcards/2021/0301/Channel\\_Lineup.pdf](https://my.dish.com/cms-files/channelcards/2021/0301/Channel_Lineup.pdf).

<sup>21</sup> USTelecom.

<sup>22</sup> Hather.

<sup>23</sup> Plantin.

licensors decline to increase the amount of content available to avoid further exposure to high levels of piracy.

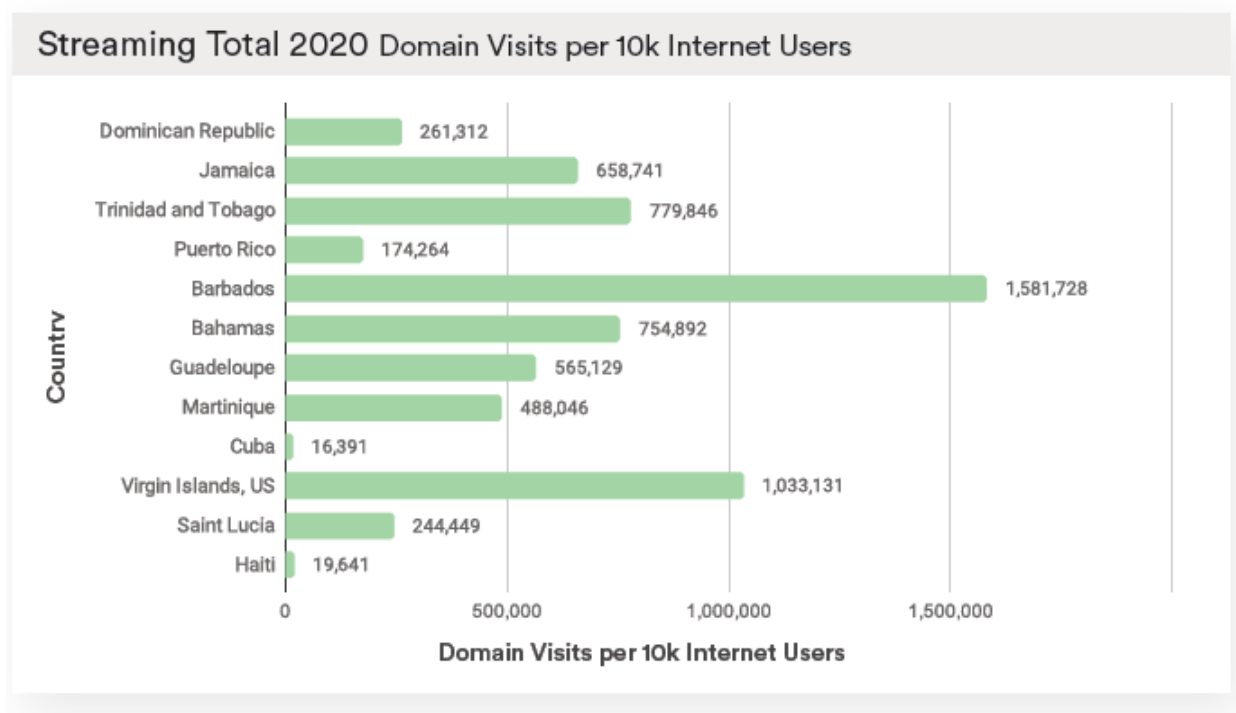


Fig. 2. Visits to pirate streaming sites in 2020 per 10,000 internet users (Source: MUSO)

24. The research commissioned for this study provided information about the preferences and demographics of consumers of unlicensed content:

- Key consumption differences are clear between the top TV titles for streaming and torrenting - streaming audiences appear to favor drama, while torrenting audiences visit more superhero and action titles.
- Film torrent and streaming demand is dominated by sci-fi, action and animation.
- The top 10 TV domains are dominated by anime and cartoon content. The top domain in the region is animeflv.net, with five other similar domains appearing in the top 10.
- The Mandalorian Season 2 was the biggest hit of the year, and despite only being released in November 2020, it had the highest Demand Volume of all the titles.
- Contagion (2011) is ranked eighth for average streaming Demand Volume per month. Visits to this title peaked during the start of the Covid-19 pandemic.
- The Caribbean region has a high proportion of young users when compared to the global demographic profile. The 24-34 age group is 2.9% higher than the global age profile. Jamaica has the highest share of 18-34 year old users (...).
- Piracy is predominantly a male pursuit: 67% of visitors to pirate sites are male, 37% female. The male profile of Caribbean pirates is 2.9% higher than the global gender profile.

25. As in other regions, piracy in the Caribbean countries takes various forms. A first type of piracy, commonplace across the globe, can be found at Internet user level. Measurement of that type of IP infringement shows staggering figures for some Caribbean territories in focus. Indeed, Barbados appears as the second highest country in the world in terms of TV streaming domain visits per Internet user. The U.S. Virgin Islands (outside of the scope of this study) ranks 6<sup>th</sup>, while Trinidad and Tobago ranks 13<sup>th</sup> and the Bahamas 15<sup>th</sup>.<sup>24</sup>

26. A second type of IP infringement practice in the Caribbean revolves around the use of IPTV devices fully loaded with add-ons enabling access to infringing streams of content. This phenomenon is present elsewhere and has given rise to case law at national (UK) and EU level in 2017 allowing for injunctions requiring the blocking of such unlicensed streams.<sup>25</sup> The reason for that particular type of remedy in Europe is the same reason why data is difficult to come by in the Caribbean or anywhere else in the world: action on marketplaces and advertising for those devices is not efficacious.

27. A third type of IP infringement lying at the crux of the matter in the Caribbean has been receiving prominent publicity in official positions denouncing the vulnerability of IP rights in the region: the unlicensed retransmission of free-to-air TV signals by several cable operators. While this practice was condoned by none of the interviewees for this study – and vocally criticized by most – some very helpfully contextualized the phenomenon diachronically as described in the next section.

## GOOD FAITH GENESIS

28. In the particular case of Jamaica, the aftermath of the tragically devastating hurricane Gilbert (8-19 September 1988) is associated with times of reconstruction. Jamaicans trace back their purchases of the first satellite dishes to those days. The dishes and decoders were typically purchased in Miami by individuals who would install them in their homes in Jamaica. The Caribbean has historically been in the footprint of the satellites carrying U.S. channels (including the four “networks” – initially ABC, CBS, NBC, Fox). The practice took place at a time when no commercial offer existed on the ground, and was further facilitated thanks to the interconnection of the Caribbean with the United States (see “diaspora” below). Testimony indicates that at the time, the practice was considered as normal by the individuals engaging in it in the sense that everything – from purchase of hardware and subscription, to transport and installation – was paid for in good faith. As time went by, the signals started to be shared with family members and neighbours in Jamaica until the practice grew organically to provide the signal to entire streets and neighbourhoods, leading to what is commonly referred to today as “community cable operators”.<sup>26</sup> Authorities realised the need to regulate this phenomenon, demanding proper licensing for the retransmission of channels. Cable operators describe finding themselves between licensors demanding license fees beyond their ability to pay, and authorities, which were increasingly attracted by the unparalleled penetration of the cable operators for public service communication.<sup>27</sup>

## EXACERBATING ELEMENTS

29. High-quality U.S. content, because of its nature, has greater audience appeal than blander local content and/or packaging. Indeed, there is little or no homegrown content.<sup>28</sup> Cost is cited as a major stumbling block for local production, where content makers end up spending money to air their

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<sup>24</sup> MUSO.

<sup>25</sup> See, e.g., *The Football Association Premier League Ltd v British Telecommunications Plc & Ors* [2017] EWHC 480 (Ch) (March 13, 2017) (“live” blocking injunction).

<sup>26</sup> Graham.

<sup>27</sup> Ibid.

<sup>28</sup> Zuniga.

creations, leading to distribution on outlets such as YouTube, sometimes with very strong local following.<sup>29</sup>

30. A recurring element, which appears to have fuelled local frustration has to do with the freshness of transmission or re-transmission, and language.

31. Language appears very prominently in the list of grievances from local consumers, and is related to some licensing or sublicensing arrangements, which although legal, keep alive the collective impression that the audiovisual content is another overspill from another region (Latin America). Problems that are pointed out are that subtitling in Spanish will cease to appear when the characters speak Spanish (no English subtitling appearing), for example; and that the advertising, interstitials and forward programming information are in Spanish (things, are, however, improving)<sup>30</sup>. The consumer experience can, as a result, appear below that enjoyed through illegal outlets. The sentiment of feeling linguistically, culturally and geographically overlooked is kept alive through that experience.

32. Lack of simultaneousness (or unreasonable delays) in the transmission or retransmission of audiovisual content is also cited as an element that has exacerbated the grievances of local consumers.<sup>31</sup> Historically, one popular U.S. soap opera was accessible in the Caribbean with a lag of several years/seasons after the U.S. market. Its distribution was discontinued, only to resume later without the many intervening seasons.<sup>32</sup>

33. The importance of simultaneousness is of course never more acute than for live events, news and sports, all major drivers of audiences in the Caribbean<sup>33</sup> (and likely everywhere in the world). This is an intrinsic trait of linear television, be it pay or free-to-air. An incident that has marked the minds of Jamaicans is the delayed retransmission<sup>34</sup> of a live, popular U.S. singing competition in which a Jamaican performer participated (and was victorious). Regardless of the responsibilities behind the incident, the delayed retransmission of that show was a perfect storm hitting all the buttons and levers of national pride, the transborder community sentiment linked to the diaspora, and the related fan base support that this event and performer would normally elicit. This appeared to be a one-off example of how this debate can become deeply emotional and galvanizing.

## INTERNATIONAL TRADE CONSIDERATIONS AND THE ISSUE OF “FORBEARANCE”

34. The question of unlicensed consumption of audiovisual content in the Caribbean has been the subject of national and international discussion for many years.

35. 2005 saw a national initiative materialise under a “Cabinet-appointed Committee to advise on how to address cable and video piracy in Trinidad and Tobago”. The Committee, which met thirteen times between February 2 and September 20, 2005, produced a detailed report<sup>35</sup> that included proposals to tackle piracy. In the report’s introductory comments, the Committee’s Chairman states: “For over two decades, the unauthorized copying and consuming of copyrighted music and audiovisual material has been rampant in Trinidad and Tobago”. A number of points in the report extend beyond Trinidad and Tobago and apply to some extent to the rest of the English-speaking Caribbean.

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<sup>29</sup> Rochester and Grant.

<sup>30</sup> Spence.

<sup>31</sup> Moore.

<sup>32</sup> *Days of our Lives*, on CBC TV in Barbados. Rochester and Grant.

<sup>33</sup> Richards-McKay.

<sup>34</sup> Jamaica Observer.

<sup>35</sup> The Cable & Video Piracy Committee.

36. The Committee's work concluded with the following proposals:

- The ceasing of the re-transmission of all unauthorized channels by January 1, 2006 (by the time of the passing of the Copyright Amendment Bill 2005).
- The significant ramping up of resources allocated to prosecution, law enforcement, and the Customs and Excise Division of the Ministry of Finance. This also included the training of magistrates.
- The refraining from adding any new channels without programming agreements.
- The fostering by TATT of a level playing field between current and future licensees/concessionaires.
- The recommendation that the Minister should suspend or terminate the broadcasting license granted to any cable/satellite provider acting in breach of Section D15<sup>36</sup> of the statutory form of concession agreement, which requires all broadcast copyright content to be licensed.
- The recommendation that the Government of Trinidad and Tobago seek assistance from the United States Department of Commerce in negotiating (with the copyright owners' representatives) legitimate access to US domestic cable television channels with "footprints" covering Trinidad and Tobago.
- The recommendation that the CARICOM Secretariat, with WIPO's assistance, start negotiations on behalf of cable operators across the Caribbean, specifically noting the "difficulties of legitimate access to US domestic cable television".
- Rejection of compulsory licensing.

A separate set of proposals focused on "DVD street piracy". A dissenting report on behalf of the Cable Company of Trinidad and Tobago Unlimited (CCTT) was annexed to the report.

37. The United States Trade Representative (USTR) has paid considerable attention to the issue of unlicensed retransmission over the last decade. In 2012, Trinidad and Tobago was listed in the Special 301 Report of the USTR<sup>37</sup>, along with the Bahamas, Barbados and Jamaica, it being alleged that cable operators had failed to pay remuneration for public performance of music. In 2013, Trinidad and Tobago was included in the Special 301 Report's Watch List<sup>38</sup>, which stated: "The United States is concerned that the local cable operator refuses to negotiate with the Copyright Music Organization of Trinidad and Tobago ("COTT"), the local performing rights organization, for compensation for public performance of music, including for music written by American composers." The country remained on the Watch List until 2016, when it was removed, on the grounds that: "the Telecommunications Authority of Trinidad and Tobago (TATT) took concrete steps to enforce its concessions agreement that requires broadcasters to respect IPR and to obtain all required permissions from IP owners prior to broadcasting programs, information, and other material."<sup>39</sup>

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<sup>36</sup> "The concessionaire shall not broadcast any programs, information or other material without first obtaining all required permissions from the relevant owners of any intellectual property in such programs, information and other material, and shall not otherwise infringe the intellectual property rights of any person."

<sup>37</sup> "The Special 301 Report (...) is the result of an annual review of the state of intellectual property (IP) protection and enforcement in U.S. trading partners around the world, which the Office of the United States Trade Representative (USTR) conducts pursuant to Section 182 of the Trade Act of 1974, as amended (the Trade Act, 19 U.S.C. § 2242)." - [https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20(final).pdf).

<sup>38</sup> "Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IP protection, enforcement, or market access for U.S. persons relying on IP. Provisions of the Special 301 statute, as amended, direct the United States Trade Representative to develop action plans for each country identified as a Priority Watch List country that has also been on the Priority Watch List for at least one year." [https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20(final).pdf).

<sup>39</sup> <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>.

38. In June 2017, a regional seminar between public and private stakeholders was organized in Jamaica by CARICOM and the U.S. Government.<sup>40</sup> The participants included telecommunications regulators (including the U.S. Federal Communications Commission), national IP offices, audiovisual licensors and licensees from across the region. At the conclusion, the participants agreed on a number of steps, including:

- Programmers present would negotiate collective licence agreements for available content, including a payment fee system, which would be extended particularly to small community operators collectively through a single entity before the end of 2017. Consequently these Operators would cease broadcasting unlicensed program content.
- Operators that were national or Regional in scope would consider with each other and with their Programmers the possibility of negotiating region-wide collective licences.
- Programmers present undertook to discuss with other suppliers the offering of a feed specific to the Caribbean market containing US programming, as opposed to the simultaneous retransmission of existing US feed, in addition to expanding current efforts at Caribbean targeted programming, including the replacement of Spanish with English in advertising and programming.
- Regional regulators would consider the outcome of these new licensing arrangements in determining the regulatory actions that they will take to bring about cessation of unlicensed broadcasting, including the termination of forbearance.
- Programmers present would work with regional regulators, IP Offices, Collective Management Organizations and local content creators to produce anti-piracy material targeted to regional audiences which programmers, local operators and relevant Government bodies would distribute, including to schools.
- Stakeholders would establish a Committee to oversee preparations for a follow-up event, including determining an appropriate agenda.
- The region would follow up with Canada and the United States on the possibility of the Caribbean entering into an arrangement for access to US broadcast content similar to that afforded border regions in Canada.<sup>41</sup>

In the event, the follow-up event has yet to take place. It does not appear that the proposals for collective licensing were realized. However, in 2019 the Telecommunications Authority of Trinidad and Tobago launched a public education campaign, “Yuh Don’t Know What Yuh Don’t Know”, covering, among other subjects, the risks to consumers of piracy.<sup>42</sup>

39. In 2020 the USTR once again included Trinidad and Tobago in the Special 301 Watch List, alleging “a lack of enforcement actions against operators that broadcast unauthorized cable and satellite channels, which Trinidad and Tobago had pledged when it was removed from the Watch List in 2016.” The USTR asserted that “progress has stalled since 2016, after TATT exercised forbearance on enforcement against operators that continue to retransmit U.S. over-the-air broadcast signals without authorization. In October 2019, the United States welcomed an announcement that TATT was ending the forbearance period by the end of the year. However, since that announcement, TATT has extended this forbearance period at least two times, most recently to July 31, 2020.” In 2021 Trinidad and Tobago remained on the Watch List, it being asserted: “The United States remains

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<sup>40</sup> *Joint CARICOM-US Public-Private Sector Stakeholder Seminar and Dialogue on Broadcast Licensing and Enforcement in a Converging World*, Kingston, Jamaica, June 21-22, 2017. See news report: *Caribbean broadcasters discuss licensing issues with US providers*, Jamaica Observer, Friday, June 23, 2017, available at [https://www.jamaicaobserver.com/business/caribbean-broadcasters-discuss-licensing-issues-with-us-providers\\_102578](https://www.jamaicaobserver.com/business/caribbean-broadcasters-discuss-licensing-issues-with-us-providers_102578).

<sup>41</sup> Spence, Asgarali.

<sup>42</sup> TATT Annual Report 2019.

concerned about the lack of enforcement action against companies in Trinidad and Tobago that violate the agreement, particularly the two state-owned telecommunications networks, both of which broadcast unlicensed U.S. content.”<sup>43</sup>

40. Beyond Trinidad and Tobago, the Bahamas appeared in the Special 301 Report in 2001, with a scheduled “out-of-cycle review” around its statutory compulsory license (see *Non-Voluntary (Compulsory) Licensing*, below) in respect of re-transmissions by cable television systems of any copyrighted work transmitted over its territory, including encrypted transmissions.<sup>44</sup> The Bahamas appeared on the Watch List in 2002, and was put on the Priority Watch List in 2003 and 2004, before being lowered to the Watch List in 2005 following encouraging legislative efforts. It was finally taken off the lists after 2006.

41. As mentioned above, Jamaica, which had been on the Watch List for several years, appeared in 2012 with a first mention of unauthorized programming by cable operators and failure to compensate for performing rights.<sup>45</sup> Jamaica remained on the Watch List every year to 2019 for a number of reasons including unlicensed retransmission of audiovisual content, but was commended in the 2016 Special 301 Report, albeit with caveats:

*In April 2015, the Broadcasting Commission of Jamaica publicly identified 98 channels as being illegally transmitted and issued a directive to cable licensees to cease the illegal transmission of 19 channels by August 2015. This first phase of enforcement action has been met with widespread compliance. However, subsequent removals have not been mandated and dozens of additional channels continue to be broadcast illegally by local operators.*<sup>46</sup>

Jamaica was removed from the Watch List in 2020 after passing a new Patent and Designs Act in January 2020 – the 2019 Special 301 Report commended efforts by the Broadcasting Commission on issues in focus in this study.

42. Barbados appeared on the Watch List in 2013. The USTR stated that “the United States is concerned that section 82 of the Copyright Act of 1988 creates a compulsory licensing scheme allowing for the interception and retransmission of United States cable programming by local cable operators without the consent of, and without adequately compensating, United States rights holders.”<sup>47</sup> Barbados has stayed on the Watch List every year since 2013, including in 2021. Several reasons are cited, including the fact that “the United States continues to have concerns about the unauthorized retransmission of U.S. broadcasts and cable programming by local cable operators in Barbados, particularly state-owned broadcasters, without adequate compensation to U.S. right holders.”<sup>48</sup>

43. While the USTR’s Special 301 Report is global in scope, the United States also issues a biennial report to Congress on the Operation of the Caribbean Basin Economic Recovery Act (CBERA). The CBERA launched the U.S. trade preferences programs for the Caribbean and Central American region in 1983. They are known collectively as the Caribbean Basin Initiative (CBI). This provides another point of pressure inasmuch as jurisdictions allowing the broadcast of copyright material, including film and televised content, belonging to U.S. copyright owners without consent are excluded from designation or accessing the system.<sup>49</sup>

44. In its 13<sup>th</sup> CBERA report, dated 31 December 2019, the USTR indicates being unaware of IP violations in Antigua and Barbuda (for government-owned entities), the Bahamas, the

<sup>43</sup> [https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20(final).pdf).

<sup>44</sup> <https://ustr.gov/sites/default/files/2001%20Special%20301%20Report.pdf>.

<sup>45</sup> [https://ustr.gov/sites/default/files/2012%20Special%20301%20Report\\_1.pdf](https://ustr.gov/sites/default/files/2012%20Special%20301%20Report_1.pdf).

<sup>46</sup> <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>.

<sup>47</sup> <https://ustr.gov/sites/default/files/2013%20Special%20301%20Report%20-%20published.pdf>.

<sup>48</sup> [https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20(final).pdf).

<sup>49</sup> The Office of the United States Trade Representative (USTR) p.30.



British Virgin Islands, Grenada, Montserrat, and Saint Lucia. However, it alleges violations and concerns regarding Barbados, Dominica, Guyana, Jamaica (while commending the authorities' efforts), St. Kitts and Nevis, St. Vincent and the Grenadines, and Trinidad and Tobago (while mentioning cooperation efforts with the IPO and TATT).

## THE CURRENT SITUATION

45. A trinity of issues appears to have led to a stalemate, which in 2021 makes the lack-of-content-leads-to-piracy issue moot.

46. Today, if we wish to keep a strict Caribbean-specific focus on the issue at hand, it must be acknowledged that the piracy boat has sailed, so to speak. IPTV piracy has prospered much more than it should have – recognising, however, that IPTV piracy is a global issue. It is reasonable to assume that, in the case of Trinidad and Tobago, for example (for lack of accessible data regarding other jurisdictions), the difference between the total number of fixed broadband subscriptions (351,000)<sup>50</sup> and the total number of pay TV subscriptions (237,300)<sup>51</sup>, i.e. 113,700, may be “IPTV device” households.<sup>52</sup>

47. Cable operators carrying the free-to-air U.S. networks without a license, today – and this view is shared by at least one regulator<sup>53</sup> – fear that taking down the historically very-much-in-demand U.S. networks, will fuel piracy by an unprecedented magnitude<sup>54</sup>, to a point where consumers will be prompted to “cut the cord” for good (i.e. cancel their cable subscriptions), and shift entirely to preloaded IPTV devices.

48. Hence the forbearance exercised by some regulators (see *Protection of Intellectual Property Rights – Enforcement and Communication Campaigns* section further down<sup>55</sup>), who also share the opinion that enforcing a takedown of the U.S. networks by cable operators will simply exacerbate piracy, to a point of no return.

49. Today, observers venture that the unlicensed retransmission of the U.S. networks sometimes appears to be the litmus test<sup>56</sup> for determining if a country appears or not on the USTR's Special 301 Watch List (as did Trinidad and Tobago, and Barbados in 2020<sup>57</sup>), unless the country demonstrates convincingly tangible efforts to curb IP rights and copyright violations. While the unlicensed retransmission of the U.S. networks seem to weigh heavily on the scale, an analysis of the USTR reports indicates that its annual or biennial conclusions very much depend on the longevity of the problem in each territory, the results of each country's efforts, and whether past pledges were fulfilled.

50. It is worth noting, however, that the suggestion that the U.S. networks are either refusing to license or commanding prohibitive prices cannot be sustained, given the context of the remuneration regime under which content on those networks is produced in the United States. Licensing to the Caribbean (or anywhere outside the U.S. borders) constitutes international exploitation and triggers an obligation for producers to pay residuals to the U.S. Guilds (DGA<sup>58</sup>, WGA, SAG-AFTRA<sup>59</sup>). A recent court case between the WGA and Fox (involving Disney post-purchase of Fox) has shed light

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<sup>50</sup> TATT. *Quarterly Market Update – Q3 2020*.

<sup>51</sup> Ibid.

<sup>52</sup> Pantin.

<sup>53</sup> Douglas.

<sup>54</sup> David.

<sup>55</sup> “Confirmation of full compliance by Digicel **save for three (3) U.S. networks**”.

<sup>56</sup> Pantin.

<sup>57</sup> The Office of the United States Trade Representative (USTR). *2020 Special 301 Report*.

<sup>58</sup> Directors Guild of America (DGA). *DGA: How Residuals Work (Basic Agreement)*.

<sup>59</sup> Directors Guild of America (DGA). *History of Residuals*.

on the issue – at the root of the case, “the studio found that an internal error had led to a widespread failure to pay the residuals for reuse in the foreign free television markets over several years”<sup>60</sup>.

51. In the absence of a “carve-out” for the Caribbean (and any such carve-out would need to be negotiated with the Guilds), foreign free TV exploitation in the Caribbean simply triggers the producers’ *international* exploitation obligations in general.

52. This is, however, very specific to the Motion Picture Association’s members – producers, distributors and owners of said networks.<sup>61</sup> Turning to the Independent Film and Television Alliance (IFTA), the view is that there is no “problem” in that the licensing of exclusive rights including language versions should be completely in the hands of the copyright owner and licensor to negotiate the release and distribution of their content. The “demand” for English language in any territory should be determined and negotiated face to face solely by the copyright owner and its distributors. Usually the U.S. studio distributing in English in North America requires contractual holdbacks or carve outs for other licensed territories in the English (and sometimes Spanish) languages especially in North America, Caribbean or Pan LatAm licensing deals.

53. Alternatively, absent a U.S. studio deal or a deal that does not require certain rights be held back from other licensed regional distributors, producers may not be able to secure a (paying) distributor for those rights who pay upfront minimum guarantees to secure the exclusive license in country or on a regional basis.<sup>62</sup> Similarly, individual content units from major producers, including the U.S. network owners, are available in all markets in the region, but licensed to different service providers in a fragmented way and so not available within a network signal package as such<sup>63</sup>.

#### NON-VOLUNTARY (COMPULSORY) LICENSING<sup>64</sup>

54. The government of The Bahamas set a precedent in the region by establishing a compulsory license regime in 2000, through the implementation of its 1998 copyright law. The scheme was immediately denounced<sup>65</sup> by the International Intellectual Property Alliance (IIPA) as an overbroad compulsory license that violated numerous international copyright standards. Under that regime, cable operators were authorized to downlink pay-TV signals, including via the internet, against remuneration. In effect, as the IIPA underlined, the compulsory license regime allowed the retransmission of any copyrighted work transmitted across Bahamian territory. According to HBO, the Bahamas’s Copyright Licensing Fund failed in its remit to compensate rights holders under the compulsory licensing regime.<sup>66</sup> The Bahamas terminated its compulsory licensing regime in 2009.

55. Notwithstanding, cable operators in the region are contemplating the option of a narrow-scoped compulsory license regime only applicable to free-to-air signals for which licenses are not

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<sup>60</sup> Wilson.

<sup>61</sup> <http://www.motionpictures.org>.

<sup>62</sup> Cleary, Susan.

<sup>63</sup> Freeman.

<sup>64</sup> “Non-voluntary (compulsory) licenses allow the use of works in certain circumstances without the right owner’s permission, but require that compensation be paid for that use. Such licenses are called non-voluntary because they are allowed within the law and do not result from the exercise of the exclusive right of the copyright owner to authorize particular acts, and thus they are not voluntary on the part of the copyright owner. Two non-voluntary licenses recognized in the Berne Convention allow the mechanical reproduction of musical works and broadcasting. Non-voluntary licenses have been created in national copyright systems when a new technology for disseminating works to the public emerges, and have been explained based on the concern of national legislators that right owners are hindering or might hinder the development of the new technology by refusing to authorize use of their works. Once adopted, these licenses sometimes remain in the law even after the technology has been in place for many years. In some countries, effective alternatives now exist for making works available to the public based on right owners’ permission, including through the collective administration of rights.” (WIPO)

<sup>65</sup> <https://www.iipa.org/files/uploads/2017/12/2001SPEC301BAHAMAS.pdf>.

<sup>66</sup> <http://www.tribune242.com/news/2013/feb/21/hbo-blasts-bahamas-for-copyright-failure/>.

available.<sup>67</sup> Inspiration is taken from the Canadian regime in place, born out of the 1988 free trade agreement with the US.<sup>68 69</sup> Arrangements similar to what applies along Canada's borders with the United States are viewed as an option that would, in the Caribbean, strengthen the case for legal action, and the political will to enforce the local laws on which forbearance may be exercised at the moment, as was suggested many years ago.<sup>70</sup>

56. It bears noting, however, that the 2005 Trinidad and Tobago report<sup>71</sup>, in its recommendations, objected to the compulsory licensing based on a) it being in breach of international treaty obligations; b) the opposition of the Free Trade Area of the Americas (FTAA); c) USTR's opposition (as well as CARICOM's opposition, noted outside of the report's recommendations). WIPO's opinion, as set out in the report, was that the Berne Convention did allow compulsory licensing – but only for the “simultaneous unchanged retransmission of programs,” that is, programs that are either received unscrambled and retransmitted as such, or received scrambled and retransmitted as such. The report's ground for its first objection is thus inaccurate if applied strictly to the above conditions. The report's scope also covered encrypted pay-TV signals, which do not conform to the above opinion. Finally, a dissenting report by the Trinidad and Tobago Trans-Cable Company Limited (CCTT) was attached to the report, promoting compulsory licensing.

## POSITIVE EVOLUTIONS

57. A majority of interviewees on all sides of the table have indicated that the situation has improved over the past three to five years in terms of the availability of licensed content.

### *Subscription-based Streaming*

58. The arrival of subscription-based streaming services in the online sphere has contributed to a significant widening of the legal supply of content, on fixed and mobile devices. Today, leading market players such as Netflix and Amazon Prime Video are accessible in every jurisdiction in the Caribbean, down to the smallest of territories. For example, Netflix's catalogue is available locally in all official languages of the region, with Spanish, English, French and Portuguese subtitling. Market scaling does not typically translate in the online space, where a more pressing challenge is infrastructure and Internet access.<sup>72</sup> At least in the case of Jamaica, Internet is thought to have “turned everything around” when it comes to the dynamics between foreign licensors and the cable industry.<sup>73</sup>

### *Licensing Deals*

59. Several television licensing deals should be viewed as encouraging developments in the regions. Those include, for example, the agreement between Belize Cable Television Operators' Association BCTVOA and HBO Latin America Group in 2019<sup>74 75 76</sup>, providing access to channels such as HBO, HBO2, HBO Signature, HBO Family, Max, Max Prime, The History Channel, A&E, and SyFy.

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<sup>67</sup> Richards-McKay.

<sup>68</sup> Zolf.

<sup>69</sup> <https://www.worldtradelaw.net/nafta/Cusfta.pdf.download#page=218>.

<sup>70</sup> Spence.

<sup>71</sup> The Cable & Video Piracy Committee.

<sup>72</sup> Silver B., Pinha P., Santos M.

<sup>73</sup> Graham.

<sup>74</sup> BNN.

<sup>75</sup> Bertran.

<sup>76</sup> Flowers.

60. In late 2020, Disney+ launched a full service in Latin America and the Caribbean with English-language programming. As of June 2021, HBO Max is available in a number of Caribbean countries. Spotify also launched its music service in 2021 in several countries in the region.<sup>77</sup>

#### *Enforcement and Communication Campaigns*

61. Most observers agree that enforcement of IP rights is the regulators' responsibility. There are visible examples of active enforcement by regulators. The Jamaica Broadcasting Commission in its 2019 Annual Report lists a number of actions taken towards copyright compliance:

*April 1, 2018: commencement of biennial audit (licensees directed to provide current channel listings/programme logs and evidence of authorisation from programme providers/content owners/channel owners and current licences from the local rights collecting societies); programme providers/content owners/channel owners and the local rights collecting societies requested to provide status reports on authorised and licensed use of copyrighted content in Jamaica.*

*June 22, 2018: receipt of reports and commencement of analysis.*

*September 2018: Meeting with [cable broadcaster] Flow and undertaking given for removal of eighteen (18) channels for which licences are not available in the Caribbean.*

*February 13, 2019: Further undertaking by Flow to remove four additional (4) unlicensed channels by February 28, 2019, bringing to thirty-nine (39), the number of unlicensed channels removed.*

*February 13, 2019: Confirmation of full compliance by Digicel save for three (3) U.S. networks.*

62. Similarly, in Trinidad and Tobago the TATT assures that takedown measures are taken regarding unlicensed channels appearing on distribution networks (except where forbearance applies – see *International Trade Discussions and the Issue of Forbearance* above).

63. Although it has not been possible to verify the information directly, commercial players, too, are reported to take content protection action – HBO Latin America is said to have been active in trying to stop piracy in the region, notably in the Cayman Islands, and specifically in hotels.<sup>78</sup> In Belize, commercial stakeholders have successfully taken legal action against the illegal retransmission of content.<sup>79</sup> <sup>80</sup> Similarly, in Bermuda, the Caribbean Cable Cooperative Ltd (described below) has launched enforcement actions against three major illegal retransmission operations.<sup>81</sup>

64. Communication campaigns promoting respect for IP rights have also been deployed in the region, notably by the the Telecommunications Authority of Trinidad and Tobago<sup>82</sup>.

#### *Ad-Hoc Commercial Solution*

65. The Caribbean Cable Cooperative Ltd. “is a buying cooperative for the English speaking cable television companies in the Caribbean and Atlantic basins (the Region). The Co-op supports its Member Companies with programming at a lower cost through the combined buying power of hundreds of thousands of customers, as well as direct negotiations with copyright holders for programming not presently licensed in the Caribbean.”<sup>83</sup>

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<sup>77</sup> Asgarali.

<sup>78</sup> Hather.

<sup>79</sup> 7 News Belize.

<sup>80</sup> United States District Court.

<sup>81</sup> Killebrew.

<sup>82</sup> TATT([https://www.youtube.com/watch?v=POZiAzEwh\\_Q](https://www.youtube.com/watch?v=POZiAzEwh_Q); <https://www.youtube.com/watch?v=EOVCXBF5IFg>; <https://www.youtube.com/watch?v=rc3JzCiLDGs>).

<sup>83</sup> <https://www.cctvcoop.com/>.

66. The Cooperative was founded in 1997 and is similar to the National Cable Television Cooperative (NCTC) in the United States<sup>84</sup>, or the Canadian Communication Systems Alliance (CCSA).<sup>85</sup>

67. The Cooperative, counting 40 member companies, representing 50 cable systems in 23 countries and over 600,000 cable customers boasts that its members pay wholesale fees that are comparable to the cable operators' in the US.

68. Beyond establishing fairer leverage for a geographically-fragmented market of cable operators and ensuring the legal retransmission of channels, the Cooperative also undertakes content protection actions to protect its members, notably by sending cease and desist letters to platforms distributing unlicensed networks via Internet protocol platforms. According to the Cooperative, those illegal platforms operate through the region, and in Bermuda alone, it is estimated that they have captured somewhere between 20% and 40% of the Bermuda home video market.<sup>86</sup>

69. It should be noted that the Cooperative's catalogue currently does not have free-to-air channels or networks in its offer but it quashes the belief that small-size territories are simply unable to acquire content legally.

## CONCLUSION

70. As a foreword to this conclusion, the author must underline that none of the individuals interviewed condones the act of piracy. Even if unsatisfied demand offered one explanation for audiovisual piracy, it can never justify it.

71. The hypothesis of this research has been that audiovisual piracy in the region is strongly encouraged by a lack of legal content in English. Its objective has been to analyse if the problem, defined as such, is substantiated. The information gathered through this research project has shown that this was probably true in the past, and that a correlation subsisted between the lack of licensed content and the import of the first unauthorized decoders. It would appear that more recently, bearing in mind the rise and modernisation of piracy permeating other regions of the world, the supply of licensed English-language content, on the one hand, and piracy, on the other, are no longer intimately bound together.

72. A simple examination of the offers of the regional cable operators<sup>87</sup> and premium content providers<sup>88</sup> reveals an abundance of quality audiovisual content. Assuming that regulators (as described above) regularly cleanse those offers of unlicensed channels – apart from the U.S. networks – we have on display a very impressive amount of quality content, of various origins (U.S., European, etc.) and different types (scripted TV content, film, news, live sports, etc.). These are also carried, in some territories, on very affordable broadband services – a result of past price wars between operators having led to high broadband penetration<sup>89</sup>, which we touched upon in this report (see *Television Broadcasting*, above)

73. When applying purchasing power parity, the observer realises that audiovisual content is also quite affordable in certain territories where GDP is higher. As mentioned above, the Caribbean (and English-speaking Caribbean region) is not, economically-speaking, a homogeneous block. In some jurisdictions, a third of residual income is dedicated to cable boxes<sup>90</sup>, while in others, OTT services

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<sup>84</sup> <https://www.nctconline.org/>.

<sup>85</sup> <https://www.ccsaonline.ca/about-us/>.

<sup>86</sup> Killebrew.

<sup>87</sup> <https://www.digicelgroup.com/en.html> / <https://discoverflow.co/>.

<sup>88</sup> <https://www.hbocaribbean.com/us>.

<sup>89</sup> Plantin.

<sup>90</sup> Asgarali.

(e.g. subscription-based streaming services) are thought to be unaffordable for a large part of the population<sup>91</sup>. In addition, it has been pointed out that OTT services may require consumers to subscribe using a credit card (rather than a debit card), which may create a barrier for poor consumers.<sup>92</sup> However, whether in the rich or poorer corners of the Caribbean, individuals seem to be turning to piracy simply “because they can”<sup>93</sup>, or because it is now deeply rooted in society to the point where citizens no longer realise the illegality of the services – if they ever did. Convenience has taken over.<sup>94</sup>

74. Several initiatives have taken place around the problem – the Trinidad and Tobago initiative of 2005 has been mentioned, but reference must also be made to the CARICOM-United States Public-Private Sector Stakeholder Seminar in Jamaica (June 21-22, 2017)<sup>95</sup>, which yielded similarly ambitious commitments<sup>96</sup>.

75. The impact of the availability or not of the U.S. networks on the cable consumers’ behaviours should not be understated – we must assume that cable operators have consumer surveys informing their beliefs that suddenly ceasing the unlicensed retransmission of those networks would fuel piracy, and even lead to a significant number of cancellations of cable subscriptions.

76. This research is not equipped to verify that element but has gathered enough testimonies converging towards the conclusion that at least a generation of the population of the English-speaking Caribbean has grown up watching the U.S. networks, to the point of having developed a strong dependency to them – if only regarding news content.

77. Piracy, at least today, appears to be a phenomenon that has come to permeate society and which is growing independently of the general availability of English-speaking content. From a U.S. government standpoint, the sentiment is that the region has not figured out how to engage collectively against copyright violations<sup>97</sup>. From a CARICOM standpoint, too, the sentiment is that more should have been done much earlier to cease illegal Internet-based broadcasting, which would have led the way to some other commitments – encouraging people to respect copyright and opening up a channel for content selectors to have more Caribbean content, for example.<sup>98</sup>

## RECOMMENDATIONS FOR FUTURE RESEARCH

78. There would be much merit in accessing updated and historical television audience and subscription data across the region and in correlating them with piracy data over the same period of time, if only to verify and document the anecdotal information laid out in this study. Systematic, on-the-ground assessment of the offer and marketplaces (including brick-and-mortar activities) would greatly inform the discussion, too.

79. Needless to say, piracy data deserves to be exhaustive in its inventory, up-to-date, and specific to each one of the jurisdictions at hand. This is essential to a credible and constructive dialogue between all stakeholders – regulators and commercial players alike.

80. Continued monitoring of the situation after relevant legislation is enacted would be key as would continued transparency and candidness on all sides. Belize and Trinidad and Tobago, to cite

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<sup>91</sup> Bellamy.

<sup>92</sup> Asgarali.

<sup>93</sup> Hather.

<sup>94</sup> Camacho.

<sup>95</sup> Browne, Richard.

<sup>96</sup> Intellectual Property Office (Trinidad and Tobago). *Comments on the Operation of the Caribbean Basin Economic Recovery Act and the Caribbean Basin Trade Partnership Act.*

<sup>97</sup> Ciesielski.

<sup>98</sup> Spence.

but two, are awaiting amendments to their copyright and tele-communications legislation, which are expected to provide improvements to the situation at hand.

81. The sharing of relevant data compiled by industry or regulators is to be encouraged as efforts progress towards a satisfactory outcome for all.

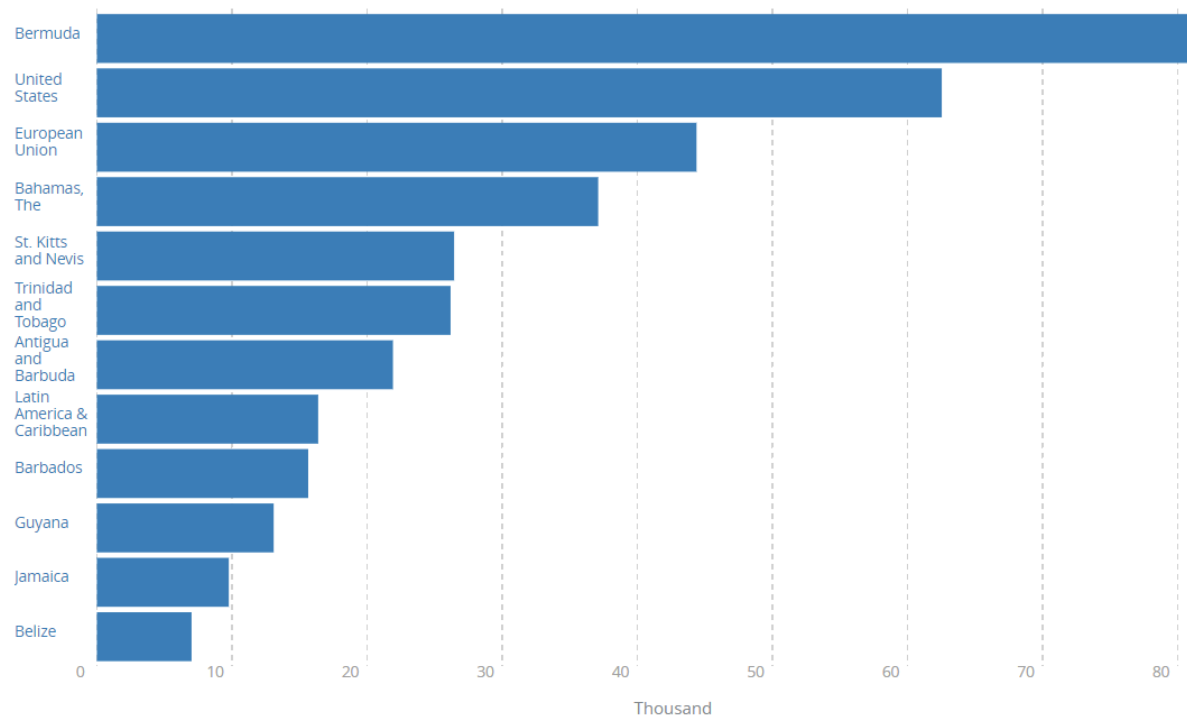
[Appendix I follows]

## APPENDIX I

International Comparison Program, World Bank | World Development Indicators database, World Bank | Eurostat-OECD PPP Programme.

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2019



GDP per capita based on purchasing power parity (PPP). PPP GDP is gross domestic product converted to international dollars using purchasing power parity rates. An international dollar has the same purchasing power over GDP as the U.S. dollar has in the United States. GDP at purchaser's prices is the sum of gross value added by all resident producers in the country plus any product taxes and minus any subsidies not included in the value of the products. It is calculated without making deductions for depreciation of fabricated assets or for depletion and degradation of natural resources. Data are in constant 2017 international dollars.

ID: NY.GDP.PCAP.PP.KD

Source: International Comparison Program, World Bank | World Development Indicators database, World Bank | Eurostat-OECD PPP Programme.

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Aggregation Method: Weighted Average

BasePeriod: 2017

Long Definition: GDP per capita based on purchasing power parity (PPP). PPP GDP is gross domestic product converted to international dollars using purchasing power parity rates. An international dollar has the same purchasing power over GDP as the U.S. dollar has in the United States. GDP at purchaser's prices is the sum of gross value added by all resident producers in the



*country plus any product taxes and minus any subsidies not included in the value of the products. It is calculated without making deductions for depreciation of fabricated assets or for depletion and degradation of natural resources. Data are in constant 2017 international dollars.*

*Periodicity: Annual*

*Statistical Concept and Methodology: For the concept and methodology of 2017 PPP, please refer to the International Comparison Program (ICP)'s website ([worldbank.org/en/programs/icp](http://worldbank.org/en/programs/icp)).*

*Topic: Economic Policy & Debt: Purchasing power parity.*

[Appendix II follows]

APPENDIX II

The advertisement features a woman with curly hair in a pink shirt watching a television. The TV screen shows a family walking in a park. To the right of the TV, there is a grid of channel logos including: LE, Nickelodeon, OWN, oxygen, TLC, slice, BET, Disney, family, YU, food network, and HBO. Below the logos, there is a graphic with the flags of the United Kingdom and Bermuda. The main text reads: **1000s of CHANNELS** and **BERMUDA IPTV**. Below that, it says: **GET A FULLY-LOADED 4K HD GLOBAL MEDIA IPTV BOX FOR ONLY \$160.00 + \$20.00 PER MONTH FOR SERVICE\* GET 1 MONTH FREE WHEN YOU SIGN UP FOR A YEAR**. Further down, it states: **Binge-watch your favourite television shows from a selection of over 1200 TV series. Watch from Episodes 1 Season 1 onward. New Episodes updated daily!** At the bottom, it says: **ABSOLUTELY NO BUFFERING • NEW TECHNOLOGY** and **CALL NOW for FREE install + FREE tutorial**. In the bottom left corner, there are two remote controls, one standard and one with a screen.

*Cropped screenshot of an IPTV service advert, courtesy of the Caribbean Cable Cooperative.*

[Appendix III follows]

## APPENDIX III

### ACRONYMS AND ABBREVIATIONS

CARICOM	Caribbean Community
CBERA	Caribbean Basin Economic Recovery Act
CBTPA	Caribbean Basin Trade Partnership Act
FTAA	Free Trade Area of the Americas
IFTA	Independent Film and Television Alliance
IIPA	International Intellectual Property Alliance
MPA	Motion Picture Association
OTT	Over-the-top (Services)
TATT	Telecommunications Authority of Trinidad and Tobago
TRIPS	Trade-Related Aspects of Intellectual Property Rights Agreement
USTR	United States Trade Representative
WIPO	World Intellectual Property Organization

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