



ILLICIT STREAMING DEVICES: TIME TO ACT

Illicit streaming devices have become the latest mainstream content piracy threat. CASBAA's **JOHN MEDEIROS** says that policymakers need to act now

From the factories of Shenzhen to Singapore's malls, London's pubs, and e-commerce platforms worldwide, illicit streaming devices, or ISDs, seem available just about anywhere.

While ISDs represent a new assault on creative industries in the global fight against content piracy, hope – in the form of effective policy and enforcement solutions – exists.

So, first things first, when discussing ISDs, what are we talking about?

THE RISE OF ISDs

ISDs (mostly called Android TV boxes, Kodi boxes, or IPTV boxes) are small Apple TV lookalike devices that connect to broadband, plug directly into a TV and are often pre-loaded with illicit content applications which bring users into a world full of streamed and downloaded pirated content.

Most ISD outfits use the open source Android operating system as a simple and cheap way to run their user interface. While an ISD could in theory be only an “empty box” – sold without software aimed at piracy – in practice they are marketed as providing the buyer with a world of pirated content. “You want HBO or STAR Chinese Movies or Premier League matches? – Yes, you'll get that for free.”

Pay a one-time fee for the ISD, you are told before purchase, and we will give you free content forever. It's a compelling sales pitch and great value proposition – free and forever.

ISDs HAVE 'TIPPED' AND BECOME MAINSTREAM

ISDs have reached the tipping point, and are now globally available and wildly popular. This new piracy ecosystem, the content industry's “perfect storm”, is impacting all businesses involved in the production and distribution of authorised content, distribution platforms and content creators alike.

In the UK, the ICM/Industry Trust for IP Awareness study examined how many users were familiar with and are using ISDs:

- 50% of IPTV box users have used ISDs to access unauthorised sports events that were only available through a subscription service
- 45% have used them to access films that were only available in the cinema
- 20% have used them to access unauthorised television content available through a subscription service
- 20% have spent less on or cancelled subscriptions to authorised services.

While the story in the UK demonstrates the rapid

growth of ISDs, Asia remains ground zero, with these devices being openly sold in retail shops and e-commerce marketplaces across the region without any meaningful government response to date. Governments have yet to acknowledge that ISDs are a real problem, that their own broadcasters and creators are in danger, and that this problem needs to be fixed. Unfortunately, too many policymakers in Asia have chosen to delay any action on ISDs, but in the meantime the problem grows and further enters the consumer mainstream.

The fact that one in five British ISD consumers have cancelled or have spent less time on authorised services should be a wake-up call for the industry and governments about the serious threat that ISDs pose to the entire content creation and distribution ecosystem.

TIME IS RUNNING OUT: ACTION IS NEEDED NOW

It is essential that all stakeholders work together to address this serious and growing problem. There are three main areas for action.

A strategy to tackle the entire ISD ecosystem.

The ISD problem requires industry and governments to work together to define a clear and effective strategy to tackle these devices, and that may mean modernising and tailoring regulatory frameworks to specifically deal with ISDs.

While the threat of ISDs and massive online infringement may be pretty clear for industry stakeholders, it is important for government to also recognise that ISDs represent serious dangers to consumers. Malware, spyware and faulty wiring are common on ISDs (a UK report from Electrical Safety First and FACT, an intellectual property protection organisation, warns that all devices it tested failed to meet national electrical safety regulations).¹

In the UK, amendments are being proposed to target ISDs. In other jurisdictions courts have delivered encouraging decisions that indeed ISDs are infringing devices. This will help industry and governments work together to determine whether laws and regulations can apply to ISDs or if they may be lacking.

In 2017, the Court of Justice of the European Union (CJEU) ruled that sale of ISDs constitutes an infringement of copyright.² The court also determined that “streaming should not be exempted from the right of reproduction”. Since ISDs mainly rely on streaming infringing content, we are hopeful that officials can more assertively target ISDs.

This follows a decision in June 2016 of the Canadian Federal Court that determined ISDs “do not act as a mere conduit, rather they deliberately encourage consumers and potential clients to circumvent authorised ways of accessing content”.³ Consequently, the court issued injunctions against numerous ISD operators preventing the continued sale of the illegal devices.

Empowering agencies to seize ISDs and disrupt criminal syndicates. Since ISDs have exploded on the scene, there have been intermittent enforcement actions in various jurisdictions to seize

devices and disrupt these criminal operations. Over the past 18 months, the UK police and other British agencies and rights holders have worked together to conduct a number of successful raids, disrupting ISD criminal operations. These actions have focused on retailers and network operators who, in addition to selling the devices, are advertising and promoting how ISDs provide access to infringing and unlicensed content. While there have been a number of successful cases, ambiguity in UK law still exists which has prevented further actions.

In Asia there have been a few notable actions against ISD operations. Hong Kong customs officers raided an ISD operation in mid-2014; the cases languished in legal limbo for two years but are now concluding, as several of the defendants have pleaded guilty to copyright and fraud charges. In February 2017, the Chinese ECID raided and closed down an ISD syndicate that was illegally distributing ABS-CBN content. In May 2017, Thailand’s Department of Special Investigations raided five locations across Thailand and arrested three individuals for running an ISD syndicate which operated across four Southeast Asian countries. They were charged with violating the Computer Crime Act and Intellectual Property Rights Act and causing over Bt100 million worth of damages. In June 2017, police in Malaysia arrested six people in Kuala Lumpur and Johor who were accused of illegally retransmitting programming from satellite broadcaster Astro. The illegal ISD operation was estimated to have 30,000 subscribers.

Meanwhile the Alliance for Creativity and Entertainment (ACE), a new global coalition set up in June 2017 to combat online piracy, has already forced a number of popular piracy-linked streaming tools offline.

Encouraging e-commerce platforms to prevent sale of ISDs. The growth of e-commerce platforms has been astonishing but unfortunately, as they evolve to provide more e-commerce and marketplace options, many criminals are finding them to be a convenient way to sell illicit goods and services, and that has certainly been the case with ISDs. For many of the initiatives and actions outlined above to be successful the cooperation of technology platforms and other intermediaries is essential. While these platforms may be able to litigate their way out of any potential liability for what is bought, sold and consumed on their platforms, we strongly believe it is in their best interests to neither promote nor condone illegal activities such as copyright infringement. Specifically, they should cease monetising the sales of ISDs and prevent such sales transactions from taking place.

Some of these platforms, including Amazon, Alibaba and Facebook, have announced policies that prohibit the sales of ISDs, which is a positive step. However, it will require sustained effort and attention to substantially reduce the sales of ISDs on otherwise reputable e-commerce platforms.

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