

February 9, 2017

**PUBLIC DOCUMENT**

*Submitted electronically to <http://www.regulations.gov>*

Christine Peterson  
Director for Innovation and Intellectual Property  
Office of the United States Trade Representative  
600 17th St., NW  
Washington, DC 20508

Re: HBO Latin America Group Comments on Piracy in the Caribbean and  
Central America – 2017 Special 301 Review: Identification of Countries  
under Section 182 of the Trade Act of 1974: Request for Public Comment  
and Announcement of Public Hearing (Docket No. USTR-2016-0026)

Dear Ms. Peterson:

On behalf of HBO Latin America Group (“HBO LA”), we provide these comments<sup>1</sup> identifying countries that we believe deny adequate and effective protection of intellectual property rights, or deny fair and equitable market access to U.S. persons reliant upon intellectual property protection, pursuant to the request of the United States Trade Representative (“USTR”).<sup>2</sup> HBO LA appreciates the opportunity to support USTR’s negotiations, development of best practices, and enforcement efforts by offering comments on market access restrictions

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<sup>1</sup> The opinions expressed in these comments are solely those of HBO LA and do not necessarily reflect the views of Home Box Office, Inc. (“HBO USA”), Time Warner, or any of their other affiliated entities, or respective management, shareholders, or other associated personnel.

<sup>2</sup> See *2017 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974; Request for Public Comment and Notice of Public Hearing*, 81 Fed. Reg. 95,722 (U.S. Trade Rep. Dec. 28, 2016).

and weak intellectual property protections HBO LA faces in the Caribbean and Central America. HBO LA respectfully requests USTR's continued diligent advocacy on the issues and, pursuant to the discussion below, requests either the continued inclusion of certain countries on the Special 301 Watch List or their addition to the Special 301 Watch List, as appropriate.

Piracy impacts HBO LA in a variety of ways. First, the Caribbean and Central American regions continue to be growing markets for HBO LA. However, systemic piracy and inadequate protection of intellectual property rights hinder HBO LA's growth in the affected markets. Second, piracy by one party in a given market creates an unfair competitive advantage for that party, creating a strong incentive for other parties to commit piracy. For example, it is difficult for a party that has paid HBO LA's license fees to compete with a party offering the same content without having incurred the same expenses. Therefore, a lack of enforcement in these markets can prevent compliance by parties that would otherwise normally comply with the law. Similarly, a lack of enforcement by Caribbean and Central American governments is allowing local cable operators to build substantial enterprise value by increasing their subscriber base through offering pirated content. Given the recent trend of business consolidation in the Caribbean, local cable operators appear to be trying to grow their subscriber base using any means possible. Finally, the revenue and license fees HBO LA loses as a result of these practices is difficult to quantify, but HBO LA believes there is an impact.

HBO LA appreciates USTR's past efforts and respectfully requests USTR's continued diligent advocacy on the issues identified in these comments. Still, to the extent that an entity in any Caribbean or Central American market continues to violate international law, HBO LA requests that USTR take the actions necessary to ensure timely compliance. To the extent that certain markets do not offer the necessary legal protections pursuant to either international

agreement or domestic legal obligations, HBO LA requests that USTR emphasize the importance of adopting and enforcing these laws to promote an environment that will help to foster beneficial development in these markets.

**I. HBO Latin America Group**

HBO LA is composed of affiliates of Home Box Office, Inc. (a wholly-owned subsidiary of Time Warner Inc.) and Olé Communications Group. Home Box Office, Inc. (“HBO USA”) is a leading premium pay television network in the United States. HBO LA owns, operates, and/or distributes leading pay television programming services throughout Latin America and the Caribbean, including *HBO*, *HBO Plus*, *HBO Family*, *HBO Signature*, *Cinemax*, *MAX*, and *MAX Prime*. HBO LA’s programming content is similar to that of HBO USA and is licensed primarily from American content providers such as HBO USA, Warner Bros. Studios, Columbia Pictures, Universal Studios, Walt Disney Studios, and CBS. HBO LA has its headquarters in Coral Gables, FL and has other offices in Sunrise, FL, Argentina, Brazil, Colombia, Mexico, and Venezuela. HBO LA has over 350 employees in the U.S.

In the Caribbean, HBO LA has devoted significant resources to creating English-language “Caribbean versions” of its *HBO* and *MAX* services, *HBO Caribbean* and *MAX Caribbean*, which are designed to service the approximately 1.3 million English speaking pay television subscribers in the Caribbean.<sup>3</sup> In addition to HBO LA’s existing services currently available in the Caribbean, which are all now available in high definition, the corresponding video on demand service, HBO on Demand, is also available in English, and HBO LA recently expanded its English language offering by launching the complementary HBO GO streaming

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<sup>3</sup> *HBO Caribbean* and *MAX Caribbean* are legitimately distributed in several Caribbean countries, including Aruba, Barbados, Bonaire, Cayman Islands, Grenada, Jamaica, Saint Lucia, and Trinidad & Tobago.

service to subscribers in the market. HBO LA has invested millions of dollars in technical infrastructure to support its programming services and incurs millions of dollars more per year in programming and operating costs to support *HBO Caribbean*, *MAX Caribbean*, and its other programming services distributed throughout the Caribbean territory. The company has a substantial number of employees devoted exclusively or partially to maintaining the Caribbean versions of its programming services. HBO LA holds the exclusive licenses to distribute a substantial volume of programming content through its pay television operators in the Caribbean during the license periods.

Throughout Central America,<sup>4</sup> HBO LA offers a full range of Spanish-language premium services, including *HBO*, *HBO2*, *MAX*, *MAX Prime* and *Cinemax*, to over 1.5 million pay television subscribers in the region. Much of this programming comes from American content providers. Additionally, HBO LA has continued its investment in Central America with the launch of its complementary HBO GO streaming service for subscribers in the region.

HBO LA is a leading U.S. exporter of original television programming to the Caribbean and Central American markets and exports millions of dollars in American intellectual property annually through its content licensing and distribution agreements throughout those regions. HBO LA has also made and continues to make significant investments in its U.S. and foreign operations, including a state-of-the-art uplink, data center, and network operations facility in Sunrise, Florida. HBO LA spends significant resources developing precise programming schedules and marketing strategies to maximize the return on its investments. Overall, HBO LA relies heavily on adequate IP protection and equitable market access – as well as frequent

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<sup>4</sup> Central America for the purpose of this discussion includes Belize, Guatemala, Costa Rica, El Salvador, Honduras, Panama and Nicaragua.

negotiations with private operators and the governments in these markets – in order to continue successfully exporting and licensing pay television programming in the Caribbean and Central America.

## **II. Summary of Issues**

As the operator of a premium video-programming business with significant and longstanding experience, investments, and presence in both the Caribbean and Central American markets, HBO LA faces a variety of market access issues and IP violations throughout the region. HBO LA is focusing these comments on piracy of IP in the Caribbean and Central America because, despite USTR's diligent and largely effective efforts, HBO LA continues to encounter pervasive and systemic issues in several Caribbean and Central American markets.

### **A. HBO LA is the victim of piracy of its exclusively licensed content in the Caribbean and Central America**

During the period of its extensive operation in the Caribbean and Central America, HBO LA has encountered a variety of significant barriers to market access. HBO LA struggles to defend its IP rights because of a lack of effective local remedies or failure by governments to pass laws that satisfy international standards. Cable providers in these markets engage in piracy by broadcasting content for which HBO LA holds an exclusive license. HBO LA's programming content is largely comprised of content licensed from HBO USA and other content that is exhibited on channels in the U.S., including Showtime, Starz, and Encore. In many instances, HBO LA holds the exclusive license to the programming content of HBO, Showtime, Starz, and Encore for exhibition in the Caribbean and Central America.

Some companies in these markets broadcast the signals of HBO USA, Showtime, Starz, and Encore programming services directly to customers in the Caribbean and Central America in

violation of HBO LA's exclusive license in the underlying programming, including by using satellite television decoders meant for residential use. More recently, piracy of HBO LA content over the internet has become a serious issue for HBO LA. In several markets, brick-and-mortar stores sell devices pre-installed with unlicensed streaming services that include HBO LA's exclusively licensed content.

Last, non-U.S. owned hotel chains operating in the Caribbean continue to regularly pirate HBO LA's exclusively licensed content. Hotels, including large chains, will retransmit signals intended for the U.S. market, which often include HBO USA programming. This violates HBO LA's exclusive right to air the content in the Caribbean. Each of these issues is examined below.

**B. Caribbean and Central American countries are subject to the disciplines imposed by international law**

The piracy described above violates several international laws. First, many Caribbean and Central American nations are subject to the disciplines of the World Trade Organization ("WTO") through either their own direct membership or their affiliation with a member country. Pursuant to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), members must "ensure that enforcement procedures...are available under [their] law[s] so as to permit effective action against any act of infringement of intellectual property rights..., including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringements."<sup>5</sup> Further, the TRIPS Agreement requires members to provide enforcement procedures that are free from unwarranted delays.<sup>6</sup> The Dominican Republic-Central America Free Trade Agreement ("CAFTA-DR") reaffirms these

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<sup>5</sup> Agreement on the Trade Related Aspects of Intellectual Property Rights, Art. 41.1, *available at* [http://www.wto.org/english/tratop\\_e/trips\\_e/t\\_agm0\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm).

<sup>6</sup> *Id.* at Art. 41.2.

principles for the Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.<sup>7</sup>

Significantly, the scope of TRIPS protections is broad, extending not only to the author of a work, but to any party that holds the intellectual property right in question.<sup>8</sup> Further, the TRIPS Agreement requires significant protections for broadcasting organizations aimed at preventing piracy of their protected broadcasts.<sup>9</sup> Therefore, to the extent WTO members do not honor HBO LA exclusive licenses, or do not provide efficient and effective remedies to prevent unauthorized rebroadcasts, they fail to fulfill their most basic legal obligations under the TRIPS Agreement.

Second, the Caribbean and Central American nations that are WTO members are also subject to disciplines under the World Intellectual Property Organization (“WIPO”). WIPO administers the Berne Convention for the Protection of Literary and Artistic Works (“Berne Convention”), the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (“Rome Convention”), and the WIPO Copyright Treaty (“WCT”). The Berne Convention also protects an author’s right to exclusively authorize the communication of their works to the public,<sup>10</sup> as well as the exclusive right to authorize the broadcast or rebroadcast of their works.<sup>11</sup> As noted above, the TRIPS Agreement explicitly reaffirms these provisions. The Rome Convention protects a broadcasting organization’s right to

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<sup>7</sup> See CAFTA-DR Articles 15.6-8.

<sup>8</sup> The TRIPS Agreement explicitly adopts the disciplines of the Berne Convention. The Berne Convention provides that all rights given in the Convention apply to the author as well as the author’s successors in interest. It is axiomatic that the holder of a copyright may assign his or her rights freely. See also TRIPS Agreement at Art. 42 (requiring provision of remedies to “rights holders,” not to authors).

<sup>9</sup> *Id.* at Art 14.3 (“Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same.”)

<sup>10</sup> Berne Convention Art. 11.1.

<sup>11</sup> Berne Convention Art 11*bis*.1.

authorize or prohibit other parties from rebroadcasting content.<sup>12</sup> The WCT focuses on protecting rights holders against potential violations of their IP in the digital space.<sup>13</sup> As a whole, these treaties theoretically offer robust protections to their signatories.

Third, countries in the region that benefit from preferential U.S. tariff treatment under the Caribbean Basin Initiative (“CBI,” specifically either CBTPA or CBERA) or the General System of Preferences (“GSP”) are obligated to protect intellectual property rights or risk losing the unilateral trade preferences the United States offers them, which are significant.

The discussion below examines the market access barriers presented both by piracy in markets with inadequate or nonexistent copyright protection. The discussion focuses on specific offenders and the inequities their piracy causes.

### **III. Piracy of HBO Signals in the Caribbean and Central America**

Many Caribbean and Central American governments often fail to provide adequate and effective means to enforce HBO LA’s copyrights and licenses, permitting piracy of HBO LA’s IP without legal consequence. This piracy is harmful to HBO LA’s economic interests and business planning strategies, and HBO LA faces these challenges in a variety of Caribbean and Central American markets. Each market described below illustrates a specific example of the challenges faced in combating piracy in the Caribbean and Central America. Accordingly, HBO LA would appreciate any assistance that can be provided by the USTR to address these issues with relevant local governmental authorities.

- *Guyana:* HBO LA entered into affiliate arrangements with E-Networks and DirecTV to distribute HBO LA’s signals containing its exclusively licensed content in the Guyanese market. Both clients depend heavily on their premium content base to compete. However, as illustrated by their program guide,

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<sup>12</sup> Rome Convention Art. 13.

<sup>13</sup> See WCT, Preamble.



MovieStar Digital TV distributes content exclusively licensed to HBO LA by retransmitting signals intended for the U.S. market without authorization.<sup>14</sup> This places both E-Networks and DirecTV at a competitive disadvantage, and undermines the substantial investment HBO LA made to establish them as legal providers in the market. As recent as November 2016, HBO LA demanded that MovieStar Digital cease its unauthorized transmission of HBO LA's signals.<sup>15</sup> HBO LA has also approached the Guyanese government for assistance in enforcing its rights, and there seems to be a lack of any administrative process available to address unauthorized retransmission.

- *Turks and Caicos*: The People's Television Network ("PTV") has been transmitting content exclusively licensed to HBO LA without authorization for at least the last three (3) years.<sup>16</sup> HBO LA has previously engaged in extensive communications with PTV in an effort to reach a satisfactory legal agreement with PTV, but has not had success. In early 2016, HBO LA again reiterated its demand to PTV that it cease its unauthorized transmissions.<sup>17</sup> To date and to HBO LA's knowledge, PTV continues to transmit content exclusively licensed to HBO LA without authorization. In addition to the direct economic effects caused by foregone revenue, negotiations and the continued pursuit of unauthorized operators like PTV requires significant resource expenditure for uncertain results.
- *Suriname*: Wireless Information Services N.V. ("Wise") is currently transmitting content exclusively licensed to HBO LA without authorization.<sup>18</sup> On March 10, 2016, HBO LA sent a cease and desist letter to Wise demanding they cease the unauthorized distribution of several television services distributed by HBO LA, including HBO.<sup>19</sup> While several communications have been exchanged with Wise since HBO LA's cease and desist letter, Wise continues, to HBO LA's knowledge, its unauthorized transmission and has failed to engage HBO LA in any meaningful negotiations.
- *Cayman Islands*: Several local businesses in the Cayman Islands sell grey market satellite television decoders, many times through brick-and-mortar stores. As a result, consumers and businesses have access to U.S. signals that include content for which HBO LA has exclusive license in the territory. For example, stores such as Funky Tang Electronics, Cay Tech Electronics, Hi-Tech Electronics,<sup>20</sup> and Dish Direct TV<sup>21</sup> have been known to sell such grey market decoders not

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<sup>14</sup> See **Attachment 1**, (MovieStar Digital Channel Offerings). MovieStar Digital offers HBO, Showtime, Starz, and Encore.

<sup>15</sup> HBO sent a Cease and Desist Letter to MovieStar Digital on November 21, 2016.

<sup>16</sup> HBO sent a Cease and Desist Letter to PTV on April 23, 2013.

<sup>17</sup> HBO sent a Cease and Desist Letter to PTV on February 15, 2016.

<sup>18</sup> See **Attachment 2**, (Wise Channel Offerings). Wise offers HBO as part of its channel listings.

<sup>19</sup> HBO sent a Cease and Desist Letter to Wise on March 10, 2016.

<sup>20</sup> See **Attachment 3**, (Photograph of Dish decoders sold by Hi-Tech Electronics).

<sup>21</sup> See **Attachment 4**, (Photographs of Storefront of Dish Direct TV).

authorized for use in the Cayman Islands. New copyright legislation, which is further addressed below, came into effect in the Cayman Islands on June 30, 2016, and HBO is currently exploring its ability to enforce its rights against resellers of grey market satellite television decoders.

- *Guatemala and Honduras:* Retransmission of unauthorized signals has been a persistent and recurring problem for HBO LA in both Guatemala and Honduras. Most recently Cable Color, a cable operator with systems in both countries, has been retransmitting HBO LA signals without authorization. While HBO's efforts in Guatemala were successful in leading to the cessation by Cable Color of further unauthorized transmissions of HBO LA's signals in Guatemala, as of today's filing, Cable Color continues, to HBO LA's knowledge, to engage in the unauthorized retransmission of HBO LA's signals in Honduras. In November 2016, HBO LA filed administrative actions against Cable Color before both the national copyright office of Honduras (*Oficina Administrativa del Derecho de Autor y Derechos Conexos*) and the national telecommunications commission (*Comision Nacional de Telecomunicaciones*). To date, both administrative actions are pending and Cable Color continues to engage in the unauthorized retransmission of HBO LA's signals in Honduras. HBO LA would like to ask for the USTR's continued advocacy and focus regarding enforcement of intellectual property rights in Honduras, including the successful implementation of the 2016 IP Work Plan.
- *Dominican Republic:* Telecable Global and Telecable Total are two cable operators currently transmitting content exclusively licensed to HBO LA without authorization. On November 21, 2016, HBO LA sent cease and desist letters to both Telecable Global and Telecable Total demanding they cease the unauthorized distribution of several television services distributed by HBO LA, including Cinemax and MAX. However, as of today's filing and to HBO LA's knowledge, Telecable Global and Telecable Total continue to engage in the unauthorized retransmission of HBO LA's signals. HBO LA has engaged with local government authorities and is currently exploring options for enforcing its rights.

All of these countries are subject to the disciplines of both the TRIPS Agreement and the Berne Convention.<sup>22</sup> The Dominican Republic, Guatemala and Honduras are also subject to IP disciplines under CAFTA-DR. Meanwhile, Guyana receives trade preferences under the CBI

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<sup>22</sup> Turks and Caicos and the Cayman Islands are subject to the disciplines as a result of its affiliation with the United Kingdom.

and Suriname receives preferences under GSP. These agreements and preference programs are meant to protect against these kinds of clear violations of HBO LA's IP rights. Because local laws do not adequately protect HBO LA's exclusive distribution rights and there is therefore no effective legal recourse, these countries are in violation of their international obligations and those receiving unilateral preferences should not be entitled to maintain them if these IP right violations persist.

#### **IV. Piracy of Non-HBO Signals in the Caribbean**

Some operators in the Caribbean illegally transmit the signals of other programmers, particularly Starz and Encore, and to a lesser extent Showtime. This violates HBO LA's IP rights to the extent that HBO LA has acquired the exclusive distribution rights for Showtime, Starz, and Encore programming in the Caribbean. Even though HBO LA's signal is not being directly pirated in this respect, HBO LA is damaged when the piracy of another company's signal results in the broadcast of materials for which HBO LA owns the exclusive distribution rights.

This affects HBO LA in several ways. First, HBO LA develops precise programming schedules and marketing strategies to maximize the utility of its exclusive distribution rights. The illegal transmission of Showtime, Starz, and Encore programming means that much of HBO's monthly studio film content in these countries may have already been unlawfully made available in the relevant market before HBO LA is permitted to premiere it under the terms of its own exclusive licenses with the content owners. This disrupts HBO LA's rollout of programming and marketing and significantly dilutes the value of HBO LA's investment in its programming, as well as its brand recognition strategies developed in reliance on its exclusive distribution rights. Further, this most often affects significant content that are centerpieces of

HBO LA's broader programming strategy.<sup>23</sup> It also decreases the use of key services like HBO on Demand and HBO GO because having titles available nearly five months in advance of HBO LA's own release of the content increases the likelihood that a person will have viewed the film or television program before its premier on the HBO LA services.

HBO LA does wish to highlight a specific instance in which USTR's diligent advocacy led to a positive result in the Caribbean markets. As a result of significant issues arising out of signal piracy in Jamaica, Jamaica's Broadcasting Commission ("BCJ") issued a directive to local cable licensees in April 2015, requiring that they remove 19 cable channels from the cable packages offered for consumption, with an effective date of May 31, 2015.<sup>24</sup> The BCJ indicated that this was the first phase of a concerted effort to comply with Jamaica's international obligations to honor IP.<sup>25</sup> According to BCJ, this effort was largely the result of consultations with a variety of stakeholders, including USTR.<sup>26</sup> Although the effective date of this directive was delayed for three months by the Office of the Prime Minister, the Jamaican market has already seen a marked decrease in the piracy of Showtime. In addition, we believe the actions taken by the BCJ in Jamaica have had an impact throughout the Caribbean. The result in Jamaica illustrates the success of concerted efforts with regulators and the support of the USTR. With the continued support of the USTR, HBO LA hopes to duplicate these results with Encore and Starz in the future.

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<sup>23</sup> For example, titles that have been compromised over the past two years include *Amazing Spider-Man 2*, *American Hustle*, *Captain Phillips*, *Guardians of the Galaxy*, *House of Lies*, *Masters of Sex*, *Oz: The Great and Powerful*, *Muppets Most Wanted*, *12 Years A Slave*, *Need for Speed*, *Captain America*, *Cinderella*, *Selma*, *Big Hero 6*, *Foxcatcher*, *Into the Woods*, and *About Last Night*.

<sup>24</sup> Jamaica Observer, *19 Channels to be Removed from Cable TV* (accessed Jan. 26, 2016).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

## **V. Internet Piracy Is a Growing Problem throughout the Caribbean**

In the past year, HBO LA continued to see a significant increase in the problem of online piracy of its service throughout all of HBO LA's territory.<sup>27</sup> In the Caribbean, several brick-and-mortar stores customarily sell Roku or generic Android set-top devices (like the Mag250, Avov, and the MXIII) preinstalled with an unlicensed streaming service and offering a few hundred channels of content, including content for which HBO LA holds exclusive license in the territory. Each market described below illustrates a specific example of the growing threat of Internet piracy in the Caribbean:

- *Cayman Islands:* While several resellers have been identified, the largest business offering an integrated hardware and service solution for streaming is Rocay. Rocay has a traditional brick-and-mortar store in the Cayman capital city, Georgetown, which opened in September of 2015.<sup>28</sup> As reported in the local media, Sandra Hill, the owner of Rocay, boasts of over 800 channels and more than 3,000 movies available on the service, including channels and movies for which HBO LA holds the exclusive license to distribute in the territory.<sup>29</sup> Rocay's business has been growing quickly and our understanding is that Rocay has approximately 2,000 to 2,500 subscribers as of January 2016, with a subscriber base that is growing every month. Based on our understanding of the model, Rocay receives an average profit of approximately \$40 per month per subscriber. If the above is true, Rocay would be receiving a total annual profit of \$1.2 million U.S. dollars, making them the second largest provider of television service in the Cayman Islands. On October 15, 2015, HBO LA sent a cease and desist letter to Rocay, with a copy to the Information and Communication Technology Authority in the Cayman Islands (the "ICTA"). On March 28, 2016, HBO LA also sent a letter to the ICTA in response to a statement they made in a local publication that companies like Rocay were mere disruptions that should be accepted as an integral part of the industry. To date, no action has been taken by the

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<sup>27</sup> Internet piracy is a problem throughout Latin America. The problem in South America was recently highlighted in a January 2016 study commissioned by the *Alianza contra la Pirateria de Television Paga* ("Alianza"), an industry trade group of which HBO LA is a member. One key finding of the Alianza study was that approximately fifty percent of all Internet users in South America view some form of pirated content in a given month. With the growth in broadband penetration throughout the region, the problem is only expected to increase. The Alianza study is available at <http://www.alianza.tv/files/NetnamesAlianzaReport012016.pdf>.

<sup>28</sup> See **Attachment 5**, New TV option opens for Cayman residents, available at <http://www.caymanreporter.com/2015/09/14/new-tv-option-opens-cayman-residents/>.

<sup>29</sup> See **Attachment 6**, Rocay advertisement.

ICTA and Rocay continues to facilitate the piracy of HBO LA and other content owners' services.

- *Sint Maarten:* HBO LA has also confirmed that personnel in well-known brick-and-mortar stores on Sint Maarten are also offering an integrated hardware and service solution for streaming unlicensed content. It is our understanding that these companies providing unlicensed video streaming services to end-users receive approximately \$35 profit per month per subscriber, and have an installed user base on Sint Maarten of approximately 3,500 subscribers. If the foregoing statements are true, the distribution of these services represents annual profits of \$1.47 million U.S. dollars and would be considered the single largest cable television provider on the island.
- *Guyana:* HBO LA has identified several reported resellers of integrated hardware and service solutions for Internet piracy and has confirmed the identity of a large reseller, Gizmos and Gadgets Electronics store, located in the capital city of Georgetown. The store advertises over 500 channels of content using Roku devices with the unlicensed streaming service marketed as ROKU TV preinstalled.<sup>30</sup> It is our understanding that the store collects payment on a monthly basis from an estimated 5,000 subscribers of the ROKU TV preinstalled service, each at an estimated profit of \$30 per month. If the foregoing statements are true, this represents an annual profit of \$1.8 million U.S. dollars and the provider of the service would be considered the second largest television provider in Georgetown. Additionally, Gizmos and Gadgets Electronics has recently started offering a second integrated hardware and service device known as the Gizmo TV BOX, which offers over 200 channels with no monthly fee.<sup>31</sup>

While HBO LA has taken steps to address the issue of this type of internet piracy with pay television regulators in the Caribbean, there appears to be little will on the part of governments to address the problem. In most instances, regulators indicate that laws are simply not available to address the issue or that it is outside of their mandate. There is also an apparent lack of willingness on the part of governments to promote cooperation between rights holders and service providers to combat online piracy.

The Cayman Islands stands out for its recent steps taken to address antiquated laws that

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<sup>30</sup> **Attachment 7**, (Gizmos and Gadgets Facebook page) (last visited Feb. 3, 2016).

<sup>31</sup> **Attachment 8**, (Gizmos and Gadgets Facebook Page) (last visited Oct. 17, 2016).

failed to provide a mechanism to combat new forms of piracy. On June 30, 2016, an adaptation of the UK Copyright law of 1988 entered into force in the Cayman Islands. HBO is currently exploring this new legislation to determine whether it can be used effectively to enforce HBO's rights with respect to the unauthorized transmission of HBO's exclusively licensed content.

However, until resolved, the type of internet piracy HBO LA has observed in the Cayman Islands, Sint Maarten,<sup>32</sup> and Guyana violates those countries' obligations under the WTO TRIPS Agreement and the Berne Convention. Guyana's failure to address these violations is also justification to deny the country its CBI and/or GSP benefits.

#### **VI. Piracy by non-U.S. Owned Hotel Chains in the Caribbean**

In addition to piracy by large cable providers, non-U.S. owned hotel chains on a variety of islands are known to pirate content exclusively licensed to HBO LA by using their own on-site facilities or obtaining service from cable operators who pirate. The violating hotels most commonly intercept either DIRECTV or Dish Network signals intended for the U.S. market, which include HBO USA's signals and programming. When hotels retransmit these signals without paying for the right to do so, the hotels illegally pirate content for which HBO LA holds the exclusive distribution rights in the market. Some hotel chains operating in the Caribbean distribute the HBO USA channel without authorization, and therefore pirate content directly from HBO USA, simultaneously breaching HBO LA's exclusive distribution rights.

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HBO LA faces significant difficulties while operating in the Caribbean and Central America. Piracy of HBO LA exclusive content is not subject to effective enforcement. These

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<sup>32</sup> Sint Maarten's WTO obligations derive from its affiliation with the Netherlands.

activities violate HBO LA's IP rights and international legal obligations promulgated by the WTO, WIPO, and regional trade agreements.

Therefore, HBO LA requests USTR's continued advocacy in the region. Where governments fail to enforce their own laws, we request that USTR re-emphasize the importance of effective IP enforcement to our trading partners. Where governments do not have the appropriate laws in place to prevent and punish signal piracy or piracy of exclusively licensed content, we request that USTR re-emphasize the importance of passing and implementing such laws, and use the threat of formal dispute settlement and/or the denial of trade preferences where appropriate.

HBO LA appreciates the opportunity to submit these comments and USTR's continued diligent advocacy, enforcement, and development of best practices on these issues. We look forward to continued dialogue with USTR to develop solutions to these important issues. Please do not hesitate to get in touch if you have any questions or require any more information regarding this submission.

Respectfully submitted,

/s/ Matthew R. Nicely  
Matthew R. Nicely  
Daniel M. Witkowski  
Hughes Hubbard & Reed LLP  
1775 I St. NW, Suite 600  
Washington, DC 20006

*Counsel to HBO Latin America Group*

Dated: February 9, 2017



# **Attachment 1**

[Home](#) > [Channels](#)

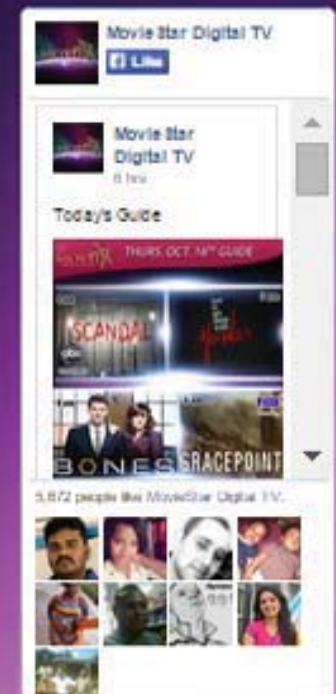
## 63 EXCITING CHANNELS FOR AS LOW AS \$5,000

Channel	Channel	Channel
2 CBS	32 TBN	60 CNN
3 ABC	33 E!	61 FOX NEWS
4 NBC	34 FX	62 CCTV4
5 FOX	35 SPIKE	63 BBC
9 APL	36 Pay Per View	70 CARTOON
10 NAT GEO	37 China Movie	71 DISNEY KIDS
11 HISTORY	38 BRAVO	72 NICK TOONS
12 FOOD NT	40 ESPN	73 NICK
14 TLC	41 NBC Sports	74 SPROUT
20 CW	42 OUTDOOR	79 TCM
21 LIFETIME	43 Fox Sports1	80 SHOWTIME
22 USA	44 SPORTS MAX	81 HBO
23 TNT	45 ESPN2	82 MoreMax
24 LMN	46 WILLOW CRICKET	83 STARZ
25 GSN	50 MTV HITS	84 BRAZZERS
26 SYFY	51 VHI ROCK	85 PLAYBOY
27 HGTV	52 BET	86 ENCORE
28 Discovery	53 VH1	87 HBO Comedy
29 OWN	54 MTV	88 ZEE CINEMA
30 ZEE TV	55 Star Plus	89 ENCORE WESTERN
31 TBS	56 FUSE	90 AMC



and much more!

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## **Attachment 2**



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## Pakketten

Lite Pakket



Aanvragen

Basic pakket



Aanvragen

## Sport (Add-on)



The logo for ESPN 2, featuring the word 'ESPN' in red and '2' in red.

The logo for EURO SPORT, featuring the words 'EURO SPORT' in red with a blue and white starburst design above it.

The logo for FOX SOCCER, featuring the word 'FOX' in white on a blue background and 'SOCCER' in white on a yellow background, with a soccer ball icon below.

Klik op het logo van jouw favoriete kanaal voor meer informatie.

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# **Attachment 3**





# Satellite TV System



# 4

## Months of Christmas

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\* (over four months) \* Terms and condition apply

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**Hopper** \$ 2,199.00 C.I

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- 2 DP- LNB's
- 1 Hopper
- 1 Joey

Additional \$189.00 for every joey  
Max of 3 joey

**Joey**

**Dish VIP 722k DUO DVR Pack**

- 1 6Ft Dish with Pole
- 2 DP- LNB's
- 1 VIP 722k DVR

\$ 2,099.00 C.I

**Dish VIP 612k SOLO DVR Pack**

- 1 6Ft Dish with Pole
- 2 DP- LNB's
- 1 VIP 612 Solo DVR

\$ 1,999.00 C.I

**Dish VIP 222k DUO Pack**

- 1 6Ft Dish with Pole
- 2 DP- LNB's
- 1 VIP 222k DUO

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**Dish VIP 211K SOLO Pack**

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- 2 DP- LNB's
- 1 VIP 211 SOLO

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E-mail: [hi-tech@candw.ky](mailto:hi-tech@candw.ky) or [hitech.satellitetelevision@gmail.com](mailto:hitech.satellitetelevision@gmail.com)



# **Attachment 4**

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**dish direct TV**  
*Cayman's Choice for TV*  
**949-4000**  
COMMERCIAL & DOMESTIC  
ENGINEERING & DESIGN



**BRANDS**

# **Attachment 5**

## New TV option opens for Cayman residents

Posted By: Content Editor on: Monday, September 14, 2015 In: Business No Comments

**Tina Trumbach**

Local residents now have new a choice in how they get their TV.

Rocay has opened up shop in Pasadora Place in George Town, offering an IPTV (Internet Protocol TV) product to Cayman consumers.

Providing internet TV using the Roku online streaming device, Rocay offers hundreds of entertainment channels at a price that the owners say is far less than local cable providers. Their product also takes advantage of high speed wireless internet services, and uses a popular and growing technology.

Business owner Sandra Hill said, "It's estimated that in 10 years the majority of customers will be streaming content online and will no longer be using a cable provider for their entertainment needs. This concept of "cutting the cord" is here to stay."

Mrs Hill said customers can access over 600 international channels including those from the United Kingdom, Canada, India, the Philippines, Europe and more.

Of those, she said, over 80 are HD (high definition) channels, and over 80 are sports channels.

"Plus there are over 2500 on-demand movies and the other streaming services customers have come to love like Netflix, YouTube, Tune-In Radio etc," Mrs Hill said.

The seasoned business owner, who has operated Micro Matrix for 12 years, noted her new company's use of technology not only in terms of the product provided, but also in its customer care and marketing.

"Essentially customers get the Roku device and via that device they have an entire entertainment experience," Mrs Hill said. "We provide excellent customer service including WhatsApp updates and our customers have given us a five-star rating."

Mrs Hill also said Rocay will soon be providing new products and services.

"We pride ourselves in providing excellent support and soon will have an internet option available with a local partner – details to come," Mrs Hill said.

Several prospective customers turned up at the grand opening of the retail location on Saturday 5 September to learn more about internet TV.

"Customers love the flexibly and variety of channels available to them at a super reasonable price. Our product is quite a hit – there are many others in Cayman doing the exact same thing many without even a business license but we have set ourselves aside as being professionals and offering the best available customer service. Customers appreciate the dependability and quality of care and as it result a large portion of new customers are referrals from their friends," said Mrs Hill.

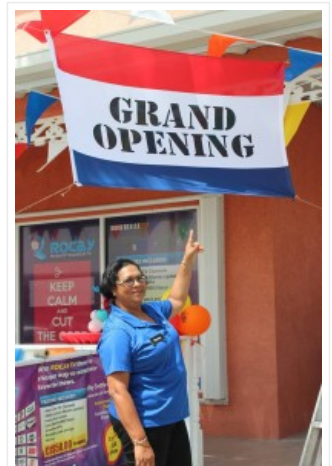
The entrepreneur was pleased with the results of her opening day.



**Rocay owner Sandra Hill discusses the product with customers at the Rocay grand opening event on Saturday 4 September.**



**Prospective customers line up to learn more about the Rocay Internet TV product.**



**The grand opening of the Rocay retail location at Pasadora Place on Smith Road in George Town.**

“The Grand Opening was a huge success and we will be offering other services at this location including our Micro Matrix training and small business services,” Mrs Hill said.



# **Attachment 6**



# The Power of your **ROKU!**



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# **Attachment 7**



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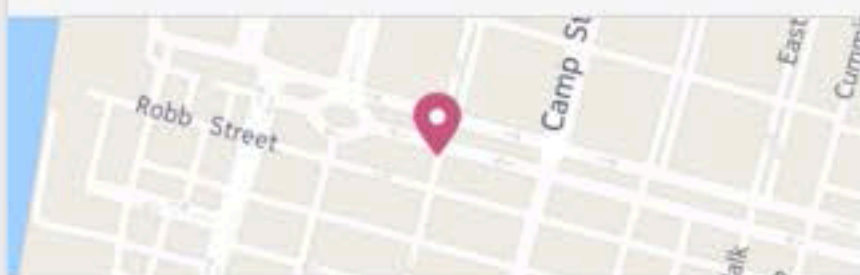
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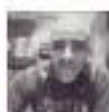
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# **Attachment 8**





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