

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE
2006 SPECIAL 301
SPECIAL MENTION

SINGAPORE

COPYRIGHT LAW AND RELATED ISSUES

On August 15, 2005, the Copyright (Amendment) Act 2005 went into force in Singapore, for the most part culminating that country's efforts to bring its law into compliance with the copyright-related provisions of the U.S.–Singapore Free Trade Agreement. Unfortunately, two issues of major concern to copyright owners were not addressed in the final legislative package: 1) the treatment of non-interactive digital audio transmissions; and 2) the treatment of parallel imports.

Digital Audio Transmissions: Section 107B of the Singapore Copyright Act exempts digital audio transmissions that are not part of an interactive service, are not themselves subscription services, or are simultaneous transmissions thereof, from the exclusive rights granted to sound recording producers. The Singapore law, like that of the U.S., does not provide sound recording producers with an exclusive broadcast right. As such, record producers and performers do not enjoy in Singapore any rights with respect to the simulcasting of broadcasts via the Internet. Broadcasting organizations in Singapore may therefore stream sound recordings for global reception without paying any remuneration to the right holders in sound recordings. This is unfair.¹

Article 16.4(2)(a) of the FTA provides in pertinent part:

[e]ach Party shall provide to authors, performers, producers of phonograms and their successors in interest the exclusive right to authorize or prohibit the communication to the public of their works, performances, or phonograms, by wire or wireless means, including the making available to the public of their works, performances, and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them. Notwithstanding paragraph 10, a Party may provide limitations or exceptions to this right in the case of performers and producers of phonograms for analog or digital free over-the-air terrestrial broadcasting and, further, a Party may provide limitations with respect to other non-interactive transmissions, in certain special cases provided that such limitations do not conflict with a normal exploitation of performances or phonograms and do not unreasonably prejudice the interests of such right holders.

¹ Industry has asked broadcasters to engage in license negotiations at least with respect to simulcasting and the use of sound recording rights outside of Singapore (the local recording industry collecting society is party to the recording industry's reciprocal Simulcasting Agreement enabling the Singaporean society to grant multi-territory licenses for simulcasting). Local simulcasters have however refused to enter in to negotiations, claiming effectively that Singapore is a "streaming piracy haven."

Insofar as the Section 107B exemption covers other than "free over the air terrestrial broadcasting" in Singapore, and that it conflicts with a normal exploitation of performances and phonograms and unreasonably prejudices the interests of right holders, it is in breach of Singapore's FTA obligations. Singapore should modify its legislation as quickly as possible, and in the interim, at least ensure that broadcasters (such as MediaCorp) acquire the necessary licenses for multi-territory simulcasting.

Exclusivity Restrictions in Pay TV: In July 2005, Singapore's Media Development Authority ("MDA") ruled that exclusive contractual agreements between content providers and pay television operators would require prior written approval of the MDA. This amounts to an unreasonable restriction on the ability of right holders to freely contract and should be challenged and overturned. When Singapore's sole pay television operator's (StarHub) license was up for renewal in July 2005, MDA inserted a clause, without industry consultation and transparency, requiring StarHub to obtain MDA's prior written approval for all new exclusive content agreements. Though MDA claims that the new requirement was inserted to facilitate the potential entry of more pay TV operators, IIPA views this as outrageous intrusion into the commercial decisions of contractual parties. Furthermore, MDA's sudden decision without transparency or prior industry consultation would appear to contradict the spirit of the U.S.-Singapore Free Trade Agreement. We understand that StarHub has appealed against the new requirement to the Ministry of Information, Communications and the Arts (MICA). Though the appeal remains pending, the new requirement is already being enforced. IIPA urges MICA to suspend the ruling and remand the matter back to the MDA for industry consultation resulting in market driven resolutions.

Parallel Imports: The influx of parallel imports (including motion pictures) from China is becoming a major concern in Singapore. Singapore laws have permitted parallel imports for over 10 years, and local industry has always had to deal with parallel imports, especially from Malaysia and Indonesia. In 2005, aggressively priced imports from China (e.g., where motion pictures are frequently released in home video formats at the same time as their theatrical release in other regional markets) had a tremendously detrimental impact on the continued development of copyright businesses, including the home video and theatrical distribution sectors in Singapore. More importantly, the relaxation of parallel imports has resulted in an influx into Singapore of pirated product masquerading as legitimate imports. Because of police reluctance to accord priority to such infringement, industry must resort to expensive and lengthy civil litigation in order to keep such pirate products out of the market. The Government of Singapore should reconsider its position on this issue given these changing developments, and should either add an exclusive right to authorize imports, or in the alternative, should, as neighboring countries and territories have done, provide a window of time from the release of a copyright title before allowing parallel imports into the market.

PIRACY AND ENFORCEMENT UPDATE IN SINGAPORE

A chief piracy concern in Singapore is increasing evidence of pirate production in Singapore for export. There are 20 known optical disc plants in Singapore (with at least 106 production lines). Most of the plants (18 of 20) have been allocated SID Code and are regulated, but the concern remains that there is some pirate product being produced in Singapore for export. In 2005, the police raided three optical disc plants, all involved in the export of pirated music seized in South Africa, among other countries, in 2003 and 2004; investigations are ongoing. We are also aware of investigations (which remain under consideration by the Attorney General's Chambers) into an additional two plants also

forensically linked to pirate product seized in South Africa in 2003. There were also an additional two complaints filed in respect of unauthorized production of pirate copies of motion pictures in 2005 which remain with the police for further investigation. The delay in the resolution of these inquiries is of concern. Cases of this magnitude and importance should be prosecuted and the Singapore Police and Attorney General's Chambers should provide better cooperation with right holders to provide access to evidence essential to support potential civil claims. In practice, civil proceedings cannot be taken until there is a decision to initiate criminal proceedings, and a decision not to initiate criminal proceedings leads to the return, and hence the potential destruction, of key evidence. A further case involves the seizure of over 400,000 pirate VCDs believed to have been manufactured in Singapore and destined for Africa. The plants involved in this latter case should be dealt with expeditiously under the new Manufacture of Optical Disc Act.

U.S. book publishing companies continue to suffer from illegal commercial photocopying. Just a few stores, well-known to the industry and to authorities, have become blatant repeat offenders, and a pervasive attitude of disrespect for copyright in books permeates Singapore's university campuses. The industry needs the continued support of police authorities, the Intellectual Property Office of Singapore (IPOS) and the Ministry of Education in addressing this problem.

By contrast, IIPA is pleased with the Government response in other areas, such as Internet piracy and end-user piracy of business software. Singapore continues to boast one of the lowest physical piracy rates in all of Asia (for example, the piracy level for recorded music stands at 5%). Entertainment software companies are also very satisfied with the record of the Singapore Government on enforcement for their products, particularly with the efforts of the local police.² Criminal cases involving industry product have resulted in the imposition of penalties and sentences that have acted as significant deterrents. The Government also has an excellent record of cooperation and partnership with the entertainment software industry on educational initiatives aimed at increasing the public's awareness of the importance of protection of copyright in interactive games.

² There is a thriving legitimate market for this industry's products, with retail and mall piracy having been effectively addressed by the local authorities.

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