

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2007 SPECIAL 301 REPORT

DISPUTE SETTLEMENT

The U.S. government's negotiation of regional and bilateral free trade agreements (FTAs) offers an important opportunity to persuade our trading partners to further modernize their copyright laws and enforcement regimes. The FTAs have set new global precedents in copyright protection and enforcement, providing further impetus to e-commerce and to global economic growth and employment. However, these beneficial impacts of the FTAs will not be realized unless the obligations they create are rigorously fulfilled in the national laws of our trading partners. The U.S. government should be generous with advice and technical assistance in helping our FTA partners to fully implement the terms of the FTAs; but the U.S. government also should not hesitate to invoke the dispute settlement procedures of the respective FTAs when FTA partners fail to live up to the obligations they have undertaken and which constitute the commercial benefits of the deals for U.S. copyright industries. In this section of the report we identify outstanding FTA implementation issues with several of our partners – Bahrain, Jordan, Morocco, and Singapore¹ – which we believe could be the basis for dispute settlement proceedings unless they can be promptly and satisfactorily resolved on an informal basis.

SINGAPORE

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, the treatment of certain non-interactive digital audio transmissions in the amendment places Singapore in violation of its FTA obligations.

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.

While the FTA permits Singapore to provide limitations with respect to non-interactive transmissions, it does so only "in certain special cases provided that such limitations do not

¹ See also the Special Mention section of this Special 301 filing, at <http://www.iipa.com/rbc/2007/2007SPEC301SINGAPORE.pdf>.

conflict with a normal exploitation of performances or phonograms and do not unreasonably prejudice the interests of such right holders.”

Section 107B of the Singapore Copyright Act exceeds the allowable discretion under the FTA by wholly exempting certain non-interactive transmissions, notably, simultaneous retransmissions of a broadcast signal (so-called simulcasting), from protection. This exemption does not apply to a special case, and most certainly conflicts with the normal exploitation of a sound recording and prejudices the interests of the right holders. Interestingly, some of the principal beneficiaries of this gap in protection are state-owned entities (such as MediaCorp, which is in turn owned by Temasek Holdings, the Singapore Government's investment arm). MediaCorp relies on this provision to simulcast its radio broadcasts over the Internet to audiences all over the world, and as such refuses to obtain the multi-territory license for simulcasting. It is a matter of great importance that Singapore quickly addresses this FTA-incompatible provision.