

# SINGAPORE

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA urges USTR to place Singapore on the Special 301 Watch List.

Executive Summary:<sup>1</sup> While the copyright law and enforcement provisions of Singapore's Free Trade Agreement with the United States, which came into force in 2005, have been largely successful, several significant shortfalls must be addressed. Online piracy continues to threaten Singapore's market for copyright works, especially music. The government's response remains clearly inadequate, both in terms of its continued refusal to bring public prosecutions of online music pirates, and its failure to bring Internet Service Providers into a cooperative stance with rights holders. Both these shortfalls also raise serious FTA compliance issues. Corporate end-user piracy of business software continues unabated; and with only a single prosecution in such cases, and inadequate penalties available, Singapore's FTA compliance can be questioned. Singapore also should join the global trend and outlaw camcording in its cinemas, before a festering problem becomes more serious; should consider upgrading (to deterrent levels) its criminal penalties for trafficking in circumvention devices and services; and should reconsider its "cross-carriage" requirements that threaten to distort the pay TV market by eliminating the ability of copyright owners to enter into exclusive licensing arrangements.

### ACTIONS THAT THE SINGAPORE GOVERNMENT SHOULD TAKE IN 2011:

- Fulfill its FTA obligations by bringing public prosecutions against significant instances of online music piracy.
- Engage with ISPs to make responsible repeat infringer policies a regular feature of the landscape, and otherwise to encourage cooperation with right holders to combat online piracy.
- Enhance enforcement against end-user business software piracy, and fulfill its FTA obligations, by protecting informants, adopting a reasonable construction of the "wilfulness" requirement, and increasing potential criminal penalties.
- Adopt a more aggressive stance in combating offline copyright crimes, and improve enforcement against imports of piratical music CDs.
- Adopt legislation specifically outlawing camcording in Singapore cinemas, and facilitate online enforcement by rectifying through legislation the deficiencies identified by Justice Woo in the *Odex* decision.
- Consider increasing criminal penalties for trafficking in circumvention devices and services such as "game copiers" and "mod chips" for game consoles.
- Drop or revise cross-carriage requirements to preserve licensing rights of content owners.

### COPYRIGHT LAW AND ENFORCEMENT ISSUES

2011 marks six years since Singapore's landmark Free Trade Agreement with the United States (the "USSFTA"), and specifically since its copyright law and enforcement obligations came into force. For the most part this agreement has been a success for the copyright industries.<sup>2</sup> Unfortunately, in some key areas, the full potential

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<sup>1</sup>For more details on Singapore's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/rbc/2011/2011SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' reports, at <http://www.iipa.com/countryreports.html>. For a summary of IIPA's 2011 global issues, see our cover letter at <http://www.iipa.com/pdf/2011SPEC301COVERLETTER.pdf>.

<sup>2</sup>IIPA congratulates Singapore's government for successfully resolving a flagrant FTA violation by clearly establishing the exclusive right of sound recording producers over non-interactive transmissions of their recordings through simulcasting (simultaneous retransmission of broadcast signals). The supportive efforts (...continued)



of this pact is far from being achieved. Singapore is also falling behind global anti-piracy trends in at least one other area not directly addressed by the FTA – camcording. IIPA urges the US government to focus its efforts in the following areas during bilateral discussions with Singapore in 2010:

**Active Engagement Needed in Enforcement Against Online Piracy.** The recorded music marketplace in Singapore is under serious stress. Sales of physical product (CDs) is in free fall, with 2010 revenues less than half what they were in 2004. Many labels, both international and local, as well as the major international music publishers, have drastically cut back their Singapore offices, or ceased operations there altogether. The retail market has been decimated, and wholesale operations no longer exist in Singapore.

Of course, in Singapore as elsewhere, access to music online or via mobile device is a key factor in the demise of the hard-goods marketplace. And, just as in many other markets, the vast majority of that online or mobile access is to infringing material. Internet music piracy has become pervasive in Singapore, as the household broadband penetration rate has soared from 42% in 2004 to over 100% in 2009.<sup>3</sup> In this highly connected, technologically savvy city-state, online music piracy is thriving, via forum sites, unauthorized portal sites, cyberlockers, and especially peer-to-peer (p2p) file sharing. One leading Internet Service Provider (“ISP”) in Singapore, StarHub, estimated that up to 42% of its bandwidth at peak hours was consumed by p2p traffic before it took steps to manage the network more aggressively. Online piracy has not only decimated the legitimate hard-goods market; it has also crowded out licensed download services and digital music stores, such as the local SoundBuzz operation, which was forced to close its doors in July 2009, unable to compete with piracy.

Prevalent online piracy in Singapore also injures other copyright sectors beyond music. The Motion Picture Association (MPA) reports extensive traffic in illegal copies of motion pictures via p2p networks. Total unauthorized activity in Singapore is estimated at over 300,000 incidences per month on average. The Entertainment Software Association (ESA) also identifies Internet piracy as a serious problem in Singapore, both via p2p services and illegal sites from which pirate games may be downloaded. During CY 2010, ESA vendors detected over 693,000 connections by peers participating in unauthorized file sharing of select member titles on P2P networks through ISPs located in Singapore, placing Singapore ninth worldwide in per capita detections.<sup>4</sup> Breakdowns by ISP show that SingNet Pte Ltd subscribers account for approximately 53% of this activity occurring in Singapore.

The response of the Singapore government to these depredations can best be described as passive. In the online arena, the music industry has been filing complaints with the Intellectual Property Rights Branch (IPRB) of the Singapore police since 2005. These have led to the issuance of a handful of warning letters from government enforcement agencies, with no action whatever in the vast majority of cases. The IPRB informed the industry in July 2007 that it would not be taking any action on these complaints and suggested that “collaborative enforcement” was the best form of action. By that, the IPRB meant that the industry should take up private prosecution or civil proceedings. Following a meeting with IPRB in 2007 at which the authorities told the recording industry that it would consider enforcement actions in cases involving a “significant number” of music files, IPRB has never responded to industry requests to specify what level of infringement would qualify as “significant.” In June 2008, the industry lodged formal complaints with IPRB against two pirate websites hosted in Singapore, and provided extensive follow-up information to the authorities. Eight months later, IPRB told the industry that warnings had been issued, and the files were closed. The government has never responded to industry requests for an explanation of why the site operators were not prosecuted. In October 2009, a complaint was filed with IPRB against a forum site hosted in Singapore that featured infringement of music. When the recording industry asked about the status of the case in December 2010,

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of US negotiators on this complex issue culminated favorably in December 2009, with the announcement of license agreements between the recording industry and Singapore’s leading broadcaster, MediaCorp, regarding simulcasting.

<sup>3</sup>According to statistics published by the Infocomm Development Authority of Singapore, the household broadband penetration rate rose from 42.3% in 2004 to 142.2% in 2009. Mobile phone penetration rate also exceeds 100%.

<sup>4</sup>These figures do not account for downloads that occur directly from hosted content, such as games found on “one-click” hosting sites, which appear to account each year for progressively greater volumes of infringing downloads.

IPRB claimed that they were “looking into the cases.” However, it was revealed that the hosting of the site moved to another jurisdiction in February 2011 and nothing has been done to stop the infringement from spreading outside Singapore. Other copyright sectors confirm this portrait of governmental passivity in the face of a serious threat from online piracy. For example, MPA representatives were invited to make a presentation on Internet piracy and graduated response to a group of public and private sector representatives in March 2010, but nothing further came of it, despite repeated requests.

IPRB’s consistent refusal to investigate online piracy complaints brought to it by industry, and its consistent direction that industry bring private prosecutions, is particularly disturbing because it marks a return to a practice that the FTA was specifically designed to discourage. Article 16.9.21.b of the FTA provides that “Each Party shall ensure that non-private criminal actions are the primary means by which it ensures the effective enforcement of its criminal law against willful copyright or related rights piracy. In addition, each Party shall ensure that its competent authorities bring criminal actions, as necessary, to act as a deterrent to further infringements.” Six years after the FTA came into force, Singapore’s fulfillment of these commitments is open to serious doubt. The experience of the music industry, at least, is that private criminal actions, far from ceding primacy to government prosecutions, is virtually the only path open to it to combat criminal infringements online; and the government’s failure to bring criminal actions is a significant part of the explanation for the indisputable fact that online music pirates are simply not being deterred in Singapore.

The fight against online piracy is further hobbled by the widespread unresponsiveness of Singapore’s Internet service providers (ISPs). The recording industry sends ISPs, on a weekly basis, notices of infringements carried out by their subscribers. In 2009-2010 alone, some 218 letters were sent, listing 3,787 IP addresses of infringing p2p users. Every six months, industry compiles these reports and identifies to the ISPs the apparent repeat infringers among their subscribers. These notices, and requests for the suspension of the accounts of repeat infringers, have been almost completely ignored.<sup>5</sup> There is no evidence that any notices have been passed on to the infringing subscribers, nor that any ISPs even have a policy to do so. A number of ISPs have even refused to meet with the recording industry to discuss ways to cooperate to deal with digital piracy. The damage inflicted by online music piracy on Singapore’s economy and culture, as well as on the interests of U.S. copyright owners, cannot possibly be addressed without cooperation from the ISPs whose facilities and services are being used to carry out infringements; yet that cooperation has been completely lacking. The entertainment software industry experience is similar. ESA last year stopped sending notices to local ISPs regarding infringing activities of their subscribers detected by ESA’s monitoring, as ISPs never responded nor gave any indications that they were taking any remedial actions.

Singapore’s government has a responsibility to contribute to solving this problem. It pledged in its FTA with the United States to “provide ... legal incentives for services providers to cooperate with copyright owners in deterring the unauthorized storage and transmission of copyrighted materials.” USSFTA, Article 16.9.22.a. Since no cooperation is occurring, any incentives the government is offering are manifestly inadequate. More specifically, the FTA clearly exhibits a policy to encourage ISPs to “adopt and reasonably to implement a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers.” Article 16.9.22.b.vi.A of the FTA makes such adoption and implementation a prerequisite for any ISP seeking to limit the scope of remedies available against it for infringements taking place on its network, including infringements as to which the ISP’s liability arises only from its role in transmitting, routing or providing connections, or engaging in associated intermediate and transient storage. See Article 16.9.22.b.i.A. On paper, Singapore implemented this obligation in Rule 8 of the Copyright (Network Services Provider) Regulations 2005, requiring providers to implement repeat infringer policies. The fact that, from all that is known, Singapore ISPs have not even adopted any such policies, much less implemented them, raises significant issues of FTA compliance.

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<sup>5</sup>One ISP responded by asking the recording industry for more details regarding the list of repeat infringers. The industry provided them, and has never heard anything further from the ISP.

IIPA urges USTR to press Singapore's government to step up to these problems. There are many steps, both formal and informal, that the government could take to encourage ISPs operating within its jurisdiction to begin to cooperate with right holders as the FTA specifically directs. Cooperation must include, but should not be limited to, forwarding to subscribers any notices received from right holders regarding specific infringements detected, as well as making responsible repeat infringer policies a regular feature of the ISP marketplace in Singapore. Whether this is achieved through adoption and active enforcement of reasonable contractual terms of service for provision of Internet access, or whether it takes the form of a required "graduated response" program with appropriate due process safeguards before suspension or termination of user accounts, Singapore must move beyond the status quo if it is to make any headway against this well-entrenched and pervasive problem.

As a further obstacle to enforcement against online infringement, Singapore law still makes no provision for agents or authorized representatives acting on behalf of copyright owners to apply for pre-trial discovery in order to identify online copyright infringers. This legislative deficiency, as measured against Singapore's obligations under the US-Singapore Free Trade Agreement, was observed by Justice Woo Bih Li in the March 2008 *Odex* decision.<sup>6</sup> Primary or subsidiary legislation needs to be enacted to fix this problem.

**More Effective Enforcement Against End-User Piracy of Business Software.** Singapore continues to suffer from unacceptably high levels of corporate and institutional piracy of business software. This end-user piracy – the willful use of pirated or unlicensed software in the workplace – has long been the most significant feature of software piracy in Singapore, and the form of infringement that inflicts the greatest losses on U.S. business software companies. Although the overall business software piracy rate has edged down from 35% in 2009 to 34% in 2010, corporate end-user piracy continues unabated, with an estimated commercial value of pirated US vendor software in the Singapore market of US\$114 million.<sup>7</sup>

When Singapore took on the obligation, in its Free Trade Agreement with the United States, to provide criminal remedies for willful infringements of copyright for purposes of commercial advantage or financial gain, IIPA was hopeful that this would lead to more effective enforcement against business end-user software piracy.<sup>8</sup> The FTA provision also requires remedies that "include imprisonment as well as monetary fines sufficiently high to deter future acts of infringement consistent with a policy of removing the monetary incentive of the infringer." In its Copyright (Amendment) Act 2004, intended to fulfill Singapore's FTA obligations, Singapore adopted Section 136(3A) to enable the criminal prosecution of willful infringers who act to gain a commercial advantage. Section 136(3A) was enacted specifically to facilitate criminal prosecution of business end-user software pirates.

Unfortunately, the hopes generated by this FTA provision and its implementation in Singapore law have not been realized. Six years after the FTA came into force, there has been only a single completed prosecution of a corporate end-user pirate under Section 136(3A), and that prosecution resulted in the imposition of penalties that fall far short of the level required to "remove the monetary incentive of the infringer."<sup>9</sup> In two other cases, after raids in 2007 on corporate end-user pirates, with support and considerable assistance from the Business Software Alliance (BSA), the prosecutions were abruptly dropped in 2009, without any official explanation.<sup>10</sup> No new cases have been brought by police since 2007. This history casts considerable doubt on Singapore's compliance with its commitments under the USSFTA.

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<sup>6</sup>*Odex Pte Ltd v. Pacific Internet Ltd* [2008] SGHC 35 (see paragraphs 31-37 of the decision).

<sup>7</sup>BSA's 2010 statistics are preliminary, representing U.S. software publishers' share of commercial value of pirated software in Singapore. They follow the methodology compiled in the Seventh Annual BSA and IDC Global Software Piracy Study (May 2010), <http://portal.bsa.org/globalpiracy2009/index.html>. These figures cover packaged PC software, including operating systems, business applications, and consumer applications such as PC gaming, personal finance, and reference software – including freeware and open source software. They do not cover software that runs on servers or mainframes, or routine device drivers and free downloadable utilities such as screen savers. The methodology used to calculate this and other piracy numbers are described in IIPA's 2011 Special 301 submission at [www.iipa.com/pdf/2011spec301methodology.pdf](http://www.iipa.com/pdf/2011spec301methodology.pdf). BSA's final piracy figures will be released in mid-May, and the updated US software publishers' share of commercial value of pirated software will be available at [www.iipa.com](http://www.iipa.com).

<sup>8</sup>See USSFTA, Art. 16.9.21. a.i.

<sup>9</sup>This case was *Public Prosecutor v. PDM International Pte. Ltd.*, which concluded in April 2006.

<sup>10</sup>The defendants in these two cases were (1) Boonty and (2) Wang & EF Tan.

Although the reasons for Singapore's failure to deliver on this commitment remain opaque, at least three factors may be contributing to the near-total dearth of prosecutions for end-user piracy of business software. All these shortcomings should be addressed as part of a comprehensive strategy to deal effectively with this serious problem. The net effect of these shortcomings has been to strip section 136(3A) of any deterrent effect.

First, detecting end-user piracy typically depends on inside information from informants within the company or other institution engaged in the infringement. In Singapore, many informants are justifiably afraid to step forward, despite the offer of monetary incentives, because they fear retribution, including threats to their physical safety as well as to their future employability. BSA has asked Singapore authorities to consider solutions such as not requiring informants to provide sworn statements in search warrant applications that are then turned over to the target company, or sealing court records to protect informants' identities; but these efforts have been unsuccessful. Until the police and prosecutors can agree upon a means for protecting informants (or courts agree to grant search warrant applications based on hearsay evidence) it will be all but impossible to generate leads for prosecutions.

A case that BSA attempted to bring in December 2010 illustrates the problem. The three informants in this case (former employees of a company allegedly using a significant amount of unlicensed business software) had signed Statutory Declarations and had therefore given evidence on oath of the alleged infringement, thus exposing themselves to prosecution if they had in fact been lying. BSA submitted a complaint based on these sworn Statutory Declarations. However, although BSA sought to protect the informants by requesting the court to seal their Statutory Declarations or redact their identifying information, the court was unable to accede to this request as there is no express provision in the law allowing this in criminal cases. As one of the informants believed that her current employment would be affected if the information became public, BSA withdrew the evidence so as not to jeopardize her employment, and as a result it was not possible to obtain a search warrant on the target infringing the law. This case clearly demonstrates the need to provide some means of protection for informants, even if only in some administrative or limited form, such as allowing the court to withhold the identities of informants or disclose them subject to certain conditions.

Second, there seems to be a surprising (and disturbing) range of views among police and prosecutors about what is required to prove "willful" infringement within the meaning of Section 136(3A). Some apparently believe that it is necessary to prove that the infringement was carried out only after a deliberate instruction from an officer of the company to use infringing software. Such an unjustified hurdle could hardly ever be surmounted. Others seem to take the view that if the unlicensed software were only used a few times, even a knowing infringement would not qualify as "willful." These strained interpretations, which fly in the face of the clear intentions underlying both the FTA provision and the parallel language in the WTO TRIPS Agreement, need to be rejected in favor of a common sense approach, under which only negligent or accidental commercial infringements are excluded from criminal liability.

Finally, even if these hurdles were overcome and a successful prosecution were maintained under Section 136(3A), that statute provides insufficient penalties to assure full deterrence. Section 136(3A) provides a fine of up to S\$20,000 (US\$15,700) or up to 6 months' imprisonment, or both, with stiffer penalties for repeat offenders. Notably, the maximum fine that can be imposed for a first violation of Section 136(3A) is much less than that available for other copyright offenses defined in Singapore's law, or for willful trademark counterfeiting.<sup>11</sup> Furthermore, since the fine authorized under Section 136(3A) – unlike comparable provisions in Singapore law – does not vary with the number of copies involved in the infringement, a high-volume pirate prosecuted under that section is exposed to the same maximum fine as someone who makes very few infringing copies, or even just one.

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<sup>11</sup>Section 136(1) (selling or renting infringing copies, or making them for sale or hire) and 136(2) (possession or importation of infringing copies for sale or distribution) are each punishable by fines "not exceeding \$10,000 for the article or for each article in respect of which the offence was committed or \$100,000, whichever is the lower." Section 136(3) (which prohibits distribution of infringing copies "for purposes of trade; or ... to such an extent as to affect prejudicially the owner of the copyright") is punishable by a fine of up to S\$50,000. Similarly, section 49 of Singapore's trademark law authorizes significantly higher fines of up to S\$100,000 for willful trademark counterfeiting.

In the only known case in which a business has been prosecuted under Section 136(3A), the defendant PDM, an interior design company, pleaded guilty to two violations of Section 136(3A).<sup>12</sup> The first count involved 20 infringing copies of an Adobe program that it had installed on its computers; the second count involved 20 infringing copies of a Microsoft program. A third count, involving the installation of 11 Autodesk programs, was taken into account for purposes of sentencing. The total retail value of the programs that PDM had installed illegally was S\$78,174. There was no question that the programs were all used in daily business operations – some over a period of years – in order to obtain a commercial advantage.

Because PDM pled guilty to two violations of Section 136(3A), the maximum possible fine it faced was S\$40,000. In fact, in consideration of the guilty plea, a fine of S\$30,000 was imposed. In other words, for years of unlicensed use of more than fifty copies of computer programs, PDM had to pay a fine amounting to less than 40% of what it would have paid for the licenses in the first place. Even if the maximum allowable fine had been imposed, PDM would have paid barely 51 cents on the dollar of what it would have cost had it obeyed the law.

The potential that the penalties authorized under Section 136(3A) would fall short of deterrent levels was evident at the time that the law was enacted. Now that this potential has been realized in the PDM case, however, the Government of Singapore should be encouraged to review penalty levels in its copyright law, to ensure that the standard for criminal remedies set forth in the US-Singapore FTA is being met.

Limited progress against Hard Goods Piracy of Music and Movies. What remains of the legitimate market for music CDs has had to contend with pirate product, sold at makeshift stalls in bazaars and at night markets, or at tourist centers, or imported in counterfeit form from China under the guise of original parallel import products. In 2010, the music industry reports some improvement in the IPRB's previously passive pattern in responding to such hard goods piracy; but there is still no cohesive or consistent Singapore Police policy in fighting IP crime. IPRB conducted two rounds of raids in the Chinatown area in April and July 2010, raiding a total of 8 locations selling pirate CDs, and initiating criminal prosecutions. Another raid in July targeted two shops and kiosks selling hard disks pre-loaded with karaoke videos. However, no one has been charged as of January 2011. The recording industry filed five new complaints involving four makeshift stalls selling pirated music products at Chinese New Year trade fairs and one retail stall on January 20, 2011. However, IPRB has responded that the industry should consider a "collaborative approach," i.e., private prosecution, as the targets do not represent "the upper echelons of the syndicate."

MPA reports on an April 2010 raid in Sim Lim Square that seized 480 units of pre-loaded media players (containing unauthorized copies of films and TV shows) and led to 14 arrests, and reportedly at least one shopkeeper was fined. An emerging "hard goods" problem involves "dongle" devices that provide delivery of Internet streaming services. Approximately 5-10 different types are being sold in Sim Lim Square. These small Internet-accessible black boxes with USB and HDMI access ports connect directly to the television which is then routed to a variety of infringing online sites (typically Chinese) containing movies, TV shows, sports programming, etc. They sell for about S\$200 (US\$156) and are marketed as an "alternative to expensive monthly cable television bills."

Finally, with regard to hard goods piracy, the prevalence in the market of pirate product imported from China in the guise of legal parallel imports justifies a review of Singapore's policies and practices in this area. In cases involving such importation, Singapore should reconsider its refusal to impose the burden of proof on the defendant to establish that the articles in question were legitimately made in the country of origin, or at least should amend its Declaration for Censorship Submission forms to require applicants to indicate (in the form of a statutory declaration) the source of such acquisition, as industry has previously requested. As it now stands, the law requires the plaintiff (or the prosecutor) to prove a negative – that the article was not made with the authority of the copyright owner anywhere in the world – as well as proving the defendant's knowledge of the article's piratical nature. Singapore should also make more active use of its existing authority to detain shipments of suspected infringing CDs *ex officio*.

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<sup>12</sup> See Public Prosecutor v. PDM International Pte. Ltd. [2006] SGDC91.

While this authority is sometimes used with respect to items such as counterfeit alcoholic beverages or tobacco products, it is almost never invoked to enforce copyright protections against importation of pirate CDs.

**Outlawing Camcording.** Although a number of Asian jurisdictions have joined the global trend toward outlawing the unauthorized camcording of feature films in cinemas, Singapore has not yet done so. In 2010, six individuals were caught camcording in Singapore cinemas, but the government declined to prosecute any of them. MPA has established that pirate copies of at least two titles that are widely available online were sourced to camcording occurring in a Singapore cinema. A specific criminal provision against camcording has proven to be a critical anti-piracy tool in many countries that have adopted it. Singapore should follow suit promptly, without waiting until the problem becomes more widespread.

**Deterring Trafficking in Circumvention Devices and Services.** ESA reports that Singapore's government continues to have an excellent record of cooperation and partnership with the entertainment software industry on enforcement efforts against retail outlets for pirate games in hard copy format, which have driven this form of piracy down to low levels, and on educational initiatives aimed at increasing the public's awareness of the importance of protecting copyright. There is, however, a persistent concern with respect to the sale of circumvention devices, which enable the play of pirated games on consoles. Although Singapore police have undertaken some high profile raids on targets engaged in the distribution of large quantities of circumvention devices, the eventual lenient sentences and penalties imposed on most defendants undermines efforts at curtailing the trade in circumvention devices.

In light of reductions in the availability of hard copy pirated entertainment software, the continued prevalence of modified consoles and circumvention devices in Singapore strongly suggests that existing legal sanctions are insufficient to create deterrence. The maximum penalty for trafficking in circumvention devices – two years' imprisonment or a fine of S\$20,000 – is far less than the penalties for the sale of pirate games – S\$10,000 per article up to S\$100,000 and/or imprisonment up to five years. Furthermore, since the fine authorized under Section 261C does not vary based on the number of circumvention devices, a high-volume distributor is exposed to the same maximum fine as a low level distributor. The problem is further exacerbated by the Court's reluctance to impose meaningful sentences against defendants charged with selling circumvention devices or modified game consoles. Yet the sale and supply of modified consoles and circumvention devices inflicts far greater damage to the market than the sale and supply of pirate games. The buyer or user of a modified game console, or of game copier cards, may stop buying legitimate software altogether, instead downloading pirated games from the Internet to meet his or her needs, thereby fostering multiple acts of infringement.

Singapore should re-examine the current penalties for criminal violations of its technological protection measures provisions (Section 261C) and consider revising them to bring them in line with the penalties for criminal copyright infringement. Moreover, judges should be encouraged to impose sufficiently stern criminal sentences to serve as a deterrent to future sales of circumvention devices.

**Book Piracy.** U.S. book publishing companies continue to suffer from illegal commercial photocopying in Singapore. The industry needs more support from the Singapore Police in tackling the problems created by entities involved in book piracy, but response by law enforcement authorities has been less than robust. Specifically, IIPA would like to see the same model of police-initiated raids that has been successful in tackling optical disc operations in the past employed to combat book piracy, including the use of police investigative powers to bring the syndicate owners to prosecution. While it appeared that some progress was being made with respect to curtailing unauthorized photocopying and the sale of pirated books on university campuses, in 2010 a rather prominent bookstore on the campus of a well known university was found selling photocopied books. University administrators should do more to address unauthorized photocopying occurring in and around university campuses, including adopting appropriate use policies and educating their faculty and students on the importance of respecting and protecting intellectual property.

## MARKET ACCESS ISSUES

In March 2010, Singapore adopted amendments to its Code of Practice for Market Conduct in the Provision of Mass Media Services. In effect, the government unilaterally abolished exclusive licenses of content for subscription television programming, requiring that all subscription television services make available the channels they have licensed from content owners to all other subscription television retailers on a so-called "cross-carriage" basis. This drastic curtailment of the freedom of copyright owners to enter into commercially sound exclusive licensing deals is unprecedented elsewhere in Asia. It is unjustified by market conditions, injects government deeply into private contractual arrangements, and threatens to stifle further innovation in the packaging and delivery of new content to Singapore consumers. It also raises significant questions under the US-Singapore FTA, and concerns about Singapore's fulfillment of its obligations under the TRIPS Agreement. IIPA urges Singapore to reconsider these amendments, which have not yet been implemented, and to modify them as needed to conform with Singapore's bilateral and multilateral commitments.