



U.S.-Singapore Free Trade Agreement

Testimony of

Eric H. Smith
President

International Intellectual Property Alliance (IIPA)

Before the

U.S. International Trade Commission

April 24, 2003

Good morning. My name is Eric H. Smith and I am President of the International Intellectual Property Alliance (IIPA), a coalition of six trade associations (named below), each representing a significant segment of the U.S. copyright-based industries. These member associations collectively represent over 1,100 companies producing and distributing materials protected by copyright laws throughout the world — all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, trade books, reference and professional publications and journals (in both electronic and print media).

IIPA strongly supports the earliest adoption by Congress of the U.S.-Singapore Free Trade Agreement (FTA).

From the standpoint of the U.S. copyright community, this agreement sets out the highest standards of protection and enforcement for copyrights and other intellectual property yet achieved in a bilateral or multilateral agreement, treaty or convention. It builds on the

standards currently in force in the WTO TRIPS Agreement and in NAFTA with the goal to update and clarify those standards to take into account not only the experiences gained since those agreements entered into force, but also the significant and rapid technological and legal developments that have occurred since that time. For example, this FTA incorporates the obligations set out in the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) and requires that Singapore ratify and fully implement these obligations within one year from “entry into force” of the FTA, namely within one year after both governments have completed their respective formal approval mechanisms. The full implementation of the WCT and WPPT both in Singapore and on a global basis at the earliest possible date is a critical goal of the copyright industries. These treaties provide the essential legal infrastructure for e-commerce through obligations that assist rightholders in safeguarding the transmission of valuable copyrighted works over advanced networks like the Internet and by providing higher standards of protection for digital products generally.

Madam Chairman, my testimony today will highlight the major advances made by this FTA in the area of copyright protection and enforcement. Other witnesses today will cover some of the other portions of the intellectual property chapter in the FTA, which altogether make up a strong agreement for all intellectual property-based industries. Because I am also the Chairman of IFAC-3, the governmental advisory committee on intellectual property, I want to refer the Commission to the IFAC-3’s detailed evaluation of this FTA in a report mandated by the Congress in the Trade Act of 2002. This report appears on the USTR website at <http://www.ustr.gov/new/fta/Singapore/ac-ifac3.pdf>. The IFAC-3, representing all facets of the IP industries, strongly endorsed this FTA.

I want to note to the Commission IIPA’s appreciation to our own government and to the Government of Singapore for having worked together to craft such an important agreement on copyright and other intellectual property protection and enforcement. We believe this agreement will set new global standards of protection, and hope and urge that these standards are carried forward in other FTAs, and in plurilateral and multilateral agreements to come. Singapore can be proud that it now has the highest level of protection in the Asian region and we believe this will assist it in attracting new foreign investment and new trade in valuable digital and other intellectual property-based products, particularly in the area of e-commerce. Given the increasing importance of intellectual property creation to economic growth in the U.S. and in both developed and developing economies, IIPA believes this FTA will be critical to the growth path for Singapore and, if followed by other countries in the Asian region, to those countries as well. As the Commission knows, the copyright-based industries are among the fastest growing and most productive of any sector of the U.S. economy, employing new workers in higher paying jobs at over three times the rate of the rest of the economy, creating new revenue at over two times that rate and contributing close to \$90 billion to the economy through foreign sales and exports.¹ Our industries’ principal barrier to trade is the lack of effective protection and enforcement of our intellectual property, resulting in piracy rates that cause more than \$22 billion in losses annually to the copyright industries alone. This FTA, fortified by the agreements to follow it, will be instrumental, we hope, in reducing these losses and in contributing to even faster global growth for all these important industry sectors.

Some of the most important highlights of this FTA are:

¹ See Copyright Industries in the U.S. Economy: The 2002 Report, by Stephen Siwek of Economists Inc.

- A provision on national treatment, which unlike TRIPS and NAFTA, is as broad as possible and permits no exceptions.
- Protection for sound recordings and performances, which comes closer than any other bilateral or multilateral agreement to equalizing protection of these works with those of books, films, computer software and other protected subject matter. Because the Internet and digitization are fast making distinctions among types of works increasingly irrelevant, if not dangerous, this is a particularly important advance for U.S. and Singapore interests.
- Provisions fully implementing the WCT and WPPT in a manner very close to the position taken by the U.S. Congress in its implementation of these critical treaty obligations, including (a) full and express protection for temporary copies; (b) full protection for the interactive transmission of protected works; and (c) detailed articles on protecting against the circumvention of technological protection measures, which are used by copyright owners to protect against unauthorized access and exploitation of their works, with only the most narrow exceptions.
- An express provision ensuring that Singapore may not subject the retransmission of television signals to compulsory licenses.
- Extension by Singapore of the term of protection for protected subject matter closer to that afforded in the U.S.
- A provision ensuring that Singapore, like the U.S. has already done, will issue decrees or other similar orders mandating use of legal software by government agencies.

The significant strengthening of enforcement mechanisms and obligations by national governments is increasingly critical to the copyright industries-- good laws without effective enforcement are simply not sufficient. This FTA makes a number of significant advances and clarifications:

- A provision (and side letter) expanding presumptions with respect to the existence of a copyright and of its ownership. This will greatly streamline enforcement and prevent unnecessary delays in enforcing rights in national courts.
- A provision clarifying TRIPS obligations with respect to courts' imposing deterrent and fully compensatory civil damages, including the use of the retail price of the product (rather than other measures prevalent in some countries, like the price of the pirate copy) as a measure of the right holder's loss.
- A provision that Singapore must implement a system of statutory damages in copyright cases, like in the U.S., with language that such damages must be "sufficiently high to constitute a deterrent to further infringements." This is a critical element to ensure that the civil enforcement system is effective in infringement cases.
- Strengthened and clarified provisions on seizures of pirate product, implements and associated documentary evidence and improved forfeiture provisions.
- Provisions requiring that Customs and criminal authorities act *ex officio* without the need for a right holder complaint -- critical elements in achieving effective enforcement.
- Improved and clarified criminal provisions -- key to reducing piracy levels. These include ensuring that the TRIPS requirement to criminalize piracy "on a commercial scale" includes non-profit-motivated unauthorized reproductions and/or transmissions of protected works over the Internet, as in the NET Act provision of U.S. law.
- Language that will provide further assurances that penalties actually imposed on infringers in criminal cases will be sufficient to deter piracy.

- A provision on the scope of limitations on remedies against service providers for the infringing reproduction and transmissions occurring over their facilities. These provisions, modeled on U.S. law, will require Singapore to amend its current law, which provides an overbroad exemption in certain cases.
- A provision requiring Singapore to adopt effective regulation of optical media production within its territory. Optical disc piracy is one of the biggest piracy problems suffered by the copyright industries in the Asian region and globally.
- A transitional provision requiring implementation of the FTA enforcement text within six months of entry into force of the agreement.

In sum, this FTA is good news for the 4.7 million Americans (3.5% of total U.S. employment) employed in the copyright industries. Thank you for the opportunity to testify before you today.