

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

JUN 9 2005

The Honorable  
Lim Hng Kiang  
Minister for Trade and Industry  
Singapore

Dear Minister Lim:

I am pleased to acknowledge receipt of your letter of this date regarding implementation of Chapter 16 of the *United States – Singapore Free Trade Agreement* (“FTA”). In your letter, you provide information regarding Singapore’s implementation of its obligations under the FTA, including commitments to introduce changes to legislation or regulations that seek to address various issues recently discussed by our two governments, and information on how Singapore’s measures implementing the FTA will operate. I would like to take this opportunity to provide you our views and comments on these issues.

1. Rights management information and circumvention of technological measures: Inclusion of “Private Financial Gain”

We welcome Singapore’s commitment to amend Sections 260(6) and 261C(4) and (5) of the Singapore Copyright Act to cover private financial gain.

2. Circumvention of technological measures: Scope of application of Section 261C(1)

We welcome Singapore’s clarification concerning its interpretation of Section 261C(1) of the Copyright Act.

3. Pre-established damages and criminal penalties for infringement of copyright or related rights

We appreciate Singapore’s assurances concerning its application of statutory damages and criminal penalties for infringement of copyright or related rights. As you know, we expressed significant concerns about the level of the per-work caps and per-action aggregate caps on statutory damages in Singapore law, as well as the level of criminal penalties for particular acts of infringement in Singapore law (including those set out in Section 136(3A) of the Copyright Act). In light of these continuing concerns, we welcome Singapore’s commitment to undertake an immediate review, and make the necessary changes to ensure that the relevant FTA obligations are met, if at any time experience reveals that statutory damages or criminal penalties for infringement of copyright are not set or imposed at sufficiently high levels.

#### 4. Temporary/Incidental Reproductions

We welcome Singapore's commitment to amend Sections 38A and 107E of the Copyright Act to limit the scope of the exception set out in those provisions. We also appreciate the clarifications that you have provided regarding the limited scope and effect of this exception.

Similarly, we welcome Singapore's commitment to amend Section 193E so that it applies to copies that are "transient and incidental" rather than "transient or incidental." We also appreciate Singapore's clarification that this exception will not be applied in a manner that will harm the legitimate interests of right holders. However, although Singapore officials have explained to us that this exception is only intended to cover a narrow set of circumstances consistent with Article 16.4.10 of the FTA, we remain concerned that it may be interpreted or applied in a manner that would be inconsistent with the requirements of that provision. We encourage Singapore to consider further changes to the statute to address this concern. In the meantime, we will monitor application of this exception with a view to revisiting this issue in the future.

#### 5. Network Service Provider (NSP) Liability: Expedient procedure for obtaining identity of the infringer

We welcome Singapore's commitments and clarifications regarding its implementation of Article 16.9.22(b)(xi) of the FTA. As you know, we expressed significant concerns with respect to the length of time that would be necessary to obtain the relevant orders. Based on Singapore's assurances on the efficiency of its judicial system, and our confidence in those assurances, we expect that hearing dates will be fixed within five days and, if the legal requirements are satisfied, orders will be issued without delay in the least time possible. As this is a new procedure, we will follow with interest the implementation and use of the new procedure and, in the event there are significant delays in the issuance of orders, we will raise those concerns with you.

#### 6. NSP Liability: Clarification of Sections 193DA(5) and 252CA(5)

We welcome Singapore's commitment to amend Sections 193DA(5) and 252CA(5) of the Copyright Act. We also appreciate the clarifications that you have provided regarding the intent of this amendment.

#### 7. NSP Liability: Knowledge Requirement and Expedient Takedown

We welcome Singapore's commitment to amend Sections 193D and 252C of the Copyright Act. We also appreciate Singapore's assurance that its NSP regulations will include a regime for notice and expedient takedown.

With respect to the various areas listed above where Singapore has committed to amend its relevant measures, we are proceeding based on Singapore's commitment to do so expeditiously.

I look forward to continuing to work with you to bring the benefits of the FTA to the people of the United States and Singapore.

Sincerely,



Rob Portman