



March 21, 2008

SUBMITTED VIA IPOS WEBSITE

Mr. Melvyn Loey
Intellectual Property Office of Singapore
51 Bras Basah Road #04-01
Plaza By The Park
Singapore (189554)

RE: Public Consultation On Changes To The Jurisdiction And Operational Aspects Of The Copyright Tribunal

Dear Mr. Loey:

The International Intellectual Property Alliance (IIPA) welcomes this opportunity to participate in the public consultation on changes to the jurisdictional and operational aspects of the Copyright Tribunal. Our comments are focused on the jurisdictional questions.

IIPA is the private sector coalition representing the copyright industry associations listed below. IIPA and its member associations have been working for stronger copyright laws and enforcement around the world for more than two decades. IIPA has participated actively in debates concerning the development of copyright law in Singapore throughout this period, most recently through comments submitted last April in the Public Consultation Exercise for Copyright (Excluded Works) Order 2007. IIPA members include:

Association of American Publishers (AAP)
Business Software Alliance (BSA)
Entertainment Software Association (ESA)
Independent Film and Television Alliance (IFTA)
Motion Picture Association of America (MPAA)
National Music Publishers' Association (NMPA)
Recording Industry Association of America (RIAA)

While the Copyright Tribunal has many important roles to play in the application of Singapore's copyright law,¹ IIPA strongly believes that its jurisdiction with respect to disputes involving non-statutory

¹ To be effective, the Copyright Tribunal must be appropriately staffed by experts with balanced views. We urge the government to ensure that any changes to the jurisdiction of the Tribunal are accompanied by staffing decisions that ensure impartiality.

licenses should be carefully circumscribed. Voluntary licensing of exclusive rights regarding copyright works and other protected subject matter is the fundamental mechanism by which incentives are given for the creation of such works and for their dissemination to the public. A government tribunal should be authorized to interfere with such voluntary licensing, and in effect to dictate contractual terms between private parties, only in narrowly defined circumstances, and only when market mechanisms have demonstrably failed to function. Any broader interference with voluntary licensing of exclusive rights also inevitably gives rise to questions about whether Singapore is in full compliance with its obligations under a wide range of international copyright agreements.

In this context, IIPA urges Singapore not to expand the jurisdiction of the Tribunal to cover licenses for all uses of all works and other subject matter (Proposal A(i)). In particular, the Tribunal should not be granted unprecedented authority to intervene in private licensing disputes regarding fundamental exclusive rights such as the reproduction right and the making available right. Investment in the creation and distribution of copyright works and protected subject matter is predicated to a great extent upon the expectation that the copyright owner will be entitled to license the reproduction and making available rights in a free market environment. Singapore should not undermine this expectation by granting the Tribunal the right to dictate contract terms, or even to force a copyright owner to grant a license, with regard to these rights.

The consultation paper asserts that “the growth of the Interactive Digital Media and entertainment sectors, which are increasingly employing new technologies to exploit films and sound recordings,” may be adversely affected “in the long run” if users are not provided with a forum in which to challenge license terms over the reproduction and making available rights which they consider unreasonable. With all due respect, IIPA strongly disagrees.² The long-standing worldwide consensus, reflected most recently in the WIPO Internet Treaties, is that the most critical determinant for growth of legitimate new media sectors is whether copyright owners are accorded clear exclusive control of these rights, and whether those rights are adequately and effectively enforced by the law. Singapore’s top priority should be to strengthen this exclusivity, not to weaken it by allowing government to dictate license terms. In particular, sound recording producers currently are currently denied the full breadth of rights that are necessary in an environment where the licensing of transmissions is quickly replacing the sale of physical products. In some cases, such a lack of adequate legislation is inconsistent with Singapore’s international agreements (rights with respect to simulcasting). In other cases, the status quo simply reflects a poor policy choice that is at odds with the practices of the great majority of developed, and developing, countries (rights of broadcasting and public performance). In addition, questions have arisen regarding the Singapore government’s responsiveness to widespread infringements of exclusive rights online. We urge that these roadblocks to the full potential of new media sectors in Singapore be addressed as a matter of priority.

IIPA strongly supports Proposal A(ii) in the consultation paper, under which the Copyright Tribunal’s jurisdiction would cover only licenses administered by collecting societies. This reform would be valuable in any case, but particularly if the Tribunal’s jurisdiction is simultaneously expanded in any way (as under Proposal A(i)) to cover licensing of additional rights in additional kinds of copyright works

² In any event, the consultation paper’s assertion provides no basis whatever for Proposal A(i) to the extent that it would expand the Copyright Tribunal’s jurisdiction to cover licenses in all categories of works or subject matter, not just sound recordings or films.

or other subject matter. While collecting societies, like other agents for copyright owners, should be accorded the maximum contractual freedom with regard to license terms, it may be appropriate for the tribunal to play a role when collective licensing negotiations break down. This arrangement would serve to address any user concerns about the potential for collecting societies to exert monopoly controls. Only in this situation is it justified to authorize an entity like the Copyright Tribunal to intervene in licensing decisions. Adoption of Proposal A(ii) would focus Copyright Tribunal licensing jurisdiction where it is most justifiable and least threatening to market mechanisms.

In implementing Proposal A(ii), IIPA urges care in crafting a definition of “collecting societies” whose licenses are potentially subject to Copyright Tribunal jurisdiction. There are many circumstances in which it is convenient or efficient for two or more copyright owners to appoint a common agent to negotiate and administer licenses with respect to copyrights owned by the principals. Such arrangements are often used for the licensing of works of foreign copyright owners in Singapore. These agency arrangements are beneficial for copyright owners and users alike, and should be encouraged. A lax definition of “collecting society” could discourage such common agency relationships by making their licensing activities subject to Copyright Tribunal licensing jurisdiction.

Thank you for considering the views of IIPA.

Respectfully submitted,

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