

# UNITED STATES - SINGAPORE FREE TRADE AGREEMENT

Chapter 16 : Intellectual Property Rights  
Chapter 14 : Electronic Commerce

**Jonathan Kok**  
Partner



# CHAPTER 16 : INTELLECTUAL PROPERTY RIGHTS



- ☑ Trademarks
- ☑ Copyright and Related Rights
- ☑ Patents
- ☑ Enforcement of Intellectual Property Rights (Civil remedies and Criminal remedies)



# TRADEMARKS



- Registration of scent and sound marks.
- Recordation of trademark licences not necessary to establish the validity of the licence or to assert any right in a trademark.



# COPYRIGHT AND RELATED RIGHTS

- Extension of duration of copyright to life of author plus 70 years or, in the case of a corporation, 70 years from the end of the calendar year of creation or first publication.
- Copyright owners shall have the exclusive right to authorize or prohibit the communication to the public of their copyright work by wire or wireless means.
- Express prohibition against re-transmission of television signals (whether terrestrial, cable, or satellite) on the internet without authorization of the right holder in the subject matter of the signal.



# CIRCUMVENTION OF EFFECTIVE TECHNOLOGICAL MEASURES

## Definition:

“Effective Technological Measure” means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other subject matter, or protects any copyright or any rights related to copyright.



# CIRCUMVENTION OF EFFECTIVE TECHNOLOGICAL MEASURES

Any person who:

- (i) knowingly, or having reasonable grounds to know, circumvents without authority any Effective Technological Measure; or
- (ii) manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components or offers to the public or provides services, which circumvents any Effective Technological Measure

shall be liable to civil proceedings and be guilty of a criminal offence.



# PROTECTION OF RIGHTS MANAGEMENT INFORMATION



Definition:

“Rights Management Information” means

- ◆ information which identifies a work or the owner of any right in the work;
- ◆ information about the terms and conditions of the use of the work; and
- ◆ any numbers or codes that represent such information when any of these items is attached to a copy of the work.



# PROTECTION OF RIGHTS MANAGEMENT INFORMATION

Any person who without authority, and knowingly, or with respect to civil remedies, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related right,

- (i) knowingly removes or alters any Rights Management Information;
- (ii) distributes or imports Rights Management Information knowing that the Rights Management Information has been altered without authority; or
- (iii) distributes, imports, broadcasts, communicates, or makes available to the public copies of works, knowing that Rights Management Information has been removed or altered without authority

shall be liable to civil proceedings and be guilty of a criminal offence.





# PROTECTION OF ENCRYPTED PROGRAM-CARRYING SATELLITE SIGNALS



Criminal offence to:

- ◆ Manufacture, assemble, modify, import, export, sell, lease or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is capable of decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal;
- ◆ Willfully receive or further distribute an encrypted program-carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal.



# PROTECTION OF RIGHTS IN COMPUTER SOFTWARE



Government agencies shall use computer software only as authorized by the right holder.

- ☑ Measures to regulate acquisition and management of software may take the form of inventories of software present on computers, and inventories of existing software licenses.



# MANUFACTURE OF OPTICAL DISCS



License will be required to manufacture optical discs, including master discs or stampers used in the manufacture of discs.

Conditions of license:

- ☑ Manufacture optical discs only in licensed premises;
- ☑ Each optical disc manufactured must be marked with the assigned manufacturer's code;



# Manufacture of Optical Discs (Cont.)



- ☑ Provide exemplers of discs to law-enforcement authorities and right holders and permit inspections;
- ☑ Maintain records of orders received, customers, suppliers, equipment and discs manufactured.

A person who breaches any condition of the license shall be liable for a fine or imprisonment or both



# PATENTS



Criteria for grant of patent:

- ⇒ New
- ⇒ Involves an inventive step
- ⇒ Capable of industrial application

The terms “inventive step” and “capable of industrial application” shall be treated as being synonymous with the terms “non-obvious” and “useful”, respectively.



# PATENTED PHARMACEUTICAL PRODUCTS

- ☑ Patent owner may prevent the procurement of a patented pharmaceutical product by a party who knows or has reason to know that such product is or has been distributed in breach of a contract between the right holder and a licensee, regardless of whether such breach occurs in or outside its territory;
- ☑ Extension of patent term to compensate for unreasonable curtailment of the patent term as a result of the marketing approval process;



# Patented Pharmaceutical Products (cont.)

- ☑ Patent owner shall be notified of the identity of third party requesting marketing approval of such products during the term of the patent;
- ☑ Unless the patent owner consents, marketing approval of such products shall not be granted to any third party prior to the expiration of the patent term.



# INTERNATIONAL CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (1991) ("UPOV CONVENTION")



The purpose of the UPOV Convention is to provide incentives to plant breeders to engage in commercial plant breeding by granting plant breeders the exclusive right:

- ➔ to produce or reproduce protected plant varieties;
- ➔ to condition them for the purpose of propagation;
- ➔ to offer them for sale;
- ➔ to commercialize them; and
- ➔ to stock them for production or commercialization.





# UPOV Convention (cont.)



Plant varieties which are New, Distinct, Uniform, and Stable will be protected under the UPOV Convention



# UPOV Convention (cont.)



Singapore to ratify or accede to the UPOV Convention within 6 months of the date of entry into force of the FTA or 31 December 2004, whichever date is earlier.



# ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS



## **CIVIL REMEDIES** shall include:

- Seizure of devices and products suspected of being involved in the prohibited activity;
- Opportunity to elect between actual damages (plus profits attributable to the prohibited activity) or pre-established damages;
- Compensation for court costs and fees and reasonable attorney's fees; and
- Destruction of devices and products found to be involved in the prohibited conduct.



# Enforcement of Intellectual Property Rights (cont.)



Judicial authorities shall have the authority to order the infringer to identify third parties that are involved in the production and distribution of the infringing goods or services and their channels of distribution and to provide this information to the right holder.



# Enforcement of Intellectual Property Rights (cont.)



## **CRIMINAL REMEDIES** shall include:

- Imprisonment as well as monetary fines sufficient to deter future acts of infringement;
- Seizure of suspected counterfeit or pirated goods, and any materials and implements used in the commission of the offence;
- Order the forfeiture and destruction of all counterfeit or pirated goods;
- Legal action may be initiated without the need for a formal complaint by the right holder.



# WHEN WILL THESE PROVISIONS TAKE EFFECT?

Article 16.10 provides that each Party shall implement the obligations of this chapter:

- ➔ within six months of the date of entry into force of the FTA;
- ➔ but where a Party is required to ratify or accede to an international treaty (except for the UPOV Convention), within one year of the date of the entry into force of the FTA



# CHAPTER 14 : E-COMMERCE

The provisions of Chapter 14 seek to remove barriers to the use and development of electronic commerce:

- No custom duties, fees or charges for importation or exportation of digital products delivered electronically, such as legitimate downloads of music, videos, software or text;



# CHAPTER 14 : E-COMMERCE

- Apply non-discriminatory practices to digital products (software, music, video, text) delivered electronically into Singapore – digital products produced and transmitted from outside Singapore to receive same treatment as digital products produced and transmitted locally;
- Customs value of an imported carrier medium (such as DVD or CD) bearing digital product to be determined according to the cost or value of the carrier medium alone, without regard to the cost or value of the digital content.





**THANK YOU**

