



August 17, 2004

VIA ELECTRONIC MAIL

(To ipos_ipchapter@ipos.gov.sg)

Ms. Lee Li Choon
Director
Intellectual Property Office of Singapore
51 Bras Basah Road #04-01
Plaza By The Park
Singapore 189554

Re: **Copyright (Amendment) Bill 2004**

Dear Sirs:

The Entertainment Software Association (ESA) is the U.S. association dedicated to serving the business and public affairs needs of companies publishing interactive games for video game consoles, handheld devices, personal computers, and the Internet. ESA members collectively account for more than 90 percent of the \$7 billion in entertainment software sales in the United States in 2003, and billions more in export sales of entertainment software.

We write in reference to the Copyright (Amendment) Bill 2004 ("Bill") and thank you for this opportunity to submit our views relating to it. The Bill is a milestone for introducing key provisions to the Copyright Act, including the prohibition against the circumvention of technological measures, statutory damages and the criminalization of commercial infringement, all of which are extremely important to this industry and our enforcement efforts. While we are optimistic that the amendments will help strengthen existing copyright law, we are of the view – shared by many U.S. copyright interests – that it is necessary to improve on several key provisions.

We join in the concerns raised in today's letter from the International Intellectual Property Alliance (IIPA), an organization of which we are a long-standing member, and take this opportunity to describe in somewhat greater detail our concerns over the criminal prohibitions on the circumvention of technological measures.

Circumvention of technological measures

From the perspective of the entertainment software industry, technological protection measures form a cornerstone in our battle against piracy. Games software publishers employ a range of technological measures that safeguard legitimate use of

entertainment software by preventing unauthorized copying as well as the play of pirated products. Of late, we have witnessed a mélange of devices that have been created for the purpose of circumventing such technological measures. These devices are trafficked around the world, including in Singapore. Game consoles that are modified to include such devices are readily available at retail in Singapore. And they profoundly impact legitimate publishers' ability to sell their products, as the value and consumer appeal of these devices comes from their use in connection with playing or making pirated copies.

Criminal provisions

We are grateful that the Bill proposes to criminalize the commercial circumvention of technological measures and the making available of circumvention devices or services. While we support these provisions and believe them to be essential to combating the ever-growing commercial market for circumvention devices and services, we are of the view that the knowledge requirement is unduly restrictive and would be difficult to prove in the prosecution of the offence. This would affect the enforceability of the criminal provisions and ultimately the effectiveness of the law.

It is submitted that the level of knowledge required to show criminal intent should be consistent with the existing criminal provisions in the Copyright Act. The proof of actual or constructive knowledge should be sufficient to show criminal intent for purposes of these offenses as well.

Further, the Bill states that to attract criminal liability, an offender must have himself promoted, advertised or marketed circumvention devices for the purpose of circumventing technological measures. We are of the view that this provision requires clarification as it suggests that there will be no liability if the responsibility for promoting, advertising and marketing is delegated to a third party.

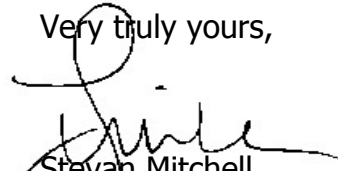
Enforcement mechanism

The proposed amendment does not appear to provide for a search and seizure mechanism to augment the enforcement of the criminal provisions. In the absence of the ability to conduct search and seizure, it would be difficult for the enforcement authorities to confiscate circumvention devices and use them as evidence for prosecution.

We again thank you for affording this opportunity to provide your office with the views of entertainment software publishers on matters addressed herein. Our legal representatives in Singapore, Mr. Alban Kang and Mr. Cyril Chua, would be pleased to meet you to discuss the issues raised in this letter. Please do not hesitate to contact them in this regard. If we can provide more directly any additional information to assist

in your consideration of this matter, please do not hesitate to contact me on 202.223.2400, or via email to Stevan@theESA.com.

Very truly yours,



Stevan Mitchell
Vice President
Intellectual Property Policy