Dear Sir/Madam:

We write in response to the Ministry’s current Public Consultation on Proposed Amendments to the Copyright Act.

CASBAA, the Cable and Satellite Broadcasting Association of Asia, is the apex industry association in Asia for participants in the pay-TV industry. A non-profit Association detached from individual national interests, it is dedicated to the development of the multi-channel pay-television industry across the Asia-Pacific region. Our 120 member organizations include leading pay-TV operators, international content and technology providers, and telecom companies. They are major investors with substantial experience in developing communications industries that now serve almost 500 million pay-TV households in Asia. CASBAA works to promote free and fair markets, the protection of intellectual property rights and the development of thriving and competitive national communications industries in the belief that the ultimate beneficiaries will be hundreds of millions of consumers across our region.

Singapore is home to several dozen CASBAA members, including both of the leading pay-TV platform operators, many international channel groups and content creators, and numerous technology and service providers. CASBAA members have made significant contributions in establishing Singapore’s role as a regional media hub. Thus, we have followed closely the work and the recommendations of the Media Convergence Review Group. As was discussed by that review, there is an urgent need for measures to deal with online piracy. The rapid growth of flagrantly infringing websites in recent years has eroded the business of the pay-TV industry. Content providers and platforms are investing significant sums and taking on substantial risks to create attractive and engaging content, and to provide new and exciting ways for consumers to receive that content. But, they are impeded by competition from unregulated, untaxed offshore pirate websites that pay nothing to creators, artists, writers, musicians, and all the people who make the industry function.

Our Association warmly welcomes MinLaw’s proposals now to streamline the process of obtaining enforcement action against flagrant pirate websites, especially those located offshore. In particular, we welcome the proposed law’s removal of the need to impute ISP liability when seeking an injunction against a pirate website; such a requirement created significant enforcement challenges and could produce needless conflict among parties which are not the source of the problem.
Enactment of the amendment proposed by MinLaw will be a good and positive step in reinforcing Singapore’s intellectual property environment. It will enhance foreign investors’ interest in coming to and remaining in Singapore, especially in the creative industries.

Unfortunately, the prominence of piracy platforms and business models means that it will not be possible, even with the enactment of this law, for Singapore to “rest on its laurels.” With almost half of Singapore’s population (49%) telling market researchers they are current participants in online piracy, the habit will be a difficult one to shake. This is even more true as the vast majority of young consumers of pirated content say they know piracy is theft but continue to do it anyway.¹

Therefore, going forward it will also be important for the government to ensure smooth implementation and regularly review and update Singapore’s copyright enforcement regime. Specifically, the Ministry should consider the following issues during implementation and plan to review within a year or two the actual operation and impact of the new amendments with a view to correcting any deficiencies which are evident.

- We are concerned that the definition of “flagrantly infringing” not become too high a hurdle for enforcement against the many variations of services in the piracy ecosystem. For instance, one reading of the current draft of the law might be that a service that is primarily used to commit or facilitate infringement is not necessarily a flagrantly infringing site. This would be a surprising and destructive conclusion. Care should be taken to ensure proper implementation of this standard.
- While the phrase “online location” is clearly intended to be interpreted broadly, covering entire websites and services, we are concerned that narrow interpretations of that language could result in a continued “whack-a-mole” problem. Indeed, we would urge the Ministry to take action now, before the law is enacted, to make sure there is no scope for a court to adopt an unwarranted narrow interpretation (with orders requiring cessation of access to only certain named works, for example.)
- We also believe that it is important to ensure that the speediness and cost of the process do not become burdens to enforcement. Consideration should be given to setting time limits at different stages of the process to enable a complaint to move forward speedily until completion. (It is possible that lack of clarity on the time-line of each step in the process could result in a long and protracted process that could defeat the intent of the new legislation.) Decisions on such issues should be rooted in the reality that rights holders are suffering massive, ongoing infringement.
- Similarly, the burdens levied by the new procedures on those attempting to defend their IP rights should be assessed, and evaluated so that procedural requirements, such as notice form and process, do not become an effective barrier to enforcement of rights. The Ministry and the Judiciary should consider ways to concentrate processing of these cases in a single court (as has been done in the UK), so that the burden of re-stating basic facts and principles can be minimized.
- A future review should also assess steps that could be taken to minimize circumvention of the law, including for example possible use of VPNs to circumvent court orders under the Act.

¹ Data from “Research Into the Online Behavior and Attitudes of Singaporeans in Relation to Movie, TV and Music Piracy 2014” www.sycamore.com.au
For now, however, we hope MinLaw and the Parliament will work together to ensure early enactment and bringing into operation of the new judicial enforcement mechanism. We appreciate the spirit of openness displayed by MinLaw and the government, and Singapore’s practical and results-oriented approach towards dealing with technological developments and piracy challenges.

Sincerely yours,

John Medeiros
Chief Policy Officer
CASBAA