

June 30, 2007

The Honorable Hyun Chong Kim  
Minister for Trade  
Seoul, Republic of Korea

Dear Minister Kim:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Article 18.10.30(b)(ix) (Enforcement of Intellectual Property Rights) of the Free Trade Agreement between our two Governments signed this day:

In meeting the obligations of Article 18.10.30(b)(ix), the United States shall apply the pertinent provisions of its law,<sup>1</sup> and any amendments thereto, and Korea shall adopt requirements for: (a) effective written notification to service providers with respect to materials that are claimed to be infringing, and (b) effective written counter-notification by those whose material is removed or disabled and who claim that it was disabled through mistake or misidentification, as set forth in this letter. Effective written notification means notification that substantially complies with the elements listed in section (a) of this letter, and effective written counter-notification means counter-notification that substantially complies with the elements listed in section (b) of this letter.

- (a) Effective Written Notification, by a Copyright<sup>2</sup> Owner or Person Authorized to Act on Behalf of an Owner of an Exclusive Right, to a Service Provider's Publicly Designated Representative<sup>3</sup>

In order for a notification to a service provider to comply with the relevant requirements set out in Article 18.10.30(b)(ix), that notification must be a written communication, which may be provided electronically, that includes substantially the following:

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<sup>1</sup> 17 U.S.C. Sections 512(c)(3)(A) and 512(g)(3).

<sup>2</sup> For purposes of this letter, "copyright" includes related rights, and "works" includes the subject matter of related rights.

<sup>3</sup> The Parties understand that a representative is publicly designated to receive notification on behalf of a service provider if the representative's name, physical and electronic address, and telephone number are posted on a publicly accessible portion of the service provider's website, and also in a register accessible to the public through the Internet, or designated in another form or manner appropriate for Korea.

1. The identity, address, telephone number, and electronic mail address of the complaining party (or its authorized agent);
  2. Information reasonably sufficient to enable the service provider to identify the copyrighted work(s)<sup>4</sup> claimed to have been infringed;
  3. Information reasonably sufficient to permit the service provider to identify and locate the material residing on a system or network controlled or operated by it or for it that is claimed to be infringing, or to be the subject of infringing activity, and that is to be removed, or access to which is to be disabled;<sup>5</sup>
  4. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
  5. A statement that the information in the notification is accurate;
  6. A statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the complaining party is the holder of an exclusive right that is allegedly infringed, or is authorized to act on the owner's behalf; and
  7. The signature of the person giving notification.<sup>6</sup>
- (b) Effective Written Counter-Notification by a Subscriber<sup>7</sup> Whose Material Was Removed or Disabled as a Result of Mistake or Misidentification of Material

In order for a counter-notification to a service provider to comply with the relevant requirements set out in Article 18.10.30(b)(ix), that counter-notification must be a written

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<sup>4</sup> If multiple copyrighted works at, or linked to from, a single online site on a system or network controlled or operated by or for the service provider are covered by a single notification, a representative list of such works at, or linked to from, that site may be provided.

<sup>5</sup> In the case of notifications regarding an information location tool pursuant to paragraph (b)(i)(D) of Article 18.10.30, the information provided must be reasonably sufficient to permit the service provider to locate the reference or link residing on a system or network controlled or operated by or for it, except that in the case of a notification regarding a substantial number of references or links at a single online site residing on a system or network controlled or operated by or for the service provider, a representative list of such references or links at the site may be provided, if accompanied by information sufficient to permit the service provider to locate the references or links.

<sup>6</sup> A signature transmitted as part of an electronic communication satisfies this requirement.

<sup>7</sup> For purposes of this letter, "subscriber" refers to the person whose material has been removed or disabled by a service provider as a result of an effective notification described in section (a) of this letter.

communication, which may be provided electronically, that includes substantially the following:

8. The identity, address, and telephone number of the subscriber;
9. The identity of the material that has been removed or to which access has been disabled;
10. The location at which the material appeared before it was removed or access to it was disabled;
11. A statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material;
12. A statement that the subscriber agrees to be subject to orders of any court that has jurisdiction over the place where the subscriber's address is located, or, if that address is located outside the Party's territory, any other court with jurisdiction over any place in the Party's territory where the service provider may be found, and in which a copyright infringement suit could be brought with respect to the alleged infringement;
13. A statement that the subscriber will accept service of process in any such suit; and
14. The signature of the subscriber.<sup>8</sup>

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

I have the further honor to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

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<sup>8</sup> A signature transmitted as part of an electronic communication satisfies this requirement.