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## NEW LAW RESTRICTING THE EXPORT OF INFORMATION FROM SINGAPORE

In January this year, amendments were made to the Strategic Goods (Control) Act, restricting the export of information comprised in documents such as specifications, blueprints, plans, manuals, models, diagrams, formulae, tables and designs in certain types of technology, software, as well as goods.

To export any information relating to technology which comes under the ambit of the Act, a permit is required. This is so even if no physical goods are exported and the technology is exported via the internet or other electronic means.

The technologies which are covered by the Act are generally of military use, but there are also a number of areas of "dual use" technologies which are also covered. Companies should therefore ensure that their technologies do not fall within these categories. Otherwise, it may be prudent to obtain a permit.

The prohibition does not apply to the export of any document in which any technology is embodied or to the transmission of any technology, to the extent necessary to facilitate an application for a patent. This clearly applies to the filing of foreign patent applications. However this exclusion may not apply to the export of R&D information generally or even before any decision is made to file a patent. Therefore companies based in Singapore which routinely send R&D information to their HQ overseas must ensure they do not fall foul of this law. The provision also excludes any research in technology the results of which have no practical application.

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## PROPOSED CHANGES TO THE JURISDICTION AND PROCEDURES OF THE COPYRIGHT TRIBUNAL

March 2008. The Singapore Government recently sought the views of the public on the proposed changes to the jurisdiction and procedures of the Copyright Tribunal. Currently, the Copyright Tribunal has the jurisdiction to hear such disputes as are provided for under the Copyright Act. However, the narrow jurisdiction of the Copyright Tribunal limits its ability to adjudicate in license disputes, thereby affecting its effectiveness in maintaining the balance between the ownership interests of copyright holders and the interests of users in having access to copyright works on reasonable terms (for example, the Copyright Tribunal may not resolve disputes in relation to the charges payable to a copyright owner for the public screening or reproduction of a film). The Intellectual Property Office of Singapore therefore sought the public's views on the following proposed changes to the jurisdiction and operation of the Copyright Tribunal, including:

- a) enabling the Tribunal to hear disputes concerning remuneration and/or royalties payable in respect of licenses for all uses of all types of copyright works, including music and films;
- b) increasing the number of Tribunal panel members; and
- c) appointing up to two Deputy Presidents.

The public consultation period ended on 24 March 2008. We await further information on the status of the proposed changes.

For more information on the proposed changes to the jurisdiction and changes to the Copyright Tribunal, please contact Koh Chia Ling at [kohchialing@atmdlaw.com.sg](mailto:kohchialing@atmdlaw.com.sg).

## ATMD SEMINAR SERIES

ATMD's IP & Technology Group conducted a Seminar on discovery, data protection and privacy issues on 10 April 2008. The seminar was well received by clients and friends from different industries. ATMD would like to thank all participants for their attendance.



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## VIRTUAL MAPS NO MORE



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In *Virtual Map (Singapore) Pte Ltd v Singapore Land Authority* [2008] SGHC 42, the Singapore High Court affirmed the decision of the District Court that the online maps provided by Virtual Map infringed the copyright of the Singapore Land Authority ("SLA").

Previously, SLA had entered into 7 licensing agreements with Virtual Map in relation to the use of SLA's street directory data ("SLA Data"). These agreements were terminated in accordance with the terms of the termination clause in the licence agreements on 10 June 2004. When Virtual Map continued to sell online maps that appeared to be substantial reproductions of the SLA Data, SLA commenced an action in the District Court against Virtual Map for copyright infringement. The District Court ruled that Virtual Map had infringed SLA's copyright in the SLA Data and accordingly granted an injunction restraining Virtual Map from infringing SLA's copyright. The District Court also directed that there be an inquiry as to damages or an account of profits.

In support of the Appeal, Virtual Map claimed that its online maps had been, since 9 August 2004, independently created through the use of Global Positioning System ("GPS") data and satellite imagery. However, the High Court found that Virtual Map's online maps were objectively similar to the SLA Data, given that Virtual Map's online maps contained numerous "fingerprints" of the SLA Data such as incorrectly named buildings and building numbers, non-existent buildings and roads which were deliberately inserted.

As SLA had shown that substantial similarities existed between Virtual Map's online maps and the SLA Data, and because Virtual Map had prior access to the SLA Data pursuant to the licensing agreements, the burden passed to Virtual Map to prove that the similarities in question were not copied from the SLA Data. However, Virtual Map was unable to prove that the "fingerprints" did not result from copying and no satisfactory explanation for the presence of the "fingerprints" of the SLA Data was given. The Court held that it was an infringement to copy a work and then go to the source to check that the information was correct. On the facts, the Court found that the online maps were not independently created by Virtual Map and that Virtual Map had merely verified and/or altered the SLA Data.

Virtual Map's online maps infringed the copyright in SLA's maps, notwithstanding that Virtual Map enjoyed copyright in its own maps (as established in the earlier dispute between Virtual Map and Suncool International Pte Ltd). Licensees who have made adaptations from licensed data should note that they risk infringement proceedings if they continue to use such data upon the termination of their licences.

Virtual Map is appealing against the High Court's decision to the Court of Appeal.

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## SINGAPORE COURTS' APPROACH TO THE ADMISSIBILITY OF ILLEGALLY OBTAINED EVIDENCE



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The Court of 3 Judges in the recent case of *Law Society of Singapore v Tan Guat Neo Phyllis* [2007] SGHC 207 decided that the Court does not have the discretion to exclude admissible evidence, in particular entrapment evidence, and even illegally obtained evidence. The Court also found, in the context of entrapment for copyright infringement, that consent is given by a copyright owner in requesting for copies to be made.

The Court considered the Evidence Act ("the EA"). Section 2(2) of the EA provides that "[a]ll rules of evidence not contained in any written law, so far as such rules are inconsistent with any of the provisions of this Act, are repealed." It further accepted, pursuant to Section 138 of the EA, that the Court has no discretion to exclude evidence which establishes a relevant fact and is bound to admit the evidence. Section 138 states in substance that "the court shall admit the evidence if it thinks that the fact, if proved, would be relevant."

The local cases which have excluded entrapment evidence on the ground of unfairness to the accused were therefore found to be inconsistent with the EA insofar as they sanctioned such a ground of exclusion.

The Court held, in light of the combined effect of section 2(2) and 138 of the EA, that the common law discretion to exclude illegality obtained, albeit relevant evidence, on the ground of unfairness, was inconsistent with EA.

The Court also examined *SM Summit Holdings Ltd v PP* ("Summit") [1997] 3 SLR 922. It found, contrary to the findings of the trial judge in Summit, that no illegal act was committed by a party acting on the request of a private investigator for copies of copyrighted material to be made. This was due to the fact that the copyright owner had consented to the copies being made, notwithstanding that the request was made for the purpose of entrapment. The intention of the copyright owner did not affect the fact of consent.

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