

Washington, D.C.

June 15, 2004

The Honorable Robert B. Zoellick
United States Trade Representative

Dear Ambassador Zoellick:

I have the honor to confirm the following understanding reached between the delegations of the Kingdom of Morocco and the United States of America in the course of negotiations regarding Article 15.11.28 (Enforcement of Intellectual Property Rights) of the Free Trade Agreement between our Governments signed this day:

In meeting the obligations of Article 15.11.28 (ix), the United States shall apply the pertinent provisions of its law¹ and Morocco shall adopt requirements for: (a) effective written notice 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 notice means notice 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 Notice, by a Copyright² Owner or Person Authorized to Act on Behalf of an Owner of an Exclusive Right, to a Service Provider's Publicly Designated Representative³

In order for a notice to a service provider to comply with the relevant requirements set out in Article 15.11.28 (ix), that notice must be a written communication, which may be provided electronically, that includes substantially the following:

1. the identity, address, telephone number, and electronic mail address of the complaining party (or its authorized agent);

¹ 17 U.S.C. Sections 512(C)(3)(A) and 512(g)(3).

² All references to copyright in this letter are understood to include related rights, and all references to works are understood to include the subject matter of related rights.

³ 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 Morocco.

2. information reasonably sufficient to enable the service provider to identify the copyrighted work(s)⁴ 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;⁵
 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 notice 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 notice.⁶
- (b) Effective Written Counter-Notification by a Subscriber⁷ 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 15.11.28 (ix), that counter-notification must be a written communication, which may be provided electronically, that includes substantially the following:

⁴ 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.

⁵ In the case of notices regarding an information location tool pursuant to paragraph (b)(i)(D) of Article 15.11.28, 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 notice 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.

⁶ A signature transmitted as part of an electronic communication satisfies this requirement.

⁷ All references to "subscriber" in this letter refer to the person whose material has been removed or disabled by a service provider as a result of an effective notice described in part (a) of this letter.

1. the identity, address, and telephone number of the subscriber;
2. the identity of the material that has been removed or to which access has been disabled;
3. the location at which the material appeared before it was removed or access to it was disabled;
4. 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;
5. 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;
6. a statement that the subscriber will accept service of process in any such suit; and
7. the signature of the subscriber.⁸

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement.

Sincerely,

Taïb Fassi Fihri
Minister Delegate for Foreign Affairs and Cooperation

⁸ A signature transmitted as part of an electronic communication satisfies this requirement.

Washington, D.C.
June 15, 2004

The Honorable Taïb Fassi Fihri
Minister Delegate for Foreign Affairs and Cooperation
Kingdom of Morocco

Dear Minister Fassi Fihri:

I am pleased to receive your letter of today's date, which reads as follows:

“In meeting the obligations of Article 15.11.28 (ix), the United States shall apply the pertinent provisions of its law⁹ and Morocco shall adopt requirements for: (a) effective written notice 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 notice means notice 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 Notice, by a Copyright¹⁰ Owner or Person Authorized to Act on Behalf of an Owner of an Exclusive Right, to a Service Provider's Publicly Designated Representative¹¹

In order for a notice to a service provider to comply with the relevant requirements set out in Article 15.11.28 (ix), that notice must be a written communication, which may be provided electronically, that includes substantially the following:

1. the identity, address, telephone number, and electronic mail address of the complaining party (or its authorized agent);

⁹ 17 U.S.C. Sections 512(C)(3)(A) and 512(g)(3).

¹⁰ All references to copyright in this letter are understood to include related rights, and all references to works are understood to include the subject matter of related rights.

¹¹ 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 Morocco.

2. the identity of the material that has been removed or to which access has been disabled;
3. the location at which the material appeared before it was removed or access to it was disabled;
4. 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;
5. 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;
6. a statement that the subscriber will accept service of process in any such suit; and the signature of the subscriber.¹²
7. the signature of the subscriber.¹³

(b) Effective Written Counter-Notification by a Subscriber¹⁴ 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 15.11.28 (ix), that counter-notification must be a written communication, which may be provided electronically, that includes substantially the following:

1. the identity, address, and telephone number of the subscriber;
2. the identity of the material that has been removed or to

¹² A signature transmitted as part of an electronic communication satisfies this requirement.

¹³ A signature transmitted as part of an electronic communication satisfies this requirement.

¹⁴ All references to "subscriber" in this letter refer to the person whose material has been removed or disabled by a service provider as a result of an effective notice described in part (a) of this letter.

which access has been disabled;

3. the location at which the material appeared before it was removed or access to it was disabled;
4. 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;
5. 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;
6. a statement that the subscriber will accept service of process in any such suit; and
7. the signature of the subscriber.¹⁵

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this letter in reply shall constitute an integral part of the Agreement.

Sincerely,

Robert B. Zoellick

¹⁵ A signature transmitted as part of an electronic communication satisfies this requirement.