

**Draft**  
**Subject to Legal Review for Accuracy, Clarity, and Consistency**  
**October 18, 2005**

[month and day], 2005

H.E. Maqbool Bin Ali Sultan  
Minister of Commerce and Industry  
Ministry of Commerce and Industry  
Sultanate of Oman

Dear Mr. Minister,

In connection with the signing on this date of the United States-Oman Free Trade Agreement (the "Agreement"), I have the honor to confirm the following understanding reached by the Governments of the United States and the Sultanate of Oman regarding the Agreement:

Oman shall adopt and maintain measures to provide adequate legal protection with respect to optical discs and expeditious legal remedies that constitute a deterrent against the unauthorized production of optical discs. Specifically, Oman agrees to give effect to the following:

- a. License:
  - (i) No person shall manufacture for any purpose in Oman pre-recorded, blank, or recordable optical discs, including master discs or stampers used in the manufacture of discs, unless that person holds a valid license to undertake the particular activity, granted by the competent authority. Licenses shall be specific to the licensee and its identified premises, and shall not be transferable.
  - (ii) Licenses shall only be granted to applicants who comply with all informational and other requirements set by the competent authority. Informational requirements shall include at least a requirement to provide names of all directors of the applicant and names and addresses of senior executives responsible for management of the applicant's manufacturing activities. The competent authority shall not grant a license to any person who has been found to have: engaged in fraud in the application process, committed an offense requiring revocation of a license previously granted under this paragraph, violated a measure implementing this letter, or engaged in criminal infringement of an intellectual property right.
  - (iii) Licenses shall be granted for a renewable term of no more than three years. An applicant seeking renewal shall be required to show that it

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has complied with all conditions of the license and meets the licensing requirements set by the competent authorities, including those in subparagraph (a)(ii).

- (iv) The competent authority shall require licensees to comply with all obligations pertaining to licensees set out in this letter as conditions of the license.
  - (v) Upon granting a license, the competent authority shall assign to the licensee a source identification (SID) code of the type currently deployed by optical media industries, including a mould code for the licensee and mastering codes for the licensee's manufacturing equipment.
  - (vi) The competent authority shall maintain a register of the licenses granted and make that register available for public inspection. The register shall include all SID codes granted, revoked, or suspended with respect to each licensee.
- b. Manufacturing Location: No licensee shall manufacture optical discs at any location other than the premises identified in its license.
- c. Customer Authorization: A licensee shall verify that the customers for whom it manufactures optical discs have authorization from all relevant intellectual property right holders.
- d. Source Identification Code:
- (i) Licensees shall ensure that manufacturing equipment is adapted to, and optical disc moulds apply, its mould code and mastering code. Licensees shall mark the appropriate SID code on each optical disc that they manufacture.
  - (ii) No licensee shall make, possess, adapt, or use a mould that does not bear the licensee's appropriate SID code; make, possess, adapt, or use any stamper or master for the purpose of applying to an optical disc a forged or false manufacturer's code; or alter, gouge or scour a SID code on or from a mould or any disc.
- e. Exemplars and Records: Licensees shall maintain, for a minimum of five years:
- (i) exemplars of discs from each manufacturing line and of each optical disc title manufactured;

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**October 18, 2005**

- (ii) complete and accurate records of orders received, orders filled, customers, verification of right holder authorizations, suppliers, equipment, and discs manufactured; and
- (iii) complete and accurate records of the quantity of manufacturing materials<sup>1</sup> received on the licensed premises; the quantity of manufacturing materials used by the licensee to manufacture optical discs; and the quantity and manner of disposal of any manufacturing materials not used by the licensee to manufacture optical discs.

Every licensee shall provide exemplars of discs from each manufacturing line and of each optical disc title manufactured to law-enforcement authorities and right-holder organizations.

- f. Inspections: The competent authority shall inspect any licensed premises or other location where optical media production activity may be occurring, or where exemplars, records, stampers, masters, manufacturing equipment, or manufacturing materials are stored, to ensure the licensee's compliance with the conditions of the license and other applicable laws and regulations. Such inspections shall take place regularly, without prior notice, and at any time, day or night. The competent authority shall have authority to seize, seal, remove, or detain any items (including exemplars, equipment, optical discs, records, or other evidence) if there is reason to suspect a breach of a condition of the license or a violation of other applicable laws or regulations, including an infringement of an intellectual property right. Materials seized shall be subject to forfeiture and destruction unless temporarily exempted for preservation of evidence. Licensees shall produce records for, and permit inspection by, the competent authorities at any time, and shall not obstruct or interfere with an inspection. The competent authority shall have authority to enter by force if its officials are refused entry to licensed premises. The competent authority shall maintain records of inspection actions and make those records available for public inspection.
- g. Offenses: A person who violates any license conditions covered by this letter, or violates a measure implementing this letter, shall be liable for an offense punishable by a fine or imprisonment, or both. Penalties shall be at a level sufficient to deter further violations. Officers or other individuals in charge of a licensee, including managers, owners, and directors, shall be held liable for violations by a licensee enterprise. It shall also be an offense for a customer of a licensee to provide false information to the licensee when that information is requested pursuant to a measure implementing subparagraph (c) of this letter.

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<sup>1</sup> For purposes of this paragraph, **manufacturing materials** means materials capable of being used as input materials to produce optical discs.

**Draft**  
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**October 18, 2005**

- h.     Revocation and Suspension: The competent authority shall revoke the license of any licensee who commits an offense involving license conditions covered by subparagraphs (b), (c), (d), or (f) of this letter, or seriously violates license conditions covered by subparagraph (e), or who otherwise ceases to meet the licensing requirements under subparagraph (a)(ii). The competent authority shall suspend a license if there is reason to suspect that the licensee has breached the conditions of the license or violated other applicable laws or regulations, including criminal infringement of an intellectual property right.
- i.     Import and Export Licensing: Oman shall provide for a system of automatic licensing prior to the export of optical discs, as well as the import into or the export from Oman of “stampers” and “masters,” manufacturing equipment and manufacturing materials. These licenses shall not be transferable. The competent authority shall maintain records of these licenses and make those records available for public inspection.
- j.     Unlawful Dealing in “Stampers” and “Masters”: Oman shall not permit the sale, offer for sale, or distribution of any “stamper” or “master” that does not bear unique identifiers as contemplated in subparagraph (d) above.
- k.     Closure of Premises: The competent authority shall have authority to close any premises where manufacturing activities covered by this letter occur without a valid license. The competent authority shall also have authority to close any licensed premises where a licensee commits an offense.
- l.     Recording of Materials onto Commercial Optical Discs: No person shall, for purposes of sale or commercial distribution, record the copyrighted materials of others onto recordable optical discs without first registering with the Sultanate of Oman and giving the names and addresses of responsible persons and the address of the premises at which the recording takes place. Registered premises may be inspected to ensure that the registrant has authorization from relevant copyright owners to record copyrighted materials onto any discs found in the inspection or traced to the registered premises.

**Draft**  
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**October 18, 2005**

I have the honor to propose that this understanding shall be treated as an integral part of the Agreement. I have the further honor to propose that this letter and your letter in reply confirming that you share this understanding shall constitute an agreement between our two Governments, to enter into force on the date of entry into force of the Agreement.

Sincerely,

Robert J. Portman  
United States Trade Representative

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[Month and day], 2005

The Honorable Robert J. Portman  
United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Dear Ambassador Portman,

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

“In connection with the signing on this date of the United States-Oman Free Trade Agreement (the “Agreement”), I have the honor to confirm the following understanding reached by the Governments of the United States and the Sultanate of Oman regarding the Agreement:

Oman shall adopt and maintain measures to provide adequate legal protection with respect to optical discs and expeditious legal remedies that constitute a deterrent against the unauthorized production of optical discs. Specifically, Oman agrees to give effect to the following:

- a. License:
  - (i) No person shall manufacture for any purpose in Oman pre-recorded, blank, or recordable optical discs, including master discs or stampers used in the manufacture of discs, unless that person holds a valid license to undertake the particular activity, granted by the competent authority. Licenses shall be specific to the licensee and its identified premises, and shall not be transferable.
  - (ii) Licenses shall only be granted to applicants who comply with all informational and other requirements set by the competent authority. Informational requirements shall include at least a requirement to provide names of all directors of the applicant and names and addresses of senior executives responsible for management of the applicant’s manufacturing activities. The competent authority shall not grant a license to any person who has been found to have: engaged in fraud in the application process, committed an offense requiring revocation of a license previously granted under this paragraph, violated a measure implementing this letter, or engaged in criminal infringement of an intellectual property right.

**Draft**  
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**October 18, 2005**

- (iii) Licenses shall be granted for a renewable term of no more than three years. An applicant seeking renewal shall be required to show that it has complied with all conditions of the license and meets the licensing requirements set by the competent authorities, including those in subparagraph (a)(ii).
  - (iv) The competent authority shall require licensees to comply with all obligations pertaining to licensees set out in this letter as conditions of the license.
  - (v) Upon granting a license, the competent authority shall assign to the licensee a source identification (SID) code of the type currently deployed by optical media industries, including a mould code for the licensee and mastering codes for the licensee's manufacturing equipment.
  - (vi) The competent authority shall maintain a register of the licenses granted and make that register available for public inspection. The register shall include all SID codes granted, revoked, or suspended with respect to each licensee.
- b. Manufacturing Location: No licensee shall manufacture optical discs at any location other than the premises identified in its license.
- c. Customer Authorization: A licensee shall verify that the customers for whom it manufactures optical discs have authorization from all relevant intellectual property right holders.
- d. Source Identification Code:
  - (i) Licensees shall ensure that manufacturing equipment is adapted to, and optical disc moulds apply, its mould code and mastering code. Licensees shall mark the appropriate SID code on each optical disc that they manufacture.
  - (ii) No licensee shall make, possess, adapt, or use a mould that does not bear the licensee's appropriate SID code; make, possess, adapt, or use any stamper or master for the purpose of applying to an optical disc a forged or false manufacturer's code; or alter, gouge or scour a SID code on or from a mould or any disc.

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- e. Exemplars and Records: Licensees shall maintain, for a minimum of five years:
- (i) exemplars of discs from each manufacturing line and of each optical disc title manufactured;
  - (ii) complete and accurate records of orders received, orders filled, customers, verification of right holder authorizations, suppliers, equipment, and discs manufactured; and
  - (iii) complete and accurate records of the quantity of manufacturing materials<sup>2</sup> received on the licensed premises; the quantity of manufacturing materials used by the licensee to manufacture optical discs; and the quantity and manner of disposal of any manufacturing materials not used by the licensee to manufacture optical discs.

Every licensee shall provide exemplars of discs from each manufacturing line and of each optical disc title manufactured to law-enforcement authorities and right-holder organizations.

- f. Inspections: The competent authority shall inspect any licensed premises or other location where optical media production activity may be occurring, or where exemplars, records, stampers, masters, manufacturing equipment, or manufacturing materials are stored, to ensure the licensee's compliance with the conditions of the license and other applicable laws and regulations. Such inspections shall take place regularly, without prior notice, and at any time, day or night. The competent authority shall have authority to seize, seal, remove, or detain any items (including exemplars, equipment, optical discs, records, or other evidence) if there is reason to suspect a breach of a condition of the license or a violation of other applicable laws or regulations, including an infringement of an intellectual property right. Materials seized shall be subject to forfeiture and destruction unless temporarily exempted for preservation of evidence. Licensees shall produce records for, and permit inspection by, the competent authorities at any time, and shall not obstruct or interfere with an inspection. The competent authority shall have authority to enter by force if its officials are refused entry to licensed premises. The competent authority shall maintain records of inspection actions and make those records available for public inspection.

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<sup>2</sup> For purposes of this paragraph, **manufacturing materials** means materials capable of being used as input materials to produce optical discs.

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- g. Offenses: A person who violates any license conditions covered by this letter, or violates a measure implementing this letter, shall be liable for an offense punishable by a fine or imprisonment, or both. Penalties shall be at a level sufficient to deter further violations. Officers or other individuals in charge of a licensee, including managers, owners, and directors, shall be held liable for violations by a licensee enterprise. It shall also be an offense for a customer of a licensee to provide false information to the licensee when that information is requested pursuant to a measure implementing subparagraph (c) of this letter.
- h. Revocation and Suspension: The competent authority shall revoke the license of any licensee who commits an offense involving license conditions covered by subparagraphs (b), (c), (d), or (f) of this letter, or seriously violates license conditions covered by subparagraph (e), or who otherwise ceases to meet the licensing requirements under subparagraph (a)(ii). The competent authority shall suspend a license if there is reason to suspect that the licensee has breached the conditions of the license or violated other applicable laws or regulations, including criminal infringement of an intellectual property right.
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- j. Unlawful Dealing in “Stampers” and “Masters”: Oman shall not permit the sale, offer for sale, or distribution of any “stamper” or “master” that does not bear unique identifiers as contemplated in subparagraph (d) above.
- k. Closure of Premises: The competent authority shall have authority to close any premises where manufacturing activities covered by this letter occur without a valid license. The competent authority shall also have authority to close any licensed premises where a licensee commits an offense.
- l. Recording of Materials onto Commercial Optical Discs: No person shall, for purposes of sale or commercial distribution, record the copyrighted materials of others onto recordable optical discs without first registering with the Sultanate of Oman and

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giving the names and addresses of responsible persons and the address of the premises at which the recording takes place. Registered premises may be inspected to ensure that the registrant has authorization from relevant copyright owners to record copyrighted materials onto any discs found in the inspection or traced to the registered premises.

I have the honor to propose that this understanding shall be treated as an integral part of the Agreement. I have the further honor to propose that this letter and your letter in reply confirming that you share this understanding shall constitute an agreement between our two Governments, to enter into force on the date of entry into force of the Agreement.”

I have the honor to confirm that my Government shares the understanding expressed in your letter and to confirm that this understanding shall be treated as an integral part of the Agreement. I have the further honor to confirm that your letter and this reply shall constitute an agreement between our two Governments, to enter into force on the date of entry into force of the Agreement.

Sincerely,

Maqbool Bin Ali Sultan  
Minister of Commerce and Industry