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## upcoming events

- Joint LES Singapore – A\*STAR seminar  
26 August 2013
- Global Forum on Intellectual Property\*  
27–28 August 2013
- TechInnovation 2013\*  
24 September 2013
- LES Singapore Basic Licensing Course  
7–8 October 2013
- 4<sup>th</sup> LES Asia Pacific Regional Conference  
15–15 October 2013, Hangzhou, China

\*LES Singapore is a supporting organization



LICENSING EXECUTIVES SOCIETY  
SINGAPORE

## President's Message

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### Fellow LES Singapore members

#### Introduction.

I am deeply honoured to have been elected the President of LES Singapore and thank all of you for your support.

I am also pleased to welcome members of the Exco 2013–2014, many of whom have served in the previous Exco and in particular, Alfred Yip who has come on board as Treasurer.

A special thanks to immediate past President, Audrey Yap, who helmed LES Singapore for the last 2 years with great dedication.

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## What's in store.

**Quarterly Newsletter** This is the first edition of Connect.™

We hope you will enjoy receiving this quarterly newsletter, providing information on upcoming events, updates on legal and other developments in licensing of intellectual property and technology and information on members.

**Website revamp** We are beginning the revamp of our LES Singapore website to update it to make it more dynamic and accessible on mobile devices. There will also be a members' section and we hope this will make your membership experience more fulfilling. We will keep you posted on the launch date for the new site.

**Events** We plan to have more events for members for information sharing and networking. We are planning to host the LES International President, Yvonne Chua, at an event sometime next year as well as put together a one-day event. We are also looking at working with various industry bodies and chambers of commerce to hold joint seminars and events.

## Call to action

We are actively looking for members to join our sub-committees to help us improve. We hope you will join us and be a part of these exciting projects.

## Sub-committees

Events

*S Sivananthan*

*s.sivananthan@ctl.creative.com*

Newsletter

*George Hwang*

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Website

*Song Wern-Lee*

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Membership

*Karol Goh*

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Please contact myself or the sub-committee chairs if you are interested in joining any one or more of these committees. We welcome any member who is interested and willing to serve.

I appreciate that we are all busy with our businesses and other commitments but I do hope you will find serving in LES Singapore a rewarding experience.

Do let me know if you have any ideas or suggestions. Thank you for being part of LES Singapore and I look forward to working with you in the coming year.

Sheena Jacob  
[president@les-singapore.org](mailto:president@les-singapore.org)



# Market Research and the New Personal Data Protection law

George Hwang

## MARKET RESEARCH AND THE NEW PERSONAL DATA PROTECTION LAW

The Personal Data Protection Act (“PDPA”) came into being in Jan 2013. By 2 Jul 2014, full compliance is expected from all private business entities.

Market research usually looks at the behavioural patterns of individuals or consumers. The PDPA protects the data privacy of individual. Therefore, market research which analyses the preferences of the consumers by gathering and analysing consumer data and spending habits will have one more area of law to contend with.

### Before 2 July 2014

Prior to 2 July 2014, a market researcher needs only be concerned with the law of confidence. Once consent from the owner of the confidential information is obtained, he no longer has any woes.

A typical market research entails the gathering of personal information of individuals, their habits or behavioural patterns. These personal

information are usually confidential information belonging to the subject interviewed. Consent forms are often signed by the interviewees to ensure that the research company can use their data.

The information gathered and resulting analysis will be protectable as confidential information and copyright. Naturally, these intellectual property originate from the personal and confidential information belonging to the subject interviewed. The consent given acts as a licence for the market researcher to use the ensuing intellectual property.

Where a 3<sup>rd</sup> party market research company is commissioned to conduct market research, the findings and conclusions are usually legally transferred to the commissioner in the form of a licence.

### Difference between Personal Data and Protectable Information in the Law of Confidence

The law of confidence protect all kinds of information subject to the requirements that the information is not in the public domain nor trivial “tittle tattle”, whereas “personal data” refers to data which is identifiable with an individual. It must be data related to a natural person and not a legal person e.g. a company.

The law of confidence protects information which belongs to the government and businesses, besides those of an individual. The 2 overlaps in the arena of personal information.

Whilst information in the public domain will render the information no longer one which is protectable by the law of confidence, being in the public domain does not mean that the information is no longer personal data. However, for information in the public domain, the requirement of seeking consent from the data subject is no longer required for collection, use and disclosure.

Data which are anonymised will no longer be protected by the PDPA. This is because they are no longer identifiable with an individual, hence, can no longer be classified as personal data. A market research company may sell this form of

data. However, this is not the same for confidential information. As long as the use is unauthorised, you are in breach of confidence. Whether you will be found out and sued is different from whether you are in breach. The breach of confidence is caused by unauthorised use. Herein lies the difference between protecting privacy and trust.

conditions need to be fulfilled:

- (a) the information to be protected must have the necessary quality of confidence about it;
- (b) that information must have been imparted in circumstances importing an obligation of confidence;

### **Differences between the Law of Confidence and PDPA**

For the law of confidence to protect the personal data of the subject interviewed, the following conditions must be fulfilled:

- (a) the information to be protected must have the necessary quality of confidence about it;
- (b) that information must have been imparted in circumstances importing an obligation of confidence; and
- (c) there must be an unauthorised use of the information to the detriment of the party who originally communicated it.

If the use is authorised by the interviewee, there will not be any breach. This is not the case for personal data protected by the PDPA. Even if consent is granted, the data user or company holding the personal data will have to comply with a few other obligations stipulated by the PDPA. They include:

1. The data subject or interviewee's right to have access to his personal data.
2. The duty to keep accurate information and to correct inaccurate information when requested to do so by the data subject.
3. The duty to protect the data by keeping it secured.
4. The duty not to keep the data for an unduly long period.
5. The duty not to send the data to countries which do not afford equivalent protection.

Unlike the duty to not to collect, use or disclose without consent, the obligations listed cannot be contracted out. Obtaining the consent from the data subject that he or she will not access the data or request for correction does not exonerate the business or company from these duties. Therefore, companies will have to start implementing systems and policies to comply with these duties imposed by PDPA.

### **Similar Treatment for Compliance**

Though personal data protection is different from protecting that of trust and confidence, the compliance measures of obtaining consent before collecting, using and disclosing personal data can be tackled together with that of protecting against being sued for breach of confidence. This is merely the use of obtaining express consent, evidenced in writing, before the interview where data is collected. The wordings will have to be tweaked to take the 2 sets of laws into account.

### **After 2 July 2014**

As can be seen, besides consent, after 2 Jul 2014, a company embarking on consumer market research will have to take into account other duties within the PDPA. As the PDPA requires all businesses with personal data to appoint an officer to be in-charge, the first step to take is to create the position of Personal Data Protection Officer and appoint a suitable person for the responsibilities.

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## Geographical Indications & the GI-st of it

Adele Lim

A Geographical Indication (“GI”) is an indication that is used on a product, which identifies that product as possessing a particular quality, reputation or some other characteristic, due to its geographical origin. For example, “Champagne”, is a GI which denotes a type of wine that originates from the Champagne region in France. Bordeaux (wine), Darjeeling (tea) and Tuscany (olive oil) are other famous examples of GIs.

Pursuant to its obligations under the European Union–Singapore Free Trade Agreement (“EUSFTA”), Singapore will soon be enhancing its existing regime for the protection of GIs.

### Current position

The TRIPS Agreement, which Singapore is party to, currently affords two levels of protection for GIs in Singapore:

(i) all GIs are protected against being misleadingly used in the designation or presentation of a product as regards the true origin of the product; and

(ii) for wines and spirits GIs, which are afforded a higher level of protection, the use of GIs that misleadingly identify wines and spirits that do not originate from the place indicated by the GI, despite indicating the true origin of the product by accompanying expressions such as “kind”, “type”, and “style”, is prohibited.

Such protection currently afforded to GIs in Singapore is embodied under the Geographical Indications Act (“Act”).

Notably, at present, the Act:

(i) does not require GIs to be registered to enjoy the protection afforded under the TRIPS Agreement in Singapore; and

(ii) allows interested parties<sup>1</sup> to stop third parties from using their GIs through civil actions.

Protection for a GI may also be sought as a certification or collective mark under the Singapore Trade Marks Act.

### Proposed Enhanced Protection

The key features of the proposed enhanced protection for GIs are:–

#### 1. GI Registry

A GI Registry within the Intellectual Property Office of Singapore (“IPOS”) will be established. The applications that qualify for registration will be those in respect of (i) wines and spirits GIs, and (ii) GIs for selected categories<sup>2</sup> of agricultural products and foodstuffs.

#### 2. Three-stage GI registration process

This is a three-stage process identical to the trade mark registration process. Following the filing of the applications, the applications will be examined by the Registry, and will thereafter proceed to publication/pre-grant opposition<sup>3</sup>. If, by

the end of the opposition period, no opposition is filed by any third party, that GI will proceed to registration. On the contrary, for a GI application that is opposed within the opposition period, an opposition hearing will be held.

It is crucial to note that a GI will not be entitled to protection in Singapore if it has become a generic term.

### **3. Enhanced GI Protection for Registered GIs**

In particular, registered GIs for agricultural products and foodstuffs will benefit from a higher level of protection than is currently available. However, notably, the same level of protection will be maintained for registered GIs for wines and spirits.

Until the EUSFTA comes into effect, it is still optional for owners of GIs to register their GIs. Existing levels of protection under the GI Act will still remain applicable for unregistered GIs. However, as a matter of prudence, businesses should be apprised of the developments in this area of the law, to ensure that they benefit from the enhanced protection once available.

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