
Intellectual Property

Impending Changes to the Copyright Regime – Copyright Bill Introduced in Parliament

Introduction

In February 2021, the Ministry of Law ("**MinLaw**") and the Intellectual Property Office of Singapore ("**IPOS**") introduced and conducted a two-month long public consultation on the draft copyright bill which is set to repeal and replace the current Copyright Act (Cap. 60, Rev. Ed. 2006) ("**Current Act**") as part of an overall review of Singapore's copyright regime – which review started way back in 2016. After incorporating the feedback received, the Copyright Bill ("**Bill**") was introduced for First Reading in Parliament by Second Minister for Law Edwin Tong on 6 July 2021.

Overall, the Bill aims to ensure that copyright continues to reward the creation of works and that such works continue to be made available for the benefit of society at large, as well as to strengthen the copyright ecosystem. Amongst other things, the Bill aims to make copyright laws clear and accessible by employing plain English and by consolidating the exceptions to the rights granted to copyright owners into a "Permitted Uses" section.

Key Features of the Bill

Rewarding the creation of copyright works and protected performances

1. *Granting creators and performers the right to be identified*

Currently, authors and performers do not have a moral right to be identified or attributed when their work or performance is used. They only have the right to prevent the false attribution of another person as the author or performer. Often, this results in mis-attribution or a lack of attribution for an author or performer.

Contribution Note: This Client Update was written with contributions from Ching Pu Fang, Senior Associate, from Intellectual Property, Technology and Gaming.



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Under the Bill, anyone who uses a work or performance in a way that causes it to be seen in public, such as by putting it online or publishing it, must attribute the author of the work or performer of the performance in a clear and reasonably prominent manner. However, this right does not apply to existing authorial works if the author had died, or to a performance which had taken place, before the commencement date of these provisions.

The rationale behind this proposed change is that proper attribution helps creators and performers build their reputation and motivates them, thereby incentivising the creation of new works. The effect of this new right is to accord creators and performers due respect and recognition for their creative efforts, generate more exposure for them, and by extension, positively impact the commercialisation of their works. This is important in the present digital era where works and performances are easily accessible to the public.

2. Granting authors default ownership of certain commissioned works

The Current Act grants default ownership of copyrighted works to authors, except for certain commissioned works such as photographs, portraits, engravings, sound recordings or films, and in respect of works created by employees in the course of their employment, where default ownership of the works vests in the commissioning party or employer, as the case may be.

Under the Bill, the authors of copyrighted works will, unless otherwise agreed *in writing* or created in the course of employment, be the default first owners of the copyright, even if they were commissioned to make those works. These amendments would give authors greater bargaining power and put them in a position to negotiate better terms with third parties, especially benefitting individual freelancers and creators from small and medium-sized enterprises. The Bill further provides that the employer will be the default first owner of copyright in sound recordings and films created by employees in the course of their employment, in addition to other copyrighted works. The employer in such cases would benefit the most from ownership and would be the party that is most incentivised to create more works.

3. Deterring people from profiting off products or services which stream audio-visual content from unauthorised sources

Currently, whether distributors and retailers of products or services that stream audio-visual content from unauthorised sources (e.g. set-top boxes) are liable for infringement of copyright is not specifically addressed in the Current Act, while the only criminal conviction so far¹ in respect of the sale of such streaming devices was based upon a plea of guilt and without a full assessment of the merits of the charges.

¹ See *Public Prosecutor v Jia Xiaofeng and Synnex Trading Pte Ltd* [2019] SGMC 73.

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In order to encourage the consumption of copyright works obtained from legitimate sources, new provisions in the Bill confer on rights-owners a right of civil action against a person who makes a device to obtain a commercial advantage or who engages in commercial dealings (including offering for sale, importation and distribution) in devices or services capable of facilitating access to works communicated to the public without the authority of their copyright owners, and where such devices or services only have a limited commercially significant purpose or use other than such capability. These infringing acts also attract criminal liability under a standalone offence under the Bill.

4. *New equitable remuneration rights when sound recordings are broadcasted or publicly performed*

Presently, sound recording companies as the copyright owner of sound recordings have, *inter alia*, the right to control how sound recordings are made available to the public "*by means of or as part of a digital audio transmission*", but they do not have rights in respect of sound recordings which are heard in public via other means (such as by way of an audio visual transmission).

Under the Bill, the owner of a sound recording has a wider right to "*communicate the recording to the public*", alongside a new right (in respect of recordings which have been published for commercial purposes) to be paid equitable remuneration by a person causing the sounds embodied in the recording to be heard in public, subject to certain conditions and exceptions. Such equitable remuneration or licence fee may either be agreed between the copyright owner and such person who caused the sounds to be heard in public, or in default of such agreement, decided by the Copyright Tribunal. These license fees may also be administered and collected by collective management organisations ("**CMOs**"). The Bill also introduces procedures for legal action in the event of a failure to pay such remuneration.

Ensuring the availability of copyright works and protected performances for the benefit of society

5. *New permitted use of online materials for educational purposes by non-profit schools*

Following the onset of the COVID-19 pandemic, educational institutions at all levels now use a wide range of digital materials obtained from the internet for e-learning purposes. While the Current Act has carved out a range of exceptions to infringement in relation to the copying of works for educational purposes, the use of digital materials (including online publications, videos and photos) beyond hard copy textbooks and materials have given rise to some uncertainty as to whether such uses are permitted by existing statutory exceptions.

The Bill has thus introduced refinements to the current permitted use exceptions for educational purposes to allow schools and students to use freely-available resources from the internet for educational purposes, without having to seek permission from each copyright owner as long as the

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source is acknowledged and the date of access is cited. Pursuant to section 204 of the Bill, students and staff of schools may reproduce, communicate or adapt material from the internet for educational purposes if those works are generally accessible by the public free of charge, although such use must stop if the students or staff are notified that such material had been made available on the internet in infringement of copyright.

6. *Setting an expiry date for protection of unpublished, anonymous and pseudonymous works*

Certain types of unpublished works, including photographs, sound recordings and cinematograph films currently enjoy virtually perpetual copyright protection as the duration of protection is calculated from the date of first publication. However, where a work remains unpublished, the knowledge in the work remains private and benefits no one, be it the creator or potential users.

Under the Bill, unpublished works will no longer enjoy such perpetual copyright protection. All works, whether published or not, will enjoy a limited period of protection, which period will vary depending on the copyright work in question. The Bill provides that a literary, musical, dramatic and artistic work (including a photograph) will be protected by copyright until 70 years after the death of the author whether such work is published or unpublished. In respect of anonymous and pseudonymous authorial works and films, these works will be protected by copyright for a period of 70 years after the making of the works, after being made available to the public, or after first publication, as the case may be.

This change applies to all works existing prior to the commencement of the new Copyright Act once it comes into force, and aims to encourage creators to commercialise their works. It also facilitates public access to the knowledge and creative expressions contained in their works, and ensures that copyright works are available for the benefit of society.

7. *Strengthening general 'fair use' permitted use*

In 2004, Singapore introduced a general, open-ended 'fair dealing' exception to the infringement of copyright works that established five factors which the court must consider when determining whether a use is fair under the 'fair dealing' defence, including: (a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes; (b) the nature of the work or adaptation; (c) the amount and substantiality of the part copied taken in relation to the whole work or adaptation; (d) the effect of the dealing upon the potential market for, or value of, the work or adaptation; and (e) the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price. This general exception was in turn strengthened by a few other specific fair dealing exceptions, including fair dealing for the purposes of reporting current events, reporting news, and criticism or review.

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In the Bill, the existing fair dealing exception in the Current Act will be reframed as the 'fair use' exception, which term is more commonly known and used in other jurisdictions, such as in the United States. The mandatory fifth factor to assess whether a use is fair under the Current Act, namely the possibility of obtaining a work within a reasonable time at an ordinary commercial price, has also been removed given that such factor may be relevant in some but not all cases.² The existing specific fair dealing exceptions (including for criticism or review, as well as the copying of reasonable portions for research or study) have nonetheless been retained and restated under the broad 'fair use' exception in the Bill. Notably, the Bill seeks to abolish the present distinction between fair dealing for the purposes of reporting current events and for the purposes of reporting news by subsuming the exception for reporting current events under the exception for reporting news, and expands the scope of the exception to all forms of news reporting, instead of the present restriction to specific traditional media or carriers (i.e. newspapers, magazines or similar periodicals, broadcasting or cable programme services or in cinematograph films).

The open-ended fair use exception in the Bill allows future creators to build upon existing works without seeking rights-holders' consent, with the key objectives being to create an environment that is conducive to the development of creative works, and to facilitate greater investment, research and development in the copyright-based industries in Singapore.

8. *New permitted use of work for computational data analysis*

The use of computational data analysis techniques, such as text and data mining and analytics and machine learning, typically involves the extraction and copying of data from large quantities of material which may be protected by copyright. While the present exceptions to infringement under the Current Act may already cover such use, the Bill introduces a new express standalone exception to provide a greater level of certainty. Under the Bill, a person may copy and/or communicate a copy of a work or recording of a protected performance, for computational data analysis (including preparing works for such analysis) without having to seek the copyright owner's permission, subject to certain conditions and safeguards to take into account rights-owners' commercial interests. One of these safeguards is the requirement not to use the reproduction of the work for any purpose other than computational data analysis.

9. *Protecting certain exceptions from being restricted by contracts*

Permitted uses of copyright works are exceptions to infringement that often serve important public interest. However, parties may seek to restrict the application of some or all of these permitted uses by way of contract, such as in standard form contracts or a website's terms and conditions. Under the Current Act, certain permitted acts such as the backing-up of a computer programme, or the observing, studying and testing of computer programs may not be restricted by contract, and any term or condition that purports to restrict any of these exceptions will be void.

² See Singapore Copyright Review Report (available [here](#)) dated 17 January 2019 at para 2.6.6.

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In the Bill, this list of exceptions will be expanded. Certain permitted uses, including permitted uses for computational data analysis and the work of galleries, libraries, archives and museums, cannot be excluded or restricted by contract under any circumstances. Other permitted uses remain non-mandatory and may be restricted or excluded by contract if they are individually negotiated (thereby excluding standard "click-through" contracts) and the term or condition purporting to restrict the permitted use satisfies the requirement of reasonableness. Whether a term is fair and reasonable is to be determined by reference to factors such as the strength of the respective bargaining positions of the parties.

This allows users of copyright works to have more certainty as to whether they can still rely on a particular permitted use if the terms of a contract seek to exclude or restrict the same.

Strengthening the copyright ecosystem

10. New class licensing scheme for CMOs

CMOs bring about efficient transactions by reducing transaction costs and facilitating royalty collections, thereby facilitating use of copyright materials and rewarding rights owners. They are presently not regulated by any public agency. Given the need for high standards of transparency and accountability for CMOs, which handle voluminous transactions involving a multitude of rights owners and users in the digital era, new provisions in the Bill provide for CMOs to be regulated by IPOS and to comply with a mandatory Code of Conduct which sets out minimum standards to be met, based on four key values, namely transparency, governance, accountability and efficiency. This will be carried out via a class licensing scheme to be administered by IPOS. Penalties will be imposed on CMOs and/or their officers for non-compliance with the standards set in the Code of Conduct, and management personnel and board members who continue to breach such standards will be removed and replaced. Furthermore, a person may apply to IPOS for IPOS to reconsider its decision concerning any financial penalty, cessation order or regulatory direction imposed against him and may further appeal to the Minister for Law against such decision of IPOS following reconsideration.

These proposed amendments are intended to benefit both members of CMOs (such as songwriters and lyricists) as well as users who take licences from CMOs, and contribute to building a fair and efficient copyright licensing ecosystem. For more information on the proposed CMO regulatory scheme, please see our earlier Client Update on "*Public Consultation on Proposed Licence Conditions and Code of Conduct for Collective Management Organisations*", available [here](#).

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Concluding Remarks

Among the many proposed changes to the existing copyright regime, the Bill is a welcome change for granting authors and performers the right to be identified and credited for original works which could help to boost their commercial value and incentivise the creation of works. Moreover, by adopting clearer and more intuitive definitions and distinctions, and by consolidating and expanding on the "Permitted Uses" section pertaining to copyright works and performances, the Bill provides greater certainty to creators, owners and users alike and promotes the development of creative work by providing certainty around what future creators can do without seeking the consent of rights holders. The Bill also achieves a greater level of consistency between exceptions pertaining to performers' rights and those available in relation to copyright works than in the Current Act, thereby eliminating situations where what a person does may fall within a permitted use in respect of a copyright work, but nonetheless still infringes performers' rights, or vice versa.

The Bill is scheduled to be read for a second time in Parliament at the first available sitting in September 2021. Given that MinLaw and IPOS's review of Singapore's copyright regime has involved extensive public consultations since 2016, it is not likely that the Bill will be sent to a Select Committee comprising selected Members of the Parliament for further review, unless Parliament finds that the Bill requires special consideration. The new Copyright Act is expected to be passed in the third quarter of 2021. The entirety of the new Copyright Act, with the exception of the provisions on collective management organisations, is expected to commence one month thereafter. The provisions in the new Copyright Act on CMOs are intended to commence on a later date, following further consultations on the regulations for the proposed class licensing scheme.

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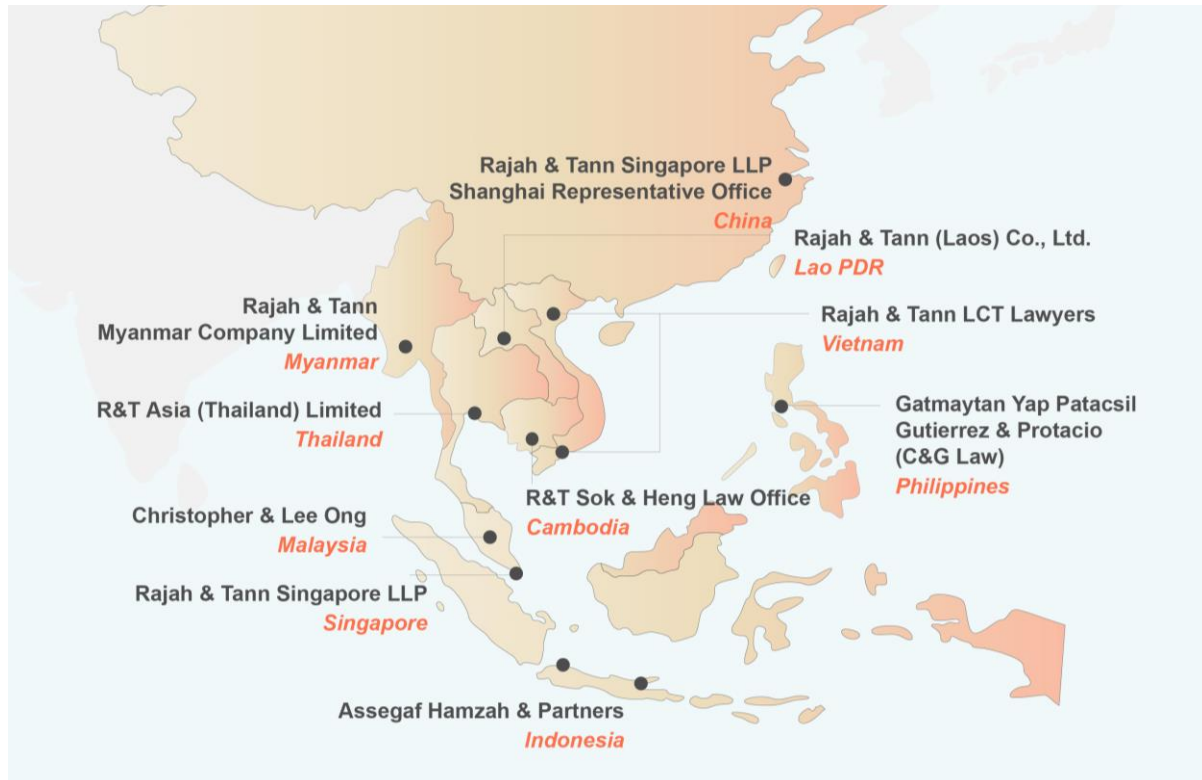
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