

Upcoming Changes to the Copyright Act

The Copyright Bill (“**Bill**”), which repeals and re-enacts the Copyright Act (“**Act**”), was introduced in Parliament on 6 July 2021 and passed on 13 September 2021. It is expected to take effect in November 2021.

The Ministry of Law has stated that the Bill will strengthen the copyright regime in Singapore by updating the Act to stay abreast of changes in how content is created, distributed, and used. It will also make the law more accessible by simplifying the language¹.

Below, we summarise and discuss some of the key changes in the Bill.

Default ownership of certain works

*Employment situation*²

Under the Bill, employers will, by default, own the copyright to all works created by their employees, except for employees in journalistic positions, where different rules apply. This default position will apply unless the contrary is provided for by contract. Currently, the default copyright ownership position in favour of employers only applies for certain works (e.g. literary works, dramatic works, musical works, artistic works). By extending the default ownership position to sound recordings and films, the Bill standardises the ownership position across all types of works in the employment scenario.

By way of illustration, if an employee creates a sound recording in the course of his/her employment, his/her employer will own the copyright in the sound recording, unless the contrary is provided for by contract.

The Ministry of Law has stated that the rationale for this change in the law is because employers in such cases would benefit the most from default ownership and be the party most incentivised to create more works.

*Commissioning situation*³

Under the Bill, creators who are commissioned to create photographs, portraits, engravings, sound recordings, or films, will, by default, own the copyright in the works. This default position will apply unless the contrary is provided for by contract. This reverses the previous position where the commissioning party would by default own the copyright to such commissioned works.

By way of illustration, a photographer commissioned by a couple to take photographs of their wedding will own the copyright in those photographs by default. If the couple wishes to own the copyright in the photographs, they will have to negotiate for a term providing for the same in their contract with the photographer.

The Ministry of Law has stated that this change in the law will ensure that copyright continues to reward the creation of works and incentivise creativity. Creators will be better positioned to negotiate with the commissioning parties, and can further showcase and commercialise their works for other purposes.

¹ <https://www.mlaw.gov.sg/news/press-releases/2021-07-06-legislative-changes-to-strengthen-singapores-copyright-regime>

² Section 134 of the Bill.

³ Section 135 of the Bill.

Right to be identified ⁴

Under the Bill, creators of literary, dramatic, musical, or artistic works, as well as performers of protected performances, will have the right to be identified when someone else uses their works or performances. The identification must be clear and reasonably prominent, and in the way that the creator or performer wishes to be identified (e.g. by a pseudonym) or any reasonable form of identification. The right to be identified does not arise where the author or performer is not known⁵, consents to not being identified, or waives this right.

The right to be identified can be infringed even if there is no copyright infringement. By way of illustration, if a company obtains a licence from a photographer to use a photograph in its marketing material (such that there is no copyright infringement) but fails to identify the photographer when it reproduces the photograph in its marketing material, it will have infringed the photographer's right to be identified (unless there was consent or waiver).

The Ministry of Law has stated that this change in the law will help individual creators and performers build their reputation.

Devices or services which stream audio-visual content from unauthorised sources ⁶

Under the Bill, rights owners can sue anyone who commercially deals in devices (e.g. set-top boxes) or services (e.g. installation of software applications) that have the commercially significant purpose or use of facilitating access to infringing copies of works.

The Ministry of Law has stated that this change in the law will encourage the public to consume copyrighted work from legitimate sources. It will also make it easier for rights owners to take action against those who deal in set-top boxes primarily used to facilitate access to infringing copies of works.

Remuneration rights relating to sound recordings ⁷

Where a sound recording has been published for commercial purposes and is then played in public, the owner of the copyright in the sound recording will have the right to be remunerated. This licence fee may be administered and collected by collective management organisations.

The practical implication of this change in the law is that businesses (e.g. hotels, restaurants, cafes, shops) which play music in their premises will have to pay for the public performance of the sound recording, in addition to paying for the licence for the public performance of the underlying musical work in the sound recording.

“Fair use” exception ⁸

Under the Bill, the “fair use” exception (known as the “fair dealing” exception under the current Act) to copyright infringement will be made simpler to understand. Instead of five factors, courts will be directed to consider only four factors in determining whether this exception applies:

⁴ Sections 369-407 of the Bill.

⁵ Sections 374 and 394 of the Bill.

⁶ Section 150 of the Bill.

⁷ Section 121(b) of the Bill.

⁸ Sections 190-194 of the Bill.

1. The purpose and character of the use, including whether the use is of a commercial nature or is for non-profit educational purposes;
2. The nature of the work or performance;
3. The amount and substantiality of the portion used in relation to the whole work or performance; and
4. The effect of the use upon the potential market for, or value of, the work or performance.

Under the current “fair dealing” exception, the courts are expressly directed to consider a fifth factor: the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price. The removal of this fifth factor will mean that courts are no longer mandated to take it into account (though they still can take it into account where relevant).

Uses of certain copyrighted material for computational data analysis ⁹

There will be a new exception to copyright infringement which permits the use of certain copyrighted material for computational data analysis. This exception is subject to certain conditions, for example:

1. Copies of the copyrighted material cannot be used for any other purpose.
2. The user must have lawful access to the copyrighted material. If, for example, the copyrighted material was accessed by circumventing a paywall, then access was unlawful.
3. Copies of the copyrighted material cannot be supplied to any person other than for the purpose of (a) verifying the results of the computational data analysis or (b) collaborative research or study relating to the purpose of the computational data analysis.

By way of illustration, a company which is developing an image recognition programme will be permitted to make copies of copyrighted images for the purpose of training the programme to recognise images, provided the above conditions are complied with.

Protecting certain exceptions from being restricted by contract ¹⁰

Under the Bill, a contract term will be void to the extent that it purports to exclude or restrict certain specified exceptions (e.g. the exception to permit the use of certain copyrighted material for computational data analysis) to copyright infringement.

Where a contract term purports to exclude or restrict exceptions other than the specified exceptions, it will be valid only if the contract is individually negotiated and the term is fair and reasonable (having regard to factors such as the strength of the bargaining positions of the parties relative to each other and whether the counterparty knew or ought to have reasonably known of the existence and extent of the term).

The Ministry of Law has stated that this change in the law will protect users such as those who have to agree to “click through contracts” which they cannot negotiate.

⁹ Sections 243-244 of the Bill.

¹⁰ Sections 186-187 of the Bill.



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