



COPYRIGHT

FACTSHEET FOR CREATORS AND PERFORMERS ON THE COPYRIGHT ACT 2021

Copyright © 2022 Intellectual Property Office of Singapore.

You may download, view, print, and reproduce this document without modification, but only for non-commercial use. All other rights are reserved. This document and its contents are made available on an "as is" basis, and all implied warranties are disclaimed. The contents of this document do not constitute, and should not be relied on as, legal advice. You should approach a legal professional if you require legal advice.



Understanding the Copyright Act 2021

Strengthening the Rights of Creators and Performers

The new Copyright Act, which is in force from 21 November 2021, replaces the existing Copyright Act (Cap. 63). The Act updates and enhances our copyright regime to take into account recent technological developments which have immensely impacted how copyright works are created, distributed, accessed, and used. It also seeks to future-proof our regime for further advancements.

A key aim of the Act is to ensure that our copyright regime continues to provide an environment that supports creativity and innovation. This factsheet explains the new rights and remedies to provide more recognition to creators and performers, and further incentivise the creation of works and performances.

For more information on the other key changes that were introduced through the Act, please read our Copyright Act 2021 Factsheet at <https://go.gov.sg/copyright2021factsheet>.

Works Protected by Copyright

Copyright protects the following types of material:

- **literary** works (e.g. books, articles in journals or newspapers, lyrics in songs, source codes of computer programs);
- **dramatic** works (e.g. scripts for films or drama (as applied), choreographic scripts for shows or dance routines);
- **musical** works (e.g. melodies);
- **artistic** works (e.g. paintings, sculptures, drawings, engravings, photographs, buildings or models of buildings, works of artistic craftsmanship such as designer furniture that is not mass produced);
- **published editions** of literary, dramatic, musical, or artistic works (e.g. typographic arrangements of a published work);
- **sound recordings** (i.e. podcasts, music, or audiobooks contained in a digital file);
- **films** (e.g. movies or videos);
- **television and radio broadcasts** (i.e. broadcasts by way of television or radio);
- **cable programmes** (i.e. programmes (visual images and sound) included in a cable programme service sent by means of a telecommunication system); and
- **performances** (e.g. performances by musicians, singers, and comedians).

What will Change?

1. Granting creators default ownership of certain types of commissioned works

Old position (under the Copyright Act 1987)	New position (under the Copyright Act 2021)
<p>Content creators are the default copyright owners.</p> <p>Exceptions:</p> <ul style="list-style-type: none">• for commissioned photographs, portraits, engravings, sound recordings, or films, the commissioning party is the default copyright owner.• for employee-created literary, dramatic, musical, and artistic works, the employer is the default copyright owner of such works created by their employees in the course of employment.	<p>Content creators are the default copyright owners, including for all types of commissioned content.</p> <p>Exception:</p> <ul style="list-style-type: none">• for employee-created content, the employer is the default copyright owner of all types of content created by their employees in the course of their employment.

New default positions remain subject to contract and other laws

- Parties can agree **in writing** to reverse the default position such that the commissioner owns the copyright.
- Other laws continue to apply, such as personal data protection, defamation, and criminal laws. In particular, the **Personal Data Protection Act** gives individuals control over their personal data and how it can be used by others. This means that, even if a photographer owns the copyright to the photographs, he or she must still obtain consent from all individuals featured in them before using those photographs.¹ Creators such as photographers cannot require their clients to provide consent beyond what is reasonable to provide their services. Further, individuals can withdraw consent earlier given.

¹ This generally applies to portrait photography. Photographers may also rely on exceptions to the requirement of consent under the PDPA, such as exceptions for news reporting or capturing images that are publicly accessible during landscape or cityscape photography. For more information on personal data in photography, video and audio recordings, please refer to Chapter 4 of the Advisory Guidelines on the Personal Data Protection Act for Selected Topics issued by the Personal Data Protection Commission at www.pdpc.gov.sg.

Practical Tips

1. Get it in writing!

As the creator, you will own the copyright to the commissioned work by default if the commissioning contract is silent on ownership of copyright. However, as a matter of good business practice and to prevent potential future disputes, you should always consider and include clearly in the commissioning contract the following key points:

- a. who will own the copyright in the work;
- b. what rights the client will have in the work and how they may use the work; and
- c. what rights you as the creator will have in the work and how you may use the work.

2. Should you agree to sell the copyright to the client?

Copyright is a form of property and may be sold entirely with ***all rights of use*** (i.e. right to make copies, to publish the work, to communicate the work to the public, to publicly perform the work and to adapt the work). It can also be sold for a ***distinct right of use***. For instance:

- If you are commissioned to write a book, you may sell the copyright in the manuscript to the publisher to only publish it in the English language. If the publisher wishes to publish the manuscript as a book in another language, it will need to obtain your consent to translate the manuscript.
- If you are commissioned to take photographs for a coffee table book, you may sell the copyright in the photographs to the client only in print medium. You are free to license or sell the photographs for other uses such as online stock photography. However, if any of these photographs contain images of persons such that they will be considered personal data, you must comply with the obligations for the use of such personal data under the Personal Data Protection Act (e.g. obtaining their consent).

Alternatively, as copyright ownership may involve a higher fee, you and your client may decide to negotiate instead for a licence for such uses as your client requires.

3. What rights to the commissioned work should you negotiate for?

As a creator, you may need to use your commissioned works to build your commercial portfolio. You may also wish to publish these works on your website or blog, or even submit them for exhibition or competition. If your client wishes to own the copyright in the commissioned work, you should not only negotiate the appropriate fee, but also negotiate, where possible, to have certain rights of use to the commissioned work (e.g. to include the work in your commercial portfolio or to use it for marketing purposes).

What will Change?

2. Identifying creators and performers whenever their works or performances are used in public

Old position

(under the Copyright Act

- Creators and performers currently do not have a right to be identified whenever their works or performances are used.
- They have only a right to prevent false identification (i.e. where their work or performance is falsely claimed to have been created or performed by someone else).

New position

(under the Copyright Act 2021)

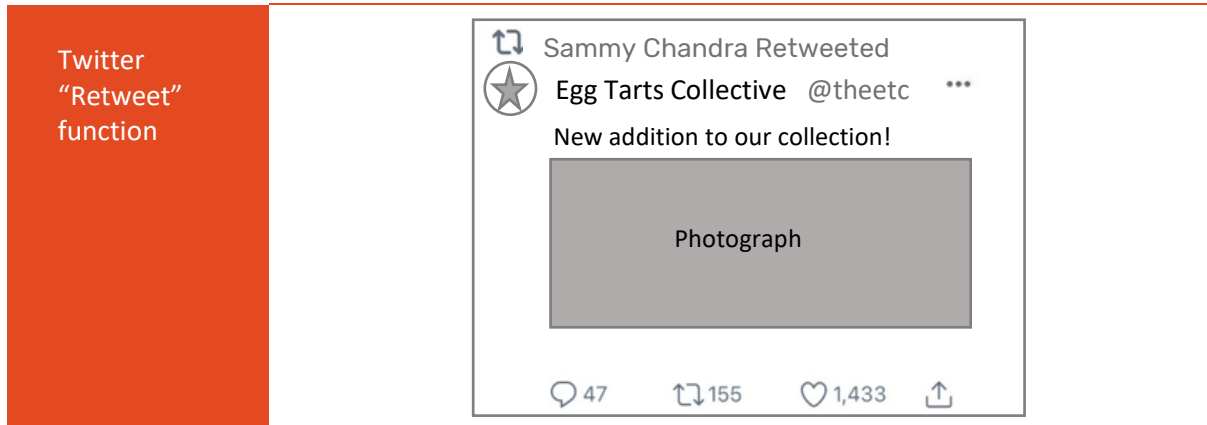
- Anyone who uses literary, dramatic, musical, or artistic works, or performances, in public (e.g. depending on the work or performance, by sharing it online, publishing it, or including it in corporate collaterals) must identify its creator or performer.
- This identification must be clear and reasonably prominent, and in the manner that the creator or performer wishes to be identified (e.g. the creator or performer may require the use of a pseudonym instead of their name).

No requirement to identify the creator or performer:

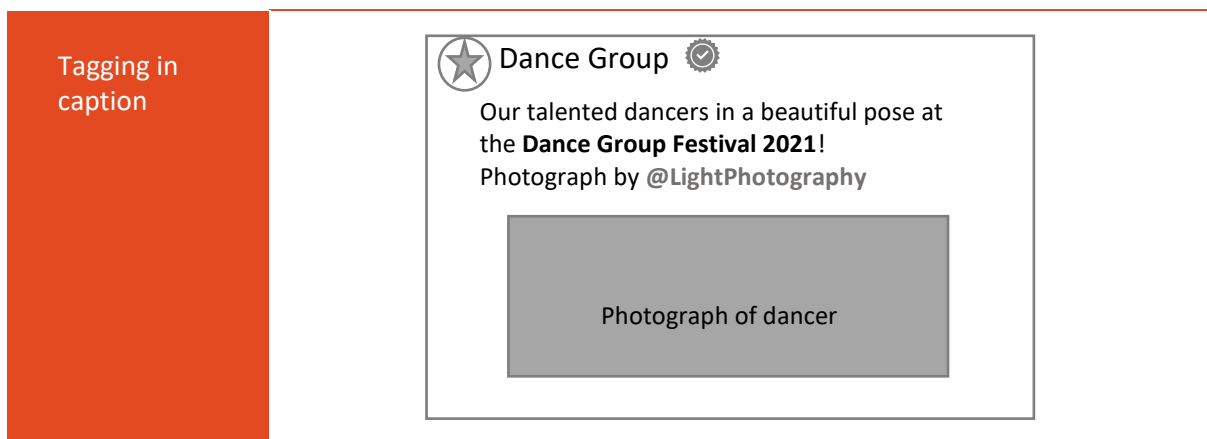
- where the author's or performer's **identity is not known**;
- where the author or performer:
 - **consents** to not being identified (i.e. they agree, whether in writing or not, that they do not need to be identified); or
 - **waives** their right to be identified (i.e. they state in writing that they relinquish their right to be identified);
- when the work or performance is to be used for **exempted purposes**, such as:
 - examinations;
 - artistic works in public places (only for works);
 - incidental inclusion in films, television broadcast, or cable programmes (only for works);
 - judicial proceedings;
 - industrially applied artistic works (only for works);
 - fair use for the purpose of reporting news; or
 - other prescribed circumstances; or
- when using **exempted materials**:
 - computer programs;
 - works made in the course of employment and first owned by the employer; or
 - works where the Government is the first owner and the author has not been identified.

The right to be identified extends to use on social media platforms.

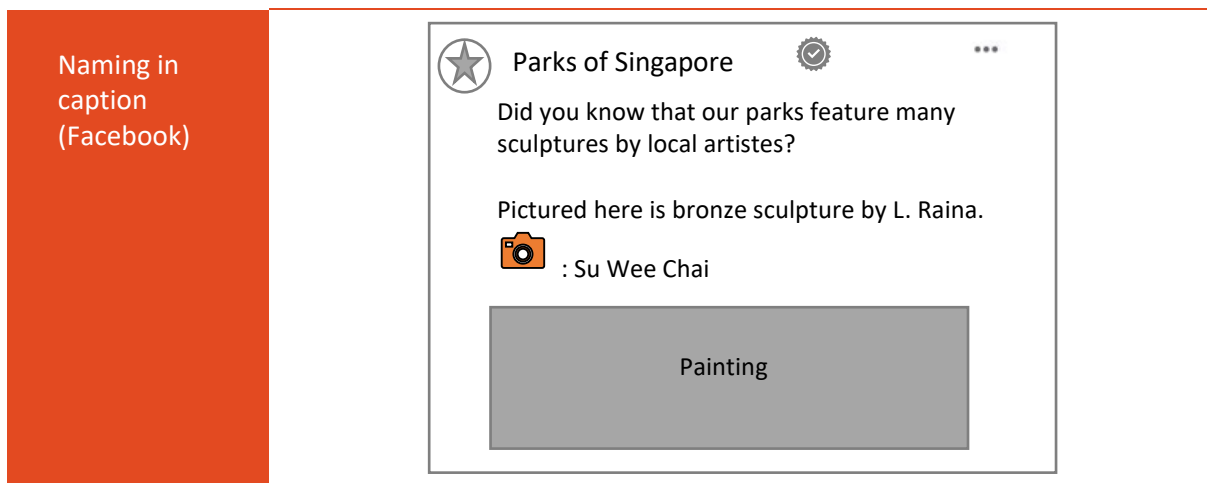
Example 1: Reposting the original content such that the author's or performer's details are automatically copied over.



Example 2: Tagging in caption so that the handle or username of the author(s) or performer(s) is identified.



Example 3: Naming in caption or content so that the author (or authors, if multiple authors' works are involved) is identified.



New right to be identified co-exists with copyright.

- Apart from identifying the creator, a user must also obtain permission from the copyright owner to use a work or rely on a permitted use in the absence of such permission.
- Even if a person has bought the copyright in a work from its creator, the new owner must still identify the creator whenever the work is used in public, unless any of the abovementioned exceptions to the right to be identified applies.

Illustration

A company commissioned a painting for its commemorative 20th anniversary celebrations. It negotiated a contract with the painter so that the company would own the copyright to the painting. The contract did not contain any waiver of the painter's right to be identified. The painter also did not consent to not being identified. The company later reproduced the painting in its commemorative collaterals (such as brochures and pamphlets) and on its website, but did not identify the painter.

The company has not infringed **copyright** since it owns the copyright to the painting). However, it has infringed the painter's **right to be identified**. The company should have identified the painter when it used the painting in those ways.

Transitional Arrangements

This new obligation to identify applies to public use of materials after the coming into force of the new Copyright Act, regardless of when the materials are created. However, for authorial works made before the Act came into force, there is a limited exemption if the use of those works would not infringe copyright pursuant to an assignment or licence in the following circumstances:

- if the first copyright owner is the **author** and the author assigned or licensed the work before 21 November 2021; or
- if the first copyright owner is **another person** (e.g. a person who commissions a work) and that person, or **any other person** to whom the work is subsequently assigned or licensed, uses the work.

Need Legal Advice?



IPOS offers an **IP legal clinic**, which provides Singapore citizens, permanent residents, and Singapore-registered businesses with access to a selected panel of professional lawyers. The 45-minute consultation session allows the requestor to seek preliminary legal advice on IP infringement, opposition, invalidation or revocation matters before he/she decides on the next course of action. The requestor is required to pay a fee directly to the law firm before IPOS reimburses the requestor.

Find out more at <https://go.gov.sg/iplegalclinic>.