

INTRODUCTION TO THE COPYRIGHT (AMENDMENT) BILL 2004

Background

In June 2004, Parliament passed four Bills on intellectual property law, touching on subjects such as patents, trade marks, and a new protection regime for new plant varieties. This marked the culmination of an extensive process of review and consultation, where much useful feedback from the public was gathered. The amendments laid out in the Bills came into effect on 1 July 2004.

In a similar vein, we are now seeking feedback on amendments to the Copyright Act.

The Copyright (Amendment) Bill 2004 will ensure that our copyright laws remain relevant in the digital age. It will strengthen Singapore's position as an attractive location for copyright-based activities and implement our United States – Singapore Free Trade Agreement (USSFTA) copyright obligations.

About the Copyright (Amendment) Bill 2004

The Bill is intended to bring about a robust copyright regime that is benchmarked against the best in the world. It puts into effect provisions in 2 main areas:

- a. **For copyright owners, new and enhanced rights, and updated enforcement provisions;** and
- b. **For copyright users, enhanced fair use provisions, and specific exceptions.**

For new and enhanced rights, the new provisions relate to:

1. Anti-circumvention measures;
2. Rights management information;
3. Right of communication to the public; and
4. Rights for performers in relation to sound recordings.

For the enforcement of IP rights, the new provisions relate to:

5. Criminal offences;
6. Statutory damages;
7. Presumption of copyright;
8. Internet service provider liability; and
9. Border enforcement.

New and Enhanced Rights

1. Anti-circumvention measures (ACM)

Technological protection measures (TPMs) such as encryption and passwords, are commonly used to protect access and copying of works. TPMs serve a variety of purposes including copy-control (to prevent reproduction or adaptation of a work) and access-control (to protect proprietary software).

Due to the ease with which digital copyrighted works can be reproduced and disseminated, copyright owners are increasingly using TPMs to protect their works.

Why is this provision necessary?

It is possible to get around (or “circumvent”) TPMs to gain unauthorised access to a work or to engage in unauthorised or infringing use of a work. In order to enable copyright owners to adequately protect the works they have put in effort to create, it is important that TPMs be legally protected.

What are the benefits of this provision?

This draft Bill provides civil and criminal liability for the act of circumventing TPMs used by copyright owners in the exercise of their rights. The manufacture, trade or import of such circumventing devices and the provision of circumvention services will also attract both civil and criminal liability.

Copyright owners who protect their works through TPMs will now have the ability to prohibit such acts through civil proceedings. If the act is carried out wilfully and for the purpose of obtaining a commercial advantage or profit, violators may also be prosecuted through criminal proceedings.

The TPM referred to in the provisions must be one used by copyright owners for the purpose of prohibiting or restricting unauthorised use of their works, or for the purpose of preventing infringement of their rights in copyright. The circumvention of such a TPM will be illegal even if there has been no actual infringement (e.g. unauthorised reproduction or adaptation), and even if there has been no unauthorised dealing such as illegal import or distribution.

2. Rights management information (RMI)

RMI is information that identifies content protected by copyright or related rights, the rights owners in such content, and the terms and conditions of use associated with it. RMI can take the form of a very simple description of the authors and rights owners, on the cover page of a book. In the digital world, it often takes the form of an electronic watermark placed in protected content.

As works can easily be changed, mutilated and distributed, especially in the digital world, RMI is central to the management of a digital work. It helps copyright owners track and prove illegal activity, and gives users certainty as to the conditions of its use.

Why is this provision necessary?

RMI can be removed or altered. This would undermine consumer confidence in the authenticity of works, and in the terms and conditions of use. It would also make it difficult for copyright owners to track and prove illegal activity involving their works.

At present, any person who knowingly removes or alters RMI, with the intent to mislead or to infringe, is liable for civil action. To enhance the protection of RMI, cause for civil action will now be broadened, to include distribution or importation for distribution of RMI which has been removed or altered. If the act is carried out wilfully and for the purpose of obtaining a commercial advantage or profit, violators may also be prosecuted through criminal proceedings.

Who will benefit from this provision?

Copyright owners who use RMI such as digital watermarking as a means of identifying themselves with their product, or to define the terms and conditions of use of that product, will benefit.

3. Right of communication to the public (Formally broadcast and cable cast right)

When any song or movie is broadcast, several copyright owners are involved. These include:

- a. Authors - e.g. lyricists and music composers;
- b. Producers of films and sound recordings– e.g. record companies such as Sony and Warner;
- c. Broadcasters – e.g entities such as MediaCorp TV or Radio Stations; and
- d. Cablecasters – e.g entities such as Singapore Cable Vision.

At present, these copyright owners have broadcast and cablecast rights. This means that they have the right to prohibit, and are entitled to be paid for the broadcast or cablecast of their works.

Why is this provision necessary?

Copyright works may now be communicated to the public not only over television and radio networks, but also over the Internet. This may affect the interests of these copyright owners. Thus, in order to safeguard the interests of copyright owners in this arena, broadcast and cable rights will be extended to the Internet as well. New exclusive rights will be given to producers of sound recordings in relation to interactive transmissions, i.e. they have the right to demand the cessation of such transmissions if they so desire. For non-interactive transmissions of a sound recording such as real-time streaming of broadcasts over the Internet, the producer of sound recordings will have the right to ask for equitable remuneration.

Who will benefit from this provision?

This provision will enable all copyrights owners to benefit from exploitation of their works on digital networks or through on-demand electronic platforms, as they will be able to get licensing fees for such exploitation or use.

4. Rights for performers relating to their live performances and in relation to their performances in sound recordings

Currently, a performer can take action against the following activities in relation to their live performances:

- a. Unauthorised recordings;
- b. Unauthorised broadcasts;
- c. Reproductions of unauthorized recordings;
- d. Distribution, sale or import of unauthorized recordings.

However, if a recording of his performance is made with his consent, the performer has no right to prohibit the subsequent exploitation of that recording (for example, the recording being sold as a CD), or to receive compensation for it.

Why is this provision necessary?

Performers who have given their consent to make recordings of their performances, have limited rights. They are unable to prohibit the unauthorised use of the recordings of their performances, for example if the recordings are used in a context to which he is not agreeable. In cases where they are not given adequate remuneration for the subsequent exploitation of recordings of their performances, performers currently also have no legal right to stop such activities from continuing.

What are the benefits of this provision?

The new right will ensure that performers are able to determine whether and how their performances are copied and distributed. This means that the performer can now require payment for the use of his performances, such as in CDs. This ensures that they enjoy the economic rewards of their performances, which serves as a powerful incentive to continue in their work. The new rights also grant the performer the right to take legal action if his performance is falsely attributed to someone else or his name is attributed to a modified or altered work without his consent.

Enforcement of IP rights

The enforcement of IP rights by a copyright owner is complex, because of a combination of technological advancements, and the unique legal and evidentiary demands involved in copyright disputes. For example, a single song can have many copyright owners – including the lyricist, music composer, singer, musician, arranger, and producer. Proving copyright ownership may require the involvement of all parties. As a result, legal action against an infringer can be deliberately drawn out by the infringer demanding that the copyright owner show proof that he in fact owns the copyright. This can discourage copyright owners from asserting and enforcing their rights, as producing proof of ownership can be complicated and expensive.

The proposed provisions seek to address these difficulties by updating and adding to the enforcement instruments available to the copyright owner.

1. Criminal Offences.

At present, Singapore's copyright law only criminalises the commercial manufacture, commercial importation, distribution or sale of infringing copyright material. Where non-trade activities are involved, Singapore's copyright law only criminalises distribution of infringing materials that is of a degree that has a severe impact on the copyright owner.

This means that infringements which do not involve any profit motive, or which do not involve distribution, currently do not constitute a criminal offence.

Why is the new offence necessary?

The advent of the Internet and other technology has made it easier for parties to carry out infringements on a wider scale. The emergence of syndicates that post movies and software on the Internet in return for recognition (and notoriety) is an example of a new form of infringement which did not exist in the past, and which the laws hitherto did not have to deal with.

The new provision is necessary to deter infringing activities which may not have been possible in the past, but which copyright owners now need protection against.

What kind of content will be affected?

Both analogue and digital content will be affected by the new provision:

a. Examples of Analogue content

- *Affected:* Large scale infringement of copyrighted content by companies, in the course of their work.

b. Examples of Digital content

- *Affected:* Companies or individuals who post copyrighted content such as music tracks, software or other copyright material and made them available on the Internet for the public to download on a large scale.

What activities will this provision impact?

This provision will impact parties who infringe copyright material and whose infringements meet all three conditions, ie., that the infringement was carried out wilfully, on a commercial scale, and has a substantial prejudicial impact on the copyright owner.

Who will benefit from this provision?

The provision will benefit any copyright owner who has hitherto been unable deter infringements which are wilful, on a commercial scale, and which had substantial prejudicial impact on him.

2. Statutory damages.

When a copyright owner takes civil action against an infringer and intends to extract compensation, he is required to account for the damage that the infringer's act has inflicted on him, or to provide an account of profits made by the infringer in monetary terms.

Why is this provision necessary?

In copyright disputes, particularly those involving digital copyright works, accounting for damages or profits can be difficult. For example, a copyright owner may face great difficulty in proving how many copies of his work have been distributed over the Internet. Without an alternative route, the copyright owner may have difficulty extracting compensation or may not be adequately compensated.

What are the benefits of this provision?

Statutory damages function as an alternative in these situations by allowing the Court to award damages from a pre-determined and finite range, guided by a set of determining factors.

Who will benefit from this provision?

Any copyright owner initiating legal action against an infringer, particularly in cases involving infringements where proof of the actual extent of infringement may be difficult.

3. Presumption of copyright.

In any copyright dispute, there are two primary issues. Firstly, there is the issue of whether or not the disputed work is protected by copyright. For example, the copyright protecting the work may have expired, allowing the work to be accessed freely by the public. Where the work is protected by copyright, there is the second issue of who the owner of the copyright in the material is.

Why is this provision necessary?

In certain cases, copyright owners initiating legal action may find it very difficult to prove that they own the copyright to a work. For example, if a copyright owner sues another party for infringement, and this party challenges the subsistence and ownership of copyright, the burden of proof will be on the copyright owner. Proof of copyright subsistence and ownership may not always be easy, and could involve the presence of many parties such as, in the case of a song, the lyricist, the music composer, the singer, and the producer.

What are the benefits of this provision?

The new provision will strengthen the position of the copyright owner in such disputes, by putting in place a stronger presumption that copyright subsists with the Plaintiff. If the defendant challenges that claim in good faith, the Plaintiff has the alternative of submitting a sworn affidavit declaring his copyright subsistence and ownership as proof. The burden then shifts to the Defendant to disprove the Plaintiff's claim.

4. Internet service provider liability.

Internet service providers host and transmit a large amount of content every day. Some of this content may be infringing material.

Why is this provision necessary?

An ISP which hosts or transmits material can play an important role in deterring infringements on the Internet. However, we have to recognise that the involvement of the ISP in the hosting and transmission of infringing material can open the ISP to possible liabilities under certain circumstances.

A system that enables copyright owners to lodge notifications of infringement with the ISP to facilitate the taking down of infringing materials by ISPs will enable copyright owners to better enforce their rights on the Internet. At the same time, the system should protect an ISP from liability for activities over which it has no control.

To balance the interests of the various parties involved, the draft Bill provides for limited legal immunity for ISPs, i.e. they would be precluded from paying monetary compensation to copyright owners for such infringement. However, this immunity only applies if ISPs comply with requirements such as administrative procedures for the taking down of infringing content on demand by copyright owners, and the putting back of that same content on counter-notice by the owner of the website.

What are the benefits of this provision?

This provision ensures a balanced and fair system for all parties – ISPs, copyright owners and website owners, and will help deter unauthorised on-line storage and transmission of copyright material.

5. Border Enforcement.

At present, customs officials must receive a formal complaint from a copyright owner before taking action against the import of infringing items.

Why is this provision necessary?

The present arrangement ties the hands of customs officials, as they cannot take action even if they suspect that a consignment of copyright works is infringing.

What are the benefits of this provision?

This provision enables customs officials to investigate suspicious shipments of copyright works and to take action if they are found to be infringing. This will give them a greater ability to stop the supply of infringing articles even before they are domestically distributed. In addition, the process by which copyright owners submit information to Customs to stop the import of infringing copies will also be streamlined.

This will improve IP enforcement in Singapore by deterring the importation of pirated and unauthorised material into and via Singapore.

Enhanced Fair Use Provisions and Exceptions

As we update our laws to enhance the rights of copyright owners, we have to ensure that we do not inadvertently create overly restrictive barriers to information and communication of ideas. Singapore's Copyright Act already provides to consumers of copyright material the defence of "fair use", and the provision of specific exceptions to suit unique circumstances.

These provisions will also be updated.

1. Enhanced fair dealing regime.

Singapore allows "fair use" of copyright material, through what is known as a "fair dealing" regime. The Copyright Act already includes a section on fair dealing. This describes specific uses of copyrighted material which are not sanctioned by the copyright owner, but which are not considered to be infringements. Such use is central in encouraging innovation and creation of new works, as well as in ensuring the accessibility and communication of information.

Singapore's fair dealing system currently restricts fair dealing to a fixed list of activities viz. research or study, criticism or review, and reporting of current events.

Why is this provision necessary?

The fixed list as described above, has the advantage of giving members of the public the certainty of what is allowable under fair dealing. For

example, with regards to research and private study, the Copyright Act states clearly that copying an article in a periodical publication, or a “reasonable portion” of a work (which is also carefully defined), is considered fair dealing. However, this fixed list may not have the flexibility to deal with unique circumstances which may arise. For example, the fixed list does not allow the limited quoting of copyrighted material other than for research or private study. In addition, the list of specific exceptions may not be responsive towards the emergence and use of new technologies in the use of works.

What are the benefits of this provision?

The proposed provision benefits all users of copyright materials. It preserves the advantages of the current system, by retaining the fixed list system. At the same time, it introduces more flexibility, by enabling fair use to go beyond the specific purposes listed. It does this by allowing all permitted acts to be assessed according to a set of factors to determine if they constitute “fair use” of copyrighted material.

2. Specific exceptions.

Beyond fair dealing, the Copyright Act provides also specific exceptions, i.e. it describes acts which do not constitute infringements of copyright works. For example, in the case of schools and libraries, certain uses of copyrighted works without the consent of, or payment to, the copyright owner, do not constitute infringement.

Who will benefit from this provision?

The proposed revisions recognise that additional exceptions will be necessary in light of new technologies and enhanced rights being conferred on the copyright owners. These relate specifically to (i) decompilation, and (ii) anti-circumvention.

- (i) **Decompilation.** To ensure that computer-related research is not inadvertently hampered, a set of new exceptions relating to decompilation¹ for purposes of research into interoperability will be provided. as well as for the observing, studying and testing of computer programs will also be provided.

¹ The act of translating machine-readable computer language into a humanly-readable form is termed “decompilation”.

- (ii) Anti-circumvention. We will provide for a comprehensive list of exceptions that will include specific acts of circumvention carried out by a wide range of individuals and organisations such as libraries, educational institutions, law enforcement agencies and owners of computer systems and networks. For example, libraries and archives will be allowed to circumvent TPMs to access a copyrighted work for the specific purpose of deciding whether to purchase that work. Similarly, the owner of a computer system or network may authorise an act of circumvention for the specific purpose of testing, investigating or correcting the security of the system or network

The individuals and organisations and the specific circumstances for their exemption from liability are listed in the Bill.

Public Consultation

As the lead agency for IP in Singapore, the Intellectual Property Office of Singapore (IPOS) would like to solicit feedback from you and your organisation on the Copyright (Amendment) Bill 2004.

All feedback and comments can be channelled via this email address: ipos_ipchapter@ipos.gov.sg

1. Preferred format

Parties that submit comments regarding the issues identified in this Consultation Document, or other provisions in the draft Bill are encouraged to include the following in their responses:

1. A broad summary of the subject of the submission;
2. The specific amendment and clause number in the Bill that the submission is referring to, e.g. "Amendment of section 84, Clause 20" or "New section 140LA, Clause 37"; and
3. Specific changes to the language of the clause in question, if applicable.
4. Supporting material may be placed in an annex.

In general, all submissions should be clearly and concisely written, and should provide a reasoned explanation for any proposed revisions. Finally,

submissions should include personal/company particulars, correspondence address, contact numbers and email addresses.

2. Duration

All submissions should reach IPOS by **18 August 2004, 5pm.**