



The Copyright Licensing and Administration Society of Singapore Limited
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Director
Intellectual Property Office of Singapore
51 Bras Basah Road #04-01
Plaza By The Park
Singapore 189554
Fax: 6339 0252

Attn: Ms Lee Li Choon

Dear Sirs,

COPYRIGHT (AMENDMENT) BILL 2004

CLASS is pleased to submit recommendations on the draft Copyright (Amendment) Bill (the "Bill") 2004 on the following issues.

Enhanced Fair Use Provisions [Clause 10]

In the proposed Clause 10 of the Bill, Section 35(2) of the Copyright Act would be amended to read:

"For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with a literary, dramatic, musical or artistic work or with an adaptation of a literary, dramatic or musical work, being a dealing by way of copying the whole or a part of the work or adaptation, constitutes a fair dealing with the work or adaptation shall include-

- (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 a reasonable price.*"

We take the view that the underscored portion should not be included as a factor for determining whether a particular dealing with a work is in fact a "fair dealing". This would unduly and unfairly hamper a copyright owner's distribution and pricing decisions, which should be based on market forces.

We therefore propose that the new Section 35 should read instead:

“For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with a literary, dramatic, musical or artistic work or with an adaptation of a literary, dramatic or musical work, being a dealing by way of copying the whole or a part of the work or adaptation, constitutes a fair dealing with the work or adaptation shall include-

- (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; and*
- (d) the effect of the dealing upon the potential market for, or value of, the work or adaptation.’*

Authorisation liability [Clause 3]

Clause 3 of the Bill purports to amend Section 9 of the Copyright Act to the following:

- “(1) A reference in this Act to an act comprised in the copyright in a work or other subject-matter shall be read as a reference to any act that, under this Act, the owner of the copyright has the exclusive right to do.*
- (2) For the purposes of this Act, the exclusive right to do an act in relation to a work, an adaptation of a work or any other subject-matter includes the exclusive right to authorise a person to do that act in relation that work, adaptation or other subject-matter.*
- (3) **Notwithstanding (2), a person who provides any facility for doing or facilitating the doing of any act comprised in a copyright is not taken to have authorised any infringement of a copyright merely because another person uses such facility to do any act comprised in the copyright.”***

We take the view that the proposed amendment to Section 9(3) should not be made. A wider reading of the proposed amendment to Section 9(3) suggests that the exclusion from infringement authorisation would cover photocopy shops as a photocopy shop would fall within the definition of ‘*person who provides any facility for doing or facilitating the doing of any act comprised in a copyright*’ and a student or customer who uses the photocopy shop’s services is ‘*another person uses such facility*’. Such an outcome will be a setback to a legislation that is intended to enhance copyright protection.

We are concerned that the proposed amendment to Section 9(3) may offer a carte blanche protection to photocopy shops. In light of this, we propose the deletion of Clause 3 of the Bill or re-drafting of the Clause to include a definition of the word “facility”.

Section 51 of the Copyright Act

Although the Bill does not include an amendment to Section 51 of the current Copyright Act, we take the view that the Bill should have included a revision to this Section, which provides for the multiple copying of insubstantial portions of works. The current Section 51(5) of the Copyright Act states:

“Where-

- (a) a person makes or causes to be made a copy of a part of a work; and*
- (b) subsection (1) applies to the making of that copy,*

*that subsection does not apply to the making, by or on behalf of that person, of a copy of any other part of that work within **14 days** after the day on which the previous copy was made.”*

The short limitation period of 14 days does not sit in comfortably with Section 52 of the Copyright Act, which provides for the multiple copying under statutory licence by educational institutions. Copying by educational institutions, provided that it is within the confines of Section 51, is free. By contrast, educational institutions would have to pay the copyright owners equitable remuneration if the extent of copying exceeds the quantitative limits of Section 51 but remains within the quantitative limits of Section 52, and the educational institutions intends to rely on Section 52 as a defence to copyright infringement.

With the current short limitation period of 14 days under Section 51(5), educational institutions can easily photocopy the entire work by photocopying tranches of the book in 14 days intervals. Notwithstanding such “bad faith” copying of works, the educational institution could still technically claim the protection of the defence under Section 51. This is grossly unfair to the copyright owner and we propose that the limitation period be amended to a more reasonable period of time. This would make it less easy for institutions which intend to copy a substantial portion of the work but avoid obtaining a licence or paying equitable remuneration under Section 52 to the copyright owner, by simply engaging in such “bad faith” copying practices.

With the expansion of the ambit of “educational institutions” in the new proposed Section 7 by removing the requirement of declaration by the Minister for qualification in respect of institutions which previously require such declaration, the threat to copyright owners of institutions taking advantage of the technical loophole in the current Section 51 is further amplified. This is all the more reason why Section 51 should be amended

CLASS welcomes the amendments to the Copyright Act but urges the Singapore Government to take these views into consideration in determining the appropriate amendments to be enacted.

Yours faithfully

Paul Wee
(No signature via electronic transmission)
Chief Executive Officer,
CLASS Limited