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INTELLECTUAL PROPERTY
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Contents

Introduction and Fundamentals	1	Other Copyright Provisions	13
Introduction		Border Enforcement Measures	
Works Protected by Copyright		Exceptions to Copyright Infringement	
Legislation Governing Copyright		- Fair Dealing	
Automatic Protection		- Other Exceptions	
Overseas Protection for Copyright Works Created		Circumvention of Technological Measures	
The Symbol ©		Rights Management Information (RMI)	
Proof of Originality		Copyright and the Internet	
What is Not Protected by Copyright		Liability of Network Service Providers	
		Copyright and Computer Programs	
Ownership and Rights	5	Copyright and Registered Designs	
Ownership		Special Provisions for Educational Institutions	
Ownership Rights			
Term		ANNEX A: Seeking Permission	21
Seeking Permission from Copyright Owners		From Collecting Societies to Use	
Copyright Tribunal		Material Protected by Copyright	
Infringement		ANNEX B: Collecting Societies	
Remedies			
Criminal Offences			

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Intellectual Property (IP) refers to the product of your mind or intellect. IP can be an invention or innovation, special names and images used in trade, original designs or an expression of an idea. In Singapore, laws exist to protect such IP. This may be through a registration process such as patent grants for inventions, trademark registration for signs used in trade, industrial design registration for designs applied to articles and grants of protection for plant varieties. Other forms of IP, that need not be registered, but may be protected nonetheless, include copyright, geographical indications, layout-designs of integrated circuits, confidential information and trade secrets.

Introduction

Copyright protects works like novels, computer programs, plays, sheet music and paintings. Generally, the author of a copyright work has the right to reproduce, publish, perform, communicate and adapt his work. These different exclusive rights form the bundle of rights that we call copyright. These rights enable a copyright owner to control the commercial exploitation of his work.

Copyright is a form of property. It can be licensed or transferred, either as an entire bundle (all of the distinct rights under copyright) or as a single, distinct right within the copyright bundle (e.g. only the right to reproduce).

For a work to be protected by copyright, it has to be original and expressed in a tangible form such as in a recording or in writing. Originality simply means that there is a degree of independent effort in the creation of the work. It is not a question of whether the work has creative merit.

Works Protected by Copyright

Copyright protects literary, dramatic, musical and artistic works. Other works like films, sound recordings, broadcasts, cable programmes and published works are also protected. Copyright accorded to such other works are often referred to as neighbouring or related rights.

- >> In this Infopack, “works” include literary, dramatic, musical and artistic works, as well as films, sound recordings, broadcasts, cable programmes and published editions.
- >> Copyright protects the expression of ideas, e.g. in words and illustrations. Ideas alone are not protected. Please refer to What is Not Protected by Copyright on page 4.

The following may be protected under the Copyright Act:

Literary works such as	<ul style="list-style-type: none">• Written works / Books• Articles in journals or newspapers	<ul style="list-style-type: none">• Lyrics in songs• Source codes of computer programs
Dramatic works such as	<ul style="list-style-type: none">• Scripts for films & drama (as applied)• Choreographic scripts for shows or dance routines	
Musical works	<ul style="list-style-type: none">• Music, i.e. melody	
Artistic works such as	<ul style="list-style-type: none">• Paintings• Drawings• Photographs• Works of artistic craftsmanship, e.g. designer furniture that is not mass produced	<ul style="list-style-type: none">• Sculptures• Engravings• Buildings or models of buildings
Published editions of literary, dramatic, musical or artistic works	<ul style="list-style-type: none">• Typographic arrangements of a published work	
Sound recordings	<ul style="list-style-type: none">• An aggregate of sounds recorded on tapes, CDs, etc.	
Films	<ul style="list-style-type: none">• An aggregate of visual images and sounds recorded on tapes, video compact discs, digital versatile discs, etc.	
Television and radio broadcasts	<ul style="list-style-type: none">• Broadcasts by way of television or radio.	
Cable programmes	<ul style="list-style-type: none">• Programmes (visual images and sound) included in a cable programme service sent by means of a telecommunication system	
Performances	<ul style="list-style-type: none">• By performers such as musicians, singers and comedians	

Legislation Governing Copyright

The Copyright Act (Cap. 63) and its subsidiary legislation form the legislation governing copyright law in Singapore.

>> View the Copyright Act (Cap. 63) online at <http://statutes.agc.gov.sg> and the IPOS website <http://www.ipos.gov.sg> (Legislation).

Automatic Protection

In Singapore, an author automatically enjoys copyright protection as soon as he creates and expresses his work in a tangible form. There is no need to file for registration to get copyright protection.

Overseas Protection for Copyright Works Created in Singapore

A copyright work created by a Singapore citizen or resident is protected in many countries overseas by virtue of international agreements. Generally, under these international agreements, the work of a Singapore citizen or resident would be protected in countries that signed the agreements as though the work was made there. Some countries such as Canada and the United States of America provide for registration to facilitate proof of copyright in infringement proceedings.

>> The Berne Convention for the Protection of Literary and Artistic Works is a convention on copyright protection of literary and artistic works including films. It is administered by the World Intellectual Property Organization (WIPO). A list of countries party to the Berne Convention may be found at the WIPO website <http://www.wipo.int>.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994) of the World Trade Organization (WTO) is an international agreement on intellectual property rights including copyright, patents, and trade marks. A list of member countries of the WTO may be found at the WTO website at <http://www.wto.org>.

The Symbol ©

The use of the symbol is simply a notice of a claim by the copyright owner that copyright exists. It does not give the copyright owner any substantive right and is therefore not crucial to the enjoyment of copyright protection.

Conversely, the non-use of the symbol does not imply a waiver or loss of copyright. It may, however, be a relevant fact in infringement proceedings. If an infringing party claims that he did not know that the copyright work was protected under copyright law, the Court may take that into account and award lower damages. The use of the © symbol would generally stop the infringing party from successfully relying on such an argument.

In practice, the © symbol is usually followed by the year when copies of the work were first made available, and the name of the copyright owner, e.g. © 2007 Intellectual Property Office of Singapore. Sometimes, near the © symbol, there may be a statement indicating the terms of permitted use, e.g. "for Private Use Only". Where the owner does not allow use, the term "All Rights Reserved" may be found after the © symbol.

Proof of Originality

In practice, authors have resorted to a number of means to preserve their interests. They may have:

- deposited a copy of their work with their solicitors or a depository;
- sent a copy of their work to themselves by post leaving the envelope unopened on its return so that the date stamp and the unopened work could establish the date of existence and the work as it existed at the relevant time; or
- made a declaration stating the facts of ownership and the date of creation before a Commissioner of Oaths.

These are, however, by no means foolproof methods of proving authorship as they do not prove that the work is original or created by the author. In a dispute, the Court will decide whether there is sufficient evidence to prove the authorship.

In an action, it is presumed that copyright subsists in the work and that the plaintiff is the copyright owner unless the defendant (alleged infringer) challenges that. If the defendant challenges in good faith whether copyright subsists in the work or whether the plaintiff is the copyright owner, the plaintiff will have to file an affidavit with assertions of relevant facts to show that copyright subsists and that he is the copyright owner.

What is Not Protected by Copyright

Subject matter not protected by copyright includes:

- Ideas (e.g. a new business idea that has not been documented);
- Concepts (e.g. an idea for a new game show that has not been written down);
- Discoveries (e.g. a research finding that has not been known before);
- Procedures (e.g. the steps involved when applying for a travel visa);
- Methods (e.g. the unique solution to a mathematical problem);
- Subject matter that has not been made tangible in a recording or writing (e.g. a speech or a dance that has not been written or recorded); and
- Subject matter which is not of original authorship (e.g. works which contain information in the public domain such as standards and the like).

Ownership

Generally, the person who created the work (i.e. the author) owns the copyright in the work. However, there are exceptions to this general rule. Some exceptions are:

Employment: If the work is created by an employee pursuant to the terms of his employment, the employer owns the copyright in the work.

>> Special situation for newspaper/magazine/periodical employees:

Where an employee of a newspaper, magazine or periodical creates a literary, dramatic or artistic work pursuant to the terms of his employment and for the purpose of publication in a newspaper, magazine or periodical, the proprietor of the newspaper, magazine or periodical owns the copyright in respect of publication in or reproduction for the purpose of publication in any newspaper, magazine or periodical. The employee owns the remaining rights that make up the copyright bundle of exclusive rights.

Commissioning: If a portrait / photograph / engraving is commissioned by another party, the commissioner owns the copyright in the work. If the portrait / photograph / engraving is required for a particular purpose, this purpose must be told to the commissioned party. While the commissioner is the copyright owner, the commissioned party has the right to stop others from doing any act comprised in the copyright, unless such act is done for the particular purpose for which the portrait/ photograph / engraving is created.

For other types of commissioned works, ownership belongs to the commissioned party, unless the commissioner and commissioned party otherwise agree.

As mentioned in the introduction at page 1, the copyright owner may transfer his rights to another party or entity either partially or wholly.

Ownership Rights

Literary, dramatic and musical works	<p>Authors enjoy the exclusive rights to</p> <ul style="list-style-type: none"> • reproduce the work; • publish the work; • perform the work in public; • communicate the work to the public; and • make an adaptation of the work
Artistic works	<p>Artists enjoy the exclusive right to</p> <ul style="list-style-type: none"> • reproduce the work; • publish the work; and • communicate the work to the public
Published editions of literary, dramatic, musical or artistic works	<p>The publisher has the exclusive right to make a reproduction of the edition.</p>
Sound recordings	<p>The producer of a sound recording enjoys the exclusive rights to:</p> <ul style="list-style-type: none"> • make a copy of the sound recording; • rent out the sound recording; • publish the sound recording if it is unpublished; and • make available to the public a sound recording by means or as part of a digital audio transmission.* <p>* Where the sound recording is made available to the public through a non-interactive digital audio transmission, the producer of the recording need only be compensated by an equitable remuneration.</p>
Films	<p>The producer of a film enjoys the exclusive rights to:</p> <ul style="list-style-type: none"> • make a copy of the film; • cause the film to be seen in public; and • communicate the broadcast to the public.
Television and radio broadcasts	<p>The broadcaster enjoys the exclusive rights to:</p> <ul style="list-style-type: none"> • make a recording of the broadcast; • rebroadcast; • communicate the broadcast to the public; and • cause the broadcast to be seen or heard by a paying audience.
Cable programmes	<p>The producer of the cable programme enjoys the exclusive rights to:</p> <ul style="list-style-type: none"> • make a recording of the cable programme; • rebroadcast; • communicate the cable programme to the public; and • cause the cable programme to be seen or heard by a paying audience.

Performances	<p>The performer has the right to authorise the following uses:</p> <ul style="list-style-type: none"> • allow the performance to be seen and heard, or seen or heard, live in public; • make a direct or indirect sound recording of his live performance; • make available a recording of the performance to the public in such a way that the recording may be accessed by any person from a place and at a time chosen by him; • distribute or sell or import for distribution or sale such recordings; • publish a recording of a performance (if not previously published); and communicate the live performance to the public (including broadcast, Internet dissemination and inclusion of the performance in a cable programme).
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>> "Communicate" means to transmit by electronic means a work or other subject matter, whether or not it is sent in response to a request, and includes:

- a) broadcasting;
- b) inclusion in a cable programme; and
- c) the making available of the work or other subject matter in such a way that the work or subject matter may be accessed by any person from a place and at a time chosen by him (e.g. access over the internet).

Term

The duration varies according to the type of copyright work concerned.

Literary, dramatic, musical and artistic works	70 years from the end of the year in which the author died. If the work is published after the death of the author, it lasts for 70 years, from the end of the year in which the work was first published.
Published editions of literary, dramatic, musical or artistic works (layout).	25 years from the end of the year in which the edition was first published.
Sound recordings and films	70 years from the end of the year of release of the sound recording or film.
Broadcasts and cable programmes	50 years from the end of the year of making the broadcast or cable programme.
Performances	70 years from the end of the year of the performance.

Seeking Permission from Copyright Owners

Consent is needed to do anything that only the copyright owner has the exclusive right to do (e.g. reproduce the work). Sometimes, consent is indicated in the terms of permitted use, e.g. "for Private Use Only". Otherwise, one should seek consent. Merely acknowledging the source when one uses the work is insufficient.

To obtain consent from copyright owners, one may:

- contact the copyright owners directly and negotiate for a licence to use the copyright work; or
- obtain a licence through a collecting society.

A collecting society is an organisation that administers the rights of a group of copyright owners. It can grant consent for use of the works of its members under specific conditions. The following are collecting societies in Singapore:

- Composers and Authors Society of Singapore Ltd
- The Copyright Licensing and Administration Society of Singapore Ltd
- Music Publishers (S) Ltd
- Recording Industry Performance Singapore Pte Ltd
- InnoForm Entertainment Pte Ltd

For more information on seeking permission from copyright owners through collecting societies in Singapore, please refer to page 21.

Not all IP Associations are collecting societies that administer licences. The following are IP Associations that represent the interests of copyright owners. Generally they are non-profit, non-government bodies engaging in promotional, educational and trade-related activities on behalf of their members:

- Business Software Alliance
- International Confederation of Societies of Authors and Composers
- International Federation of the Phonographic Industry
- Recording Industry Association (Singapore)
- The Motion Picture Association

For more details, please refer to the IPOS website <http://www.ipos.gov.sg> (About Copyright>IP Association & Collecting Societies).

Copyright Tribunals

The Copyright Tribunals are a forum for resolving disputes between licensors who are in the business of collectively administering copyright licences for different copyright owners, and users of copyright materials. The Copyright Tribunals' jurisdiction is set out in Part VII of the Copyright Act (Cap. 63).

There is a president to the Copyright Tribunals, as well as two deputy presidents and up to 15 members. Either the president or a deputy president may preside over a Tribunal that is formed. Each Tribunal will consist of three members.

A Tribunal is empowered to:

- resolve disputes relating to licences and licence schemes in relation to a work or other subject matter.
- ascertain the royalty payable for the recording of musical works and, where applicable,
- apportion the royalty in respect of a record.
- determine what constitutes "equitable remuneration" for the right to film artistic works for permitted broadcasts or cable programmes
- determine what constitutes "equitable remuneration " for the making available to the public of a sound recording through a non-interactive digital audio transmission;
- determine what constitutes "equitable remuneration" payable by educational institutions when they use copyright material within the permissible limits allowed under the Copyright Act; and
- determine the terms on which the government can use copyright material.

A Tribunal has the power to refer to the High Court any matter that comes before it for the determination on a point of law. This may be done on its own volition or at the request of any party to the matter.

The procedure for applications to be made to a Tribunal is set out in the Copyright Tribunal (Procedure) Regulations 1988. The forms are available at the IPOS website.

The operating hours of the Registry of the Copyright Tribunals are:

Monday to Friday 8.30 - 5.30pm
Saturday, Sunday and Public Holidays CLOSED

Submission of forms and payment should be made to the IPOS counter within the following hours:

Monday to Friday 8.30 am - 5.00 pm

For more information, please contact:

Secretary to the Copyright Tribunals
Intellectual Property Office of Singapore
51 Bras Basah Road, #04-01 Manulife Centre, Singapore 189554
Tel: 6339 8616, Fax: 6339 0252

Infringement

Infringement occurs when one has not obtained consent from the copyright owner to do something that only the copyright owner has the exclusive right to do. For example, a person infringes copyright if he photocopies an article without the consent of the copyright owner.

It is important to note that one does not need to have reproduced the entire copyright work before infringement takes place. It is an infringement as long as a substantial amount of the original work has been copied.

In an infringement dispute, a substantial amount is not measured merely in terms of the quantity that has been copied. The Court also takes into account the nature of the portion that has been copied or reproduced. If the portion copied constitutes the primary part or essence of the copyright work, the Court may construe that a substantial amount has been copied.

Infringement also occurs when one deals commercially with infringing copies, e.g. if a person:

- a) imports infringing copies for sale or distribution;
- b) sells (including distribution for trade or any other purpose to an extent that affects prejudicially the copyright owner) or lets for hire infringing copies; or
- c) offers infringing copies for sale or hire by way of trade.

The copyright owner may take legal action against a person who infringes his copyright.

>> Please refer to page 14 for Exceptions to Copyright infringement.

Remedies

Remedies are the measures of relief that the Court can grant to a person whose rights are infringed. In civil lawsuits, remedies for copyright owners include injunctions (to stop someone from doing something), damages (whether actual damages, as proved, or statutory damages), and account of profits. Where it is proper to do so, considering the flagrancy of the infringement, the Court may also order additional damages to be paid by the infringing party to the copyright owner.

>> An award of statutory damages is a remedy (instead of damages) that the Court may order against the infringing party without the need for the copyright owner to prove the loss he has suffered as a result of the infringement. This is subject to a per-work ceiling of \$10,000 and to an aggregate ceiling of \$200,000 for a particular action.

Factors considered in determining Statutory Damages

In determining the amount of statutory damages, the Court is to consider these factors:

- Nature and purpose of the infringing act, including whether the infringing act was of a commercial nature or otherwise;
- Flagrancy of infringement;
- If the act was done in bad faith;
- Any loss suffered or likely to be suffered by the copyright owner;
- Any benefit shown to have accrued to the defendant;
- conduct of both parties before and during proceedings;
- The need to deter similar instances of infringement; and
- All other relevant matters.

Criminal Offences

In Singapore, criminal offences under copyright law include the following:

- **Manufacture** of infringing copies for sale;
- **Sale** of infringing copies;
- **Possession or importation** of infringing copies for the purposes of sale, hire, or distribution for trade or for any other purpose to an extent that will affect the copyright owner prejudicially;
- **Distribution** of infringing copies for trade or for any other purposes to such an extent as to affect the copyright owner prejudicially.

In any of the instances above, it must be proved that the infringing party knows or ought reasonably to know that the copies are infringing copies.

The law provides that where a person is found to have 5 or more infringing copies of any work, unless proved otherwise, it is presumed that the possession of the infringing copies was not for the purpose of private or domestic use; or that such possession was for the purpose of sale.

The penalties for manufacture for sale; sale of infringing copies; and possession or importation of infringing copies for the purposes described above are:

- A fine not exceeding \$10,000 per infringing copy, up to a total of \$100,000 per charge; and/or
- Imprisonment up to 5 years.

2. OWNERSHIP AND RIGHTS

The penalties for distribution of infringing copies for trade or for other purposes to such an extent as to affect the copyright owner prejudicially are:

- A fine not exceeding \$50,000; and/or
- Imprisonment up to 3 years.

The making or possession of an article specifically designed for making infringing copies, e.g. machinery for manufacturing infringing copies, is also an offence attracting the following penalties:

- A fine not exceeding \$20,000 per article; and/or
- Imprisonment up to 2 years.

Criminal Liability for Wilful Infringement

It is also a criminal offence if a person wilfully infringes copyright for the purpose of obtaining a commercial advantage and/or to an extent that is significant.

>> Commercial advantage means any direct advantage, benefit or financial gain for a business or trade. As to whether the infringement is to an extent that is significant, this is judged based on the volume and value of infringing copies, whether the infringement has a substantial prejudicial impact on the copyright owner and all other relevant matters.

The penalties for such wilful copyright infringement are:

- 1st offence, a fine not exceeding \$20,000 and/or imprisonment up to 6 months;
- 2nd or subsequent offence, a fine not exceeding \$50,000 and/or imprisonment up to 3 years.

>> Other acts that have civil and criminal liabilities include:

- circumventing a technological measure (page 15); and
- removing or altering the rights management information electronically attached to a work (page 17).

Border Enforcement Measures

Restriction of Importation of Infringing Copies

A copyright owner or licensee (the “objector”) may serve on the Director-General of Customs a written notice stating that he objects to the impending importation of infringing copies of his copyright material. The objector would have to provide sufficient information to enable the Director-General of Customs to identify the alleged infringing copies and to ascertain the time and place where the copies are expected to be imported. The objector would also have to satisfy the Director-General of Customs that the copies are infringing copies. Copies of the relevant notice can be found on the IPOS website <http://www.ipos.gov.sg> (Forms and Fees>Border Enforcement).

Upon receipt of such a notice, the Director-General of Customs will take appropriate action to seize the alleged infringing material and inform the objector and importer of the seizure. The objector can then decide whether to institute an action for copyright infringement in Court and notify the Director-General of Customs accordingly within a period of 10 working days from the Director-General’s notice of seizure. If the objector does not institute an action in Court and there is no written notice from the importer consenting to the seized copies being forfeited to the Government, the Director-General shall then release the seized copies to the importer.

Detention and Examination of Infringing Copies

Any appropriate officer of Customs or Police (“an authorised officer”) may also exercise his power to detain copyright material which he reasonably suspects are infringing copies. The copyright material may be imported into or exported from Singapore or are in transit and consigned to a person with a commercial or physical presence in Singapore.

Upon detention, the Director-General of Customs shall notify the copyright owner and the importer/exporter/consignee, and hold the copies for 48 hours. If no further action is taken by the copyright owner, the detained copies will be released to the importer/exporter/consignee.

However, during the 48-hour period, in the case of imports, the copyright owner may serve a formal notice requesting the further detention of the seized copies. If the copyright owner serves such a notice, the seized copies will be detained for a further period of 10 working days within which the copyright owner has to institute an action for copyright infringement in Court and notify the Director-General of Customs. If the copyright owner does not do so, the detained copies will be released to the importer.

In the case of infringing copies that are to be exported from Singapore or are in transit with a local consignee in Singapore, the copyright owner must place a security deposit with the Director-General within 48 hours of the Director-General’s notification of seizure of the infringing copies. The copyright owner must then institute an action for copyright infringement within 10 working days after the Director-General’s notice and serve on the Director-General a court order authorising further detention of the infringing copies.

In addition, an authorised officer has wide powers to examine any material, including goods in transit, which he reasonably suspects to be infringing copies of any copyright material.

3

OTHER COPYRIGHT PROVISIONS

Exceptions to Copyright Infringement

The Copyright Act provides for exceptions to copyright infringement.

Fair Dealing

Under the provisions of the Copyright Act, copying the whole or a part of a copyright work is permissible as long as it is a "fair dealing". Factors that will be taken into account in deciding whether such copying is a fair dealing include the following:

- Purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;
- Nature of the work;
- Amount and substantiality of the part copied taken in relation to the whole work;
- Effect of the dealing upon the potential market for, or value of, the work;
- The possibility of obtaining the work within a reasonable time at an ordinary commercial price.

Where the copying is for the specific purposes of research or study, it shall be taken to be a fair dealing as long as the copying limits are observed. For a published work of at least 10 pages, the copying limits are up to 10% of the number of pages or 1 chapter, whichever is the greater.

In other cases, fair dealings for the purposes of criticism, review or reporting current events would not constitute copyright infringement. In the case of criticism or review and the reporting of current events in a newspaper, magazine or similar periodical, a sufficient acknowledgment of the work is required.

Other Exceptions

It is not an infringement if a person:

- Does anything which is the copyright owner's exclusive right to do if it is done for the purposes of judicial proceedings or seeking or rendering professional legal advice;
- Makes a copy from an original copy of a computer program, which he owns, for the purpose of using that duplicate copy as a back-up in the event that the original copy is lost, destroyed or rendered unusable;
- decompiles a computer program from a lower level language to obtain the information necessary to create an independent non-infringing computer program which can be operated with the computer program decompiled or with another computer program if the information is unavailable and subject to the information not being used for other purposes and not being supplied to other persons; or
- observes, studies or tests the functioning of a computer program in order to determine the underlying ideas and principles if this is done while loading, displaying, running, transmitting or storing the computer program insofar as he is entitled to do any of these latter acts.

Circumvention of Technological Measures

Due to the increasing ease with which digital copyright works can be reproduced and disseminated, in order for copyright works to be adequately protected, it has become necessary to render legal protection to technological measures employed by copyright owners to prevent unauthorised access or to restrict unauthorised use of their works.

Where technological measures are applied to copyright works by a copyright owner in connection with the exercise of his copyright, the copyright owner may take civil action against a person who:

- a) Knowingly circumvents a technological measure that effectively controls access to a work;
- b) Manufactures, imports, distributes, offers to the public, provides or otherwise traffics in any device, product or component which
 - (i) is promoted, advertised or marketed for the purpose of circumventing the technological measure,
 - (ii) has limited commercial significance other than to circumvent the technological measure, or
 - (iii) is designed or made primarily for the purpose of circumventing the technological measure ("circumventing device");
- c) Offers to the public or provides any service which
 - (i) is promoted, advertised or marketed for the purpose of circumventing the technological measure,
 - (ii) has limited commercial significance other than to circumvent the technological measure, or
 - (iii) Is performed primarily for the purpose of circumventing the technological measure ("circumventing service").

>> Circumvent means to avoid, bypass, remove, deactivate, descramble (where the copy is scrambled), decrypt (where the copy is encrypted) or otherwise impair.

Criminal Liability for Wilful Contravention

Where a person performs the act in part (a) above wilfully and for the purpose of obtaining any commercial advantage or private financial gain, he shall be guilty of an offence. Upon conviction, he shall be liable to a fine not exceeding \$20,000.

Where a person performs an act in part (b) or (c) above wilfully and for the purpose of obtaining any commercial advantage or private financial gain, he shall be guilty of an offence. Upon conviction, he shall be liable to a fine not exceeding \$20,000 and/or imprisonment for a term not exceeding 2 years.

For (b)(i) and (c)(i), the act is not considered wilful unless the person had himself promoted, advertised or marketed; or authorised the promotion, advertisement or marketing of the circumventing device or service.

For (b)(ii) and (c)(ii), the act is not considered wilful unless the person, at the time of contravention, knew or had reason to believe that the circumventing device or service had limited commercial significance other than to circumvent the technological measure.

3. OTHER COPYRIGHT PROVISIONS

For (b) (iii), the act is not considered wilful unless the person, at the time of contravention, knew or had reason to believe that the circumventing device was designed or made primarily for the purpose of circumventing the technological measure.

For (c) (iii), the act is not considered wilful unless the person had himself performed or authorised the performance of the circumventing service.

Civil Remedies

The copyright owner may take civil action against a person who does any of the acts described above. Civil remedies available include:

- Injunction;
- Damages (including account of profits) or statutory damages in lieu of damages of not more than \$20,000;
- Order for delivery up of any articles used to carry out the prohibited act to the copyright owner; or
- Order for destruction.

Please refer to page 11 on the considerations by the Court in awarding statutory damages.

Exceptions to Prohibition on Circumvention of Technological Access Control Measures

There are exceptions where the circumvention of a technological measure which effectively controls access to a work is not a contravention. They include acts done:

- to enable a non-profit library, any non-profit archives, an educational institution, an institution assisting handicapped / intellectually handicapped readers to have access to a copyright work which is not otherwise available to the library, archives or institution, for the sole purpose of determining whether to acquire a copy of the work;
- When undertaking research on any encryption technology (subject to conditions);
- For the sole purpose of identifying and disabling a technological measure that is capable of collecting or disseminating personally identifying information (subject to conditions);
- For the sole purpose of achieving interoperability of an independently created computer program with another computer program (subject to conditions);
- For the sole purpose of preventing access by minors to any material on the Internet (subject to conditions);
- by or under the authority of the owner of a computer, computer system or computer network for the sole purpose of testing, investigating, or correcting a security flaw or vulnerability of that computer, computer system or computer network; and
- By the Government or any Government-authorized person for the purpose of law enforcement, intelligence, national defence, essential security or other similar purpose.

3. OTHER COPYRIGHT PROVISIONS

Exceptions to Prohibitions Relating to Circumventing Devices and Circumventing Service

There are exceptions for the making/importing/distribution/offering/provision/trafficking of circumventing devices or offering/provision of circumventing services when they are done:

- For the sole purpose of achieving interoperability of an independently created computer program with another computer program (subject to conditions);
- To circumvent a technological access control measure when undertaking research on any encryption technology (subject to conditions);
- For the sole purpose of preventing access by minors to any material on the Internet (subject to conditions);
- To circumvent a technological access control measure for the sole purpose of testing, investigating, or correcting a security flaw or vulnerability of a computer, computer system or computer network (subject to conditions); and
- By the Government or any Government-authorized person for the purpose of law enforcement, intelligence, national defence, essential security or other similar purpose.

Rights Management Information (RMI)

Rights management information includes information identifying the author of a work, and the terms and conditions relating to its use. It is used by authors of digital works to identify their works or provide information about the copyright work. An example of an RMI is a digital watermark that authenticates the source of a digital photograph.

Where RMI in electronic form

- is attached to or embodied in a copy of a work; or
- appears in connection with the communication or making available to the public a copy of a work, a civil action may be brought against a person if, without the consent of the copyright owner or exclusive licensee of the copyright in the work, the person does any of the following acts:
 - a) Knowingly removes or alters the RMI;
 - b) Distributes or imports for distribution the RMI which has been altered; or
 - c) Distributes, imports for distribution, communicates or makes available to the public copies of a work in respect of which the RMI has been removed or altered.

The person performing any of the above acts must also know or ought reasonably to know that the act will induce, enable, facilitate or conceal an infringement of the copyright in the work.

Criminal Liability

Where a person performs the acts in part (a) above wilfully and for the purpose of obtaining any commercial advantage or private financial gain, he shall be guilty of an offence. Upon conviction, he shall be liable to a fine not exceeding \$20,000.

Where a person performs an act in part (b) or (c) above wilfully and for the purpose of obtaining any commercial advantage or private financial gain, he shall be guilty of an offence. Upon conviction, he shall be liable to a fine not exceeding \$20,000 and/or imprisonment for a term not exceeding 2 years.

3. OTHER COPYRIGHT PROVISIONS

Civil Remedies

The copyright owner or exclusive licensee may take civil action against the person who does any of the acts described above. Civil remedies available include:

- An injunction
- damages, account of profits or an award of statutory damages of not more than \$20,000 in lieu of damages or account of profits,;
- Order for delivery up of any articles used to carry out the prohibited act to the copyright owner or exclusive licensee; or
- Order for destruction.

Please refer to page 11 on the considerations by the Court in awarding statutory damages.

Copyright and the Internet

Copyright Material on the Internet

Copyright works sent over the Internet or stored on web servers are treated in the same manner as copyright material in other media. The fact that they are made available on the Internet does not constitute a waiver of copyright nor does it carry any implied licence for anyone to download or reproduce the copyright works without the permission of the copyright owner.

It is good practice for all copyright owners to maintain documentary evidence of the date of creation of the works, and display a notice of copyright on the material posted on the Internet. The documentary evidence will facilitate proof of copyright should there be a need to enforce the copyright against a third party. Please refer to the Symbol © and Proof of Originality on page 3.

Webpages

Generally, a web page is considered subject matter protected by copyright. The individual copyright works (e.g. original music, original text) within a webpage can also be separately protected by copyright.

If you wish to hyperlink to a website, generally, it is good practice to check the terms and conditions of use of the website and the terms and conditions of use of the works.

Downloading Copyright Works from the Internet

Downloading copyright works from the Internet results in making digital copies of copyright works. This will constitute copyright infringement if no prior authorization is first obtained from the copyright owner,

However, exceptions may apply. Please refer to page 14 on Exceptions to Copyright Infringement.

3. OTHER COPYRIGHT PROVISIONS

Browsing

While browsing (viewing, listening or utilising) copyright works made available on the Internet, such works are communicated to the user. In order for the user to receive the communication, a transient and incidental electronic copy of a copyright work is created in the user's computer or other electronic device. The making of this transient and incidental copy of the work constitutes a reproduction of the work.

The Copyright Act provides a specific limited exception for the act of browsing. The copyright in a work is not infringed by the making of a temporary or transient reproduction of the work.

However, the exception applies only if:

- the reproduction is made incidentally as part of the technical process of making or receiving a communication; and
- The act of making the communication itself does not constitute an infringement.

This exception shall NOT apply if the reproduction of the copyright work that is communicated is:

- an infringing copy of the work; or
- A reproduction that, if it had been made in Singapore, would have been an infringing copy of the copyright work.

Email Forwarding

Generally, forwarding an email which contains copyright material without the consent of the copyright owner is an infringement because the act of forwarding the copyright material would constitute communication and reproduction of the copyright material without permission. .

Liability of Network Service Providers (NSPs)

NSPs provide Internet access services and facilities for transmission, routing or storage of data. As such, they are the repository and access point for a high volume of copyright works. Recognising the need to limit the liability of NSPs for infringement committed by their users, the Copyright Act provides NSPs with limited legal liability in copyright infringement suits, subject to the NSP meeting certain stipulated conditions. One of these conditions is that the NSP must designate a representative to receive any notice of infringement served by copyright owners.

All designated representatives together with prescribed information thereof must be notified to IPOS and be listed in the [Directory of NSPs](#) administered and maintained by IPOS. To notify IPOS of the designated representative, an NSP can obtain the form at the IPOS website <http://www.ipos.gov.sg> (Forms and Fees>Network Service Providers). The completed form can be submitted by hand, mailed, faxed or emailed to IPOS. An administrative fee of \$32 will apply.

Copyright and Computer Programs

The source code of a computer program is protected as a literary work. The layout and the display of the program may also be protected by copyright.

For more information on exceptions relating to computer programs, please refer to Exceptions to Copyright Infringement, Other Exceptions on page 14.

Copyright and Registered Designs

When an artistic work, such as a drawing or a sculpture, is applied to a product and industrially produced (i.e. more than 50 copies of the products are produced), the copyright protection will no longer apply to that artistic work. It may be protected as a registered design under the Registered Designs Act (Cap. 266), if the registration criteria are met.

>> For more information on registered design and its registration criteria, please refer to the IPOS website <http://www.ipos.gov.sg> (About IP>Registered Designs).

3. OTHER COPYRIGHT PROVISIONS

Special Provisions for Educational Institutions

There are special provisions in the Copyright Act that allow certain educational institutions to make copies of or to communicate a copyright work within limits for educational purposes.

In the case of a published edition of a literary, dramatic or musical work, there is a presumption of non-infringement if the amount taken falls within the following limits (whichever is applicable):

- For works of at least 10 pages divided into chapters
 - Not more than 10% of the total number of pages of the work; or
 - Not more than one chapter; whichever is the greater.
- For works of at least 10 pages, not divided into chapters
 - Not more than 10% of the number of pages of the work.
- Where the work is an edition stored on an electronic medium and is not divided into pages
 - Not more than 10% of the total number of bytes in the edition; or
 - Not more than 10% of the total number of words in that edition; or
 - Not more than 10% of the contents of that edition.
- Where the work is an edition stored on an electronic medium and is divided into chapters
 - Not more than 10% of the total number of bytes in the edition; or
 - Not more than 10% of the total number of words in that edition; or
 - Not more than 10% of the contents of that edition, but contains only the whole or part of a single chapter of the work.

There are however certain record-keeping requirements imposed on the schools and the need to pay equitable remuneration to the copyright owners upon their request.

ANNEX A: Seeking Permission from Collecting Societies to Use Material Protected by Copyright

If you, your business or your organisation uses copyright works administered by a collecting society, this section provides general information on the "why"s and "how"s to obtain authorisation for the use of such copyright works.

1. What are collecting societies and what do they do?

A collecting society is formed by a group of copyright owners to manage their rights to their copyright works. Collecting societies administer the licensing of rights, collection of royalties and enforcement of rights on behalf of the copyright owners.

Although not all copyright owners are members of collecting societies, in some instances, these organizations form the main contact points between copyright owners and users. For further information, please refer to the questions and answers.

2. What rights are administered by collecting societies in Singapore?

In Singapore, there are currently 5 collecting societies administering different rights to copyright works:

Public performance rights for a musical work

The **Composers and Authors Society of Singapore (COMPASS)** (<http://www.compass.org.sg>) administers the music public performance rights for songwriters and lyricists. Public performance means the playing or use of music in a public place such as in a shopping centre, a restaurant, lounge, gym or in a concert hall, etc.

Public performance rights for a music video

The **Recording Industry Performance Singapore Pte Ltd (RIPS)** (<http://www.rips.com.sg>) administers the public performance rights of the music videos and karaoke videos owned or controlled by the record companies represented by RIPS.

Rights (other than public performance) for a musical work

The **Music Publishers (Singapore) Ltd (MPS)** (<http://www.mps.org.sg>) is an association of music publishing companies in Singapore. These companies collectively control a number of rights to musical works in Singapore. With the exception of public performance rights (which are administered by COMPASS), all other rights are under the administration and/or ownership of MPS members. This means, for example, for reproduction of music compositions, you will need to contact MPS members.

To find out which music publisher administers and/or owns the rights to a work, you could write to MPS at info@mps.org.sg. It is advisable to give as much information as you can, such as the title of the song, composer/lyricists, usage details, so that a quotation of the copyright fee can be established.

Although The Composers and Authors Society of Singapore (COMPASS) administers music performing rights, COMPASS also administers the rights of reproduction and adaptation of musical works of some Singapore-based music publishers. You can approach COMPASS if you need to copy or adapt the lyrics or music score of selected local musical works.

To find out whether MPS or COMPASS administers the rights to a work, you should contact MPS and COMPASS. It is advisable to give as much information as you can about the title of the song, composer, lyricist, the music publisher, record company, etc.

Reproduction rights for sound recordings found in a CD, record and karaoke / music videos recorded in video/LD/VCD/DVD

The **Recording Industry Performance Singapore Pte Ltd (RIPS)** represents record companies who own the copyright to a sound recording in a song and music as recorded in a CD or a record and karaoke/ music videos recorded in video/LD/VCD/DVD. RIPS provides licences for the use of sound recordings and karaoke/music/music videos.

Reproduction rights for karaoke and music videos

InnoForm Entertainment Pte Ltd administers the reproduction rights of karaoke and music videos on behalf of major record companies.

Members of the public or businesses who wish to make reproductions and/or store karaoke and/or music videos on servers should obtain an appropriate licence from InnoForm Entertainment Pte Ltd before proceeding with any such act.

Reproduction rights for literary works

The **Copyright Licensing and Administration Society of Singapore Ltd (CLASS)** (<http://www.class-singapore.com>) administers the reproduction right of published literary works such as books, magazines, journals, etc on behalf of authors and publishers. CLASS provides licences to allow photocopying of these works.

3. How do I know when I need to get licences to use copyright works?

Generally, a user would have to obtain a license for the use of a work if:

- the work enjoys copyright protection;
- the term of copyright protection has not expired; and
- The use of the work does not fall within the fair dealing exceptions.

To find out more about copyright protection, please see About Copyright, Ownership & Rights and Exceptions to Copyright Infringement.

For businesses and organisations, copyright works can be used in many different ways. For example, a lounge can have live performances by bands; radio stations will broadcast songs over the air; advertising companies may adapt well-known pictures and songs for their advertisements; conference speakers may circulate interesting articles to the participants and so on.

The following provides a non-exhaustive list of examples of some common scenarios where copyright protected works are used and when you may need licences for such uses:

Scenario 1: If you play music in public:

As part of your business, you may provide entertainment in the form of music. This includes nightspots, karaoke, restaurants, discotheques, lounges and so on. Or your business plays background music e.g. hotels, factories, skating rinks, hairdressing salons, fitness and shopping centres, or you provide telephone music on-hold facilities. All these activities constitute public performances of musical works.

Enquire with **COMPASS** on the need for and terms of a licence for such uses of music (excluding the use of music videos and private re-mixing, which need other licences. See other scenarios below).

Scenario 2: If you reproduce copyright works:

Your business may make copies (physical or digital) of copyright works. For example, the use of mobile phone ringtones, the photocopying of books, copying of photographs and drawings and so on. All these concern the reproduction right of copyright works. To make a copy of a musical work, enquire with MPS [info@mps.org.sg] and COMPASS. To make a copy of the original sound recordings, enquire with RIPS.

To make a copy of a literary work, enquire with CLASS (class@singnet.com.sg).

Scenario 3: If you publish copyright works:

Your business publishes works with significant portions of other people's copyright works, for example assessment books with questions taken from other sources or graphics related books with photos taken by other photographers. Enquire with the copyright owners of these works.

Scenario 4: If you are adapting a musical work:

Your business may rearrange a musical work for use in advertisements or commercials. To obtain permission to adapt a musical work, enquire with MPS [info@mps.org.sg], or COMPASS.

Scenario 5: If you organise concerts, events etc

Your business organises events such as concerts, fun fair carnivals, weddings and so on. For the use of music, or music videos, enquire with COMPASS and RIPS [info@rips.com.sg], respectively.

4. When is a licence not required?

The Copyright Act provides for exceptions for "fair dealing" in the use of copyright works. The fair dealing exceptions can be found on page 14 of this infopack. When these exceptions apply, there is no need to obtain permission to use copyright works within the parameters of these exceptions. It is advisable to check with your legal counsel about the applicability of these exceptions to your organisation.

5. How do I obtain a licence to use the works?

Since the collecting societies represent the copyright owners, you can approach any representative of the relevant collecting society for authorisation to use the works that they administer.

But collecting societies do not administer all works, nor all the rights in the works they administer. If the rights to works are not administered by a collecting society in Singapore (such as the rights to use a photograph, drawing, sculpture, etc.), you will have to approach the copyright owner to get his/her permission to use the particular work in that particular manner. The names of the copyright owners are often available on the work itself. If not, you could check with the provider of the work.

For example, you have found a very interesting cartoon strip on a news portal and would like to include that as an illustration in your soon-to-be-published book. Look next to the © symbol on the cartoon strip which should indicate the author / copyright owner. If that is not available, approach the news portal for rights information about the cartoon strip.

6. Why do I sometimes have to approach more than one collecting society?

Each collecting society is authorised by the copyright owner to administer particular rights on his/her behalf. If your activity requires the use of several rights, you will need to approach the societies administering those rights. For example, if you make your own collection of songs for your CD and play it during a fun fair, you will need to obtain reproduction licences from RIPS [info@rips.com.sg] and MPS [info@mps.org.sg], to make your CD and a public performance licence from COMPASS to play the musical works publicly.

7. How much would it cost?

A Collecting Society will have a scale of fees which it will charge depending on the different use of the copyright works. For COMPASS, these **fees** are available on its website. MPS/RIPS licence fees are generally granted either on an annual basis or to cover 'one-off' single events. Usage which does not fall into the **standard tariffs** will be considered on a case-by-case basis. If you are using works that are not administered by collecting societies, you would have to approach the correct copyright owners themselves for permission. The correct copyright owners will determine how much they want to charge for a particular use of their works, if at all.

8. What information do I need to provide to obtain a licence?

For musical works and sound recordings, the usual information required by the collecting societies include: the title of the song, composer/lyricists and usage details. Copyright owners, as the creators of the works, are sometimes particular about what their creations are used for. For example, music publishers, in some instances, will need to seek approval from the songwriters and/or copyright owner of the music composition. The songwriter and/or copyright owner has the right to approve or deny the use of a music composition for various reasons. For example, in the case of TV commercial music usage request, some songwriters/copyright owners may not want to be associated with a certain product which could be against their personal values and/or beliefs. Hence requests could be denied. Sometimes, the music composition may have been licensed exclusively to another licensee and hence cannot be further licensed for any other use. For more info, please see the mps website at <http://www.mps.org>.

For other copyright works, please provide sufficient information for the copyright owners to be able to identify the work and explain the manner of use. The collecting societies need the information as part of their service to help draft out a suitable licence that is adequate for your use. The information is also used to determine the appropriate rate for the licence as well as to distribute the royalties back to the correct copyright owners. (Please see Question 10 below for more information on how the royalties are distributed.)

9. How long would it take to get a licence?

Depending on the nature of the licence application, the collecting societies could get back to you to clarify some details. Based on feedback by the collecting societies, the following is the estimated time lines for the various collecting societies to reply to your enquiry:

COMPASS: 7-60 working days

MPS: 7-14 working days

RIPS: 7-14 working days

InnoForm Entertainment Pte Ltd: 7 working days

10. What do collecting societies do with the money collected?

Collecting societies are usually structured as non-profit entities. After deducting an administration fee, the rest of the amount collected is distributed back to the copyright owners. For ease of administration, the monies are distributed usually on a half yearly or yearly basis. Collecting societies have a distribution policy to determine how much money goes to which copyright owner, depending on how often the work was used. Thus a famous song played very frequently on the radio would earn the original composer more royalties.

Some collecting societies follow the best practice of putting up a Code of Conduct for their operations. Some also upload their annual reports or yearbook to explain their operations to the public. For example you can access the COMPASS code of conduct and annual report from the COMPASS website at <http://www.compass.org.sg>.

If you still need further clarification on the operations of collecting societies, you can contact them via their email links on this page.

11. Why should I respect copyright?

Authors, artists, musicians, playwrights, programmers and others involved in the copyright and related industries are creative professionals who bring us new songs, books, plays, films and other works. They invest time, intellectual and creative effort to make available to the public works of literature, music, art, software applications and so on.

Copyright laws are in place to provide protection for such works, and to recognise the creators for their creative effort. These laws also provide incentives for creators to continue creating new works.

12. I want to respect copyright, and ensure that the creators get their due returns. But I am concerned with the rates and terms and conditions proposed. What can I do?

The rates of copyright works usage and payment terms are private matters between users and the collecting societies acting on behalf of copyright owners. Collecting societies can sometimes offer fee-free licences for causes they find worthy to support. For example, some collecting societies have granted fee-free licences for the use of music in key charitable events.

If you are concerned with the rates and/or terms of the licenses, you should contact the senior managers of CLASS [classy@singnet.com.sg], COMPASS, MPS [info@mps.org.sg], and RIPS [info@rips.com.sg].

Singapore has also established a Copyright Tribunal empowered to resolve certain licensing disputes between copyright owners and users of copyright materials. Hearings by the Copyright Tribunal do not require you to engage a lawyer, although having legal advice could help in presenting your case to the Tribunal. Contact the Secretariat of the Copyright Tribunal for more information.

ANNEX B: Collecting Societies

Introduction

A collective management organisation is generally formed or appointed by copyright holders to manage the rights in their copyright works. Collective management organisations are appointed by copyright owners to administer the licensing of rights, collection of royalties and enforcement of rights on their behalf. If you intend to use a work protected by copyright, such as music or other sound recordings, you will need to be authorised, which is normally granted through a license granted by copyright owners / collective management organisations. You may obtain licenses from either the copyright owners, or from legally authorised collective management organisations administering the relevant rights governing your use of such works.

Collective management organisations are independent, private organisations. The collective management organisations will be able to provide further information relevant to your intended use of works. You may also wish to obtain legal advice to verify that your intended use of works will be appropriately covered by licenses provided by the relevant collective management organisations.

For updated information on the following please refer to the IPOS website at www.ipos.gov.sg

- Composers and Authors Society of Singapore Ltd
- Horizon Music Entertainment Pte Ltd
- InnoForm Entertainment Pte Ltd
- K-Net Music Pte Ltd
- Music Publishers (S) Ltd
- Recording Industry Performance Singapore Pte Ltd
- The Copyright Licensing and Administration Society of Singapore Ltd
- Motion Picture Licensing Company (Singapore) Pte Ltd



The Intellectual Property Office of Singapore or IPOS (<http://www.ipos.gov.sg>) is the lead government agency that formulates and regulates intellectual property (IP) laws, promotes IP awareness and provides the infrastructure to facilitate the greater development of IP in Singapore. With IP fast becoming a critical resource in today's new economy, IPOS' vision is to foster a creative Singapore where ideas and intellectual efforts are valued, developed and exploited. Formerly known as the Registry of Trade Marks and Patents, IPOS was established as a statutory board of the Ministry of Law on 1 April 2001.



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