



# COPYRIGHT

## FACTSHEET FOR BUSINESSES ON THE COPYRIGHT ACT 2021

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# Understanding the Copyright Act 2021

## What Businesses Need to Know

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

This factsheet explains the key changes that businesses operating in Singapore should note, in particular:

- (a) new licences that may be required when using copyright-protected sound recordings;
- (b) changes to who owns copyright in the absence of a contract; and
- (c) new obligations to identify creators and performers when using their content publicly.

Flowcharts are included to illustrate how businesses should take into account these changes when using third-party content in two common scenarios: **playing music on premises** and **streaming advertising or marketing videos online**.













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

















## What will Change?

### New Sound Recording Right

The Copyright Act 2021 protects a wide variety of content. Rights owners can control how their content is used and receive payment for it, while businesses may need licences to use such content.

Below is an overview of the types of content commonly used by businesses and when it may be necessary to obtain a licence for certain uses. As shown, rights owners of sound recordings now have an additional right relating to performing a sound recording in public. Thus, a corresponding licence may be necessary for businesses that use sound recordings in this manner.

Types of Content	Uses for which licence(s) may be required			
	Making a copy	Publishing (e.g. supplying copies through sale)	Performing in public (i.e. to show or play in public)	Communicating to the public (i.e. to transmit to the public, e.g. over the internet)
<b>Literary works</b> (e.g. books, articles in journals or newspapers, lyrics in songs or computer program source codes)				
<b>Dramatic works</b> (e.g. scripts for films or drama, choreographic scripts for shows or dance routines)				
<b>Musical works</b> (e.g. melodies)				

<b>Artistic works</b> (e.g. paintings, sculptures, drawings, engravings, photographs, buildings or models of buildings, works of artistic craftsmanship such as designer furniture)				
<b>Films</b> (e.g. movies or videos)				
<b>Sound recordings</b> (e.g. podcasts, music or audiobooks contained in a digital file)			 <b>NEW</b>	
<b>Performances</b> (e.g. recording of performances by musicians, singers or comedians)				

### Is your business fully licensed?

Certain content, such as sound recordings and films, can comprise different types of content, each of which is individually protected by copyright. For example, a recorded song contains the copyright in the lyrics, the melody, and the sound recording itself. This means that a business that uses such content must obtain a licence from the rights owner of **each** type of content.

The new right for rights owners of sound recordings is a right to collect payment (known as “**equitable remuneration**”) when their sound recordings are performed in public:

### Old position (under the Copyright Act 1987)

Currently, if your business plays music in public, you may need to obtain a licence for the public performance of the underlying **musical scores** and **lyrics**.

### New position (under the Copyright Act 2021)

Under the Copyright Act 2021, if your business plays music in public, you may need to obtain a licence for the public performance of the **sound recording** in addition to the licence for the public performance of the underlying **musical scores** and **lyrics**.

A sound recording is **performed in public** whenever the sounds in the recording are heard in public at a physical location, such as:-



In shops or shopping malls



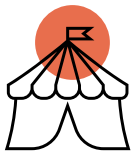
In cafés, restaurants or other eating establishments



In hotels



In offices or workplaces



At exhibitions



At concerts



At roadshows or other promotional events



At dinner & dances

Public performance is different from transmitting the sound recording over the internet, such as when a song is streamed in the background of an online video. In those cases, a separate licence (for communication of the sound recording) may be necessary.

## When a licence is not required

Your business will not require a licence if any of the following applies:

### Expiry of copyright:

The duration of copyright protection depends on the content in question.

For a sound recording, copyright expires **70 years** after the end of the year it is made (unless the recording is published within 50 years after it is made, in which case copyright expires 70 years after the first publication).

Once copyright expires, the public may use the content freely.

### Permitted uses:

The Copyright Act 2021 provides permitted uses for:

- public performance of sound recordings through receiving a broadcast (e.g. playing music through a radio);
- performance of sound recordings by an education institution, in the course of its activities, to an audience directly connected with the institution; and
- fair use of the sound recording (e.g. public performance for the purposes of criticism or review).

## Obtaining the necessary licences

Copyright owners often grant permission through a licence agreement which requires the user to agree to comply with specific conditions, such as the payment of a fee, in exchange for a licence to use the content.

Generally, the most straightforward way to obtain the necessary licences is to approach the collective management organisation(s) ("**CMOs**") which administer the content you plan to use. CMOs are bodies appointed by copyright owners to manage the licensing of their copyright in a collective manner for efficiency. They administer the licensing of rights, monitor usage of content, collect royalties/licence fees, and enforce rights on behalf of copyright owners. When you approach a CMO, you should ask about the repertoire they represent to ensure they manage the rights to the content that you intend to use.

Alternatively, you can approach the copyright owner of the content directly. This will more likely be the case if you intend to use non-music content because most CMOs in Singapore deal with copyrights relating to music.

The following are the main CMOs currently operating in Singapore:

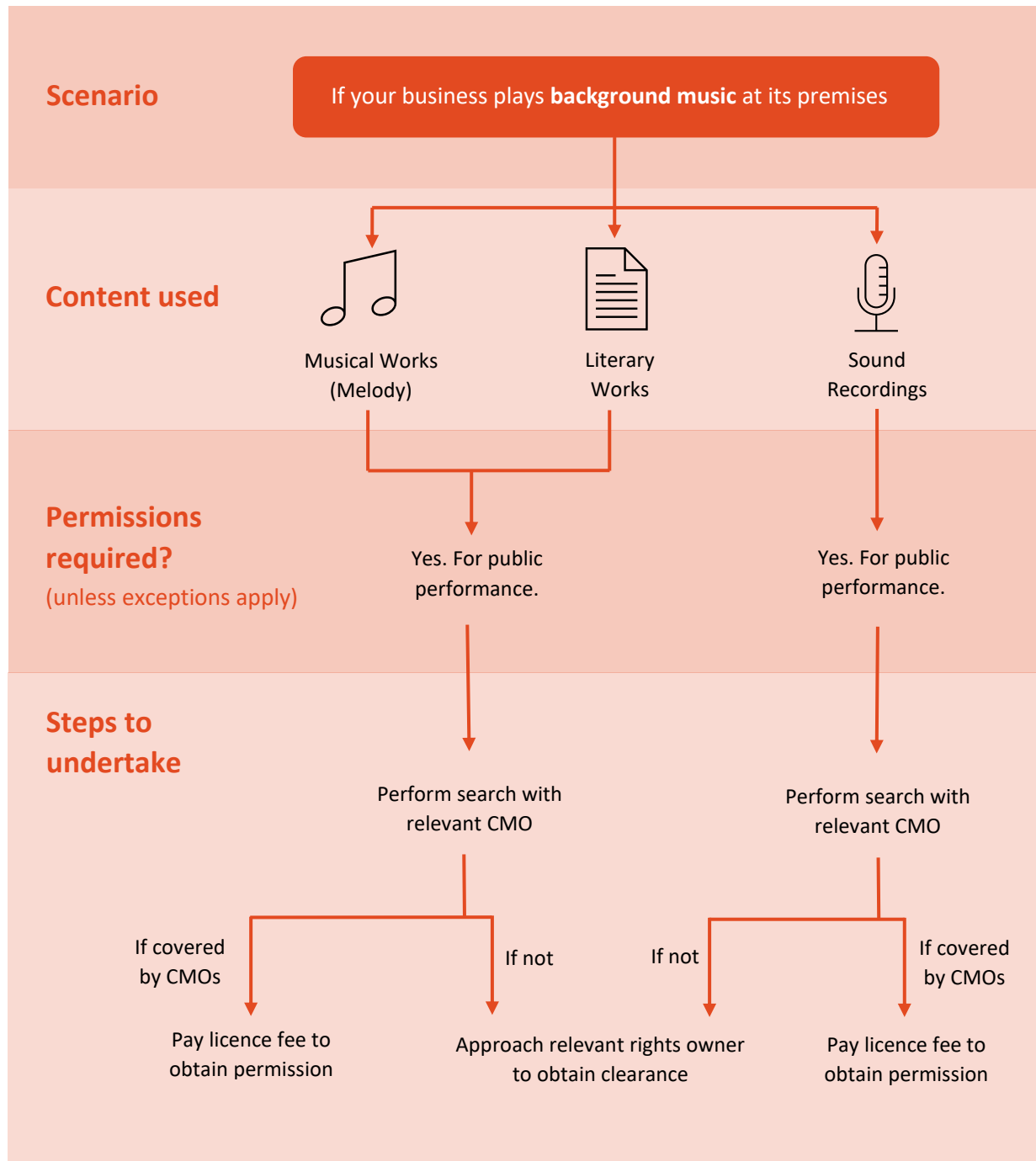
CMO	Rights which the CMO administers
<a href="#">Composers and Authors Society of Singapore Ltd</a> (COMPASS)	<ul style="list-style-type: none"> <li>• Reproduction rights of musical works</li> <li>• Reproduction rights of lyrics</li> <li>• Public performance rights of musical works</li> <li>• Public performance rights of lyrics</li> </ul>
<a href="#">Music Rights (Singapore) Public Limited</a> (MRSS)	<ul style="list-style-type: none"> <li>• Reproduction of karaoke videos and music videos for use on karaoke-on-demand systems in Singapore</li> <li>• Reproduction rights of sound recordings</li> <li>• Public performance rights of films featured in music videos and karaoke videos</li> <li>• Public performance rights of sound recordings (following the introduction of the new equitable remuneration right)</li> </ul>
<a href="#">Copyright Licensing and Administration Society of Singapore Ltd</a> (CLASS Singapore)	<ul style="list-style-type: none"> <li>• Reproduction rights of literary works featured in books, journals and periodicals</li> </ul>
<a href="#">Motion Picture Licensing Company (Singapore) Private Limited</a> (MPLC)	<ul style="list-style-type: none"> <li>• Public performance rights of motion pictures and other audio-visual content.</li> </ul>

### What if you cannot agree on the licence fee?

Businesses can refer licensing disputes to the Copyright Tribunals to determine if the fees or other terms of a licence are reasonable. This applies not only to disputes about the equitable remuneration for public performance of sound recordings, but also licensing disputes concerning all other types of content.

Read more at [www.ipos.gov.sg/about-ip/copyright/copyright-tribunal](http://www.ipos.gov.sg/about-ip/copyright/copyright-tribunal).

The illustrative flowchart below summarises what you need to take into account when playing music at your business premises. Note that this covers only copyright requirements; other laws may also apply.





## Changes to Default Copyright Ownership

The Copyright Act 2021 changes and standardises the default (i.e. in the absence of a contract) positions as to the copyright owners of certain types of content, as set out below. These default positions are subject to contract, i.e., parties can **agree in writing** to change the position so that some other party will own the copyright instead. **Therefore, businesses that wish to own the copyright in content when they are not the default copyright owner must have a written agreement with the creator to provide for this.**

### Old position (under the Copyright Act 1987)

Content creators are the default copyright owners.

#### Exceptions:

- for **commissioned photographs, portraits, engravings, sound recordings, or films**, the commissioning party is the default copyright owner.
- for **employee-created literary, dramatic, musical, and artistic works**, the employer is the default copyright owner of such works created by their employees in the course of employment.

### New position (under the Copyright Act 2021)

Content creators are the default copyright owners, including for **all types of commissioned content**.

#### Exception:

- for **employee-created** content, the employer is the default copyright owner of **all types of content** created by their employees in the course of their employment.

## Illustration

BigCo Pte Ltd commissioned a marketing video for a promotional event celebrating its 20<sup>th</sup> anniversary. It negotiated a contract with a freelance video editor, James, to create the marketing video. The contract provided for the fee payable and other details such as the length of the video and the subject matter but made no mention of the copyright ownership of the marketing video.

By default, James as the creator will own the copyright to the marketing video. While BigCo is permitted to make use of the marketing video for the purposes which it was commissioned, James may make use of the video for his own purposes as well, including licensing its use to others, subject to other applicable laws (e.g. personal data laws).

If BigCo wishes to use the marketing video for other purposes or events, it should have negotiated the contract to provide that it would own the copyright to the video. Given that it did not do so, it can still reach an agreement with James to amend the contract to provide for this. Alternatively, BigCo can obtain a licence from James to cover its further intended uses. To avoid potential future disputes, the licence should be recorded in writing.

## New Obligation to Identify Creators and Performers When Using Their Content in Public

Under the Copyright Act 2021, creators and performers must generally be identified whenever their content is used in public. This right to be identified **co-exists** with copyright. This means that even if you acquire the copyright in the content, you must still identify the creator or performer (unless exceptions apply).

### Old position (under the Copyright Act 1987)

Currently, creators and performers do not have a right to be identified when their content is used.

They have only a right to prevent false identification (i.e. to stop others from falsely claiming that their content was created or performed by someone else).

### New position (under the Copyright Act 2021)

Anyone who uses an **authorial work** (i.e. a **literary, dramatic, musical, or artistic work**) or a **performance** in public must identify its creator or performer.

This identification must be clear and reasonably prominent, and in the manner that the creator or performer wishes to be identified (e.g. the creator or performer may require the use of a pseudonym instead of their name).

Businesses should pay attention to the **specific type of content** and **manner of use in public**, as it affects whether the creator or performer needs to be identified at all, and if so, how the identification should be made.

For example, sharing content online, publishing it, or including it in corporate collaterals generally requires identification of the creator or performer. However, when a song is streamed online, the composer and lyricist do not need to be identified, although it is good practice to do so anyway.<sup>1</sup>

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<sup>1</sup> For details, please refer to Sections 372 and 392 (for specific circumstances in which a creator or performer must be identified) and Sections 373 and 393 (for how the identification should be made) of the Copyright Act 2021.

Further cases where there is no requirement to identify the creator or performer are set out below:

**No requirement to identify the creator or performer:**

- for types of content not listed above, such as sound recordings or films;
- for creators that are corporate entities, as only natural persons have the right to be identified;
- where the creator's or performer's identity is **not known** (e.g. where they choose to remain anonymous);
- where the creator or performer **consents** to not being identified (i.e. they agree, whether in writing or not, that they do not need to be identified) or **waives** their right to be identified (i.e. they state in writing that they relinquish their right to be identified);
- when using the content for **exempted purposes**, such as:
  - examinations;
  - artistic works in public places (only for authorial works);
  - incidental inclusion in films, television broadcast, or cable programmes (only for authorial works);
  - judicial proceedings;
  - industrially applied artistic works (only for authorial works);
  - fair use for the purpose of reporting news; or
- for **exempted materials**, such as:
  - computer programs;
  - authorial works made in the course of employment and first owned by the employer; or
  - authorial works where the Government is the first owner and the author has not been identified.

## Illustration

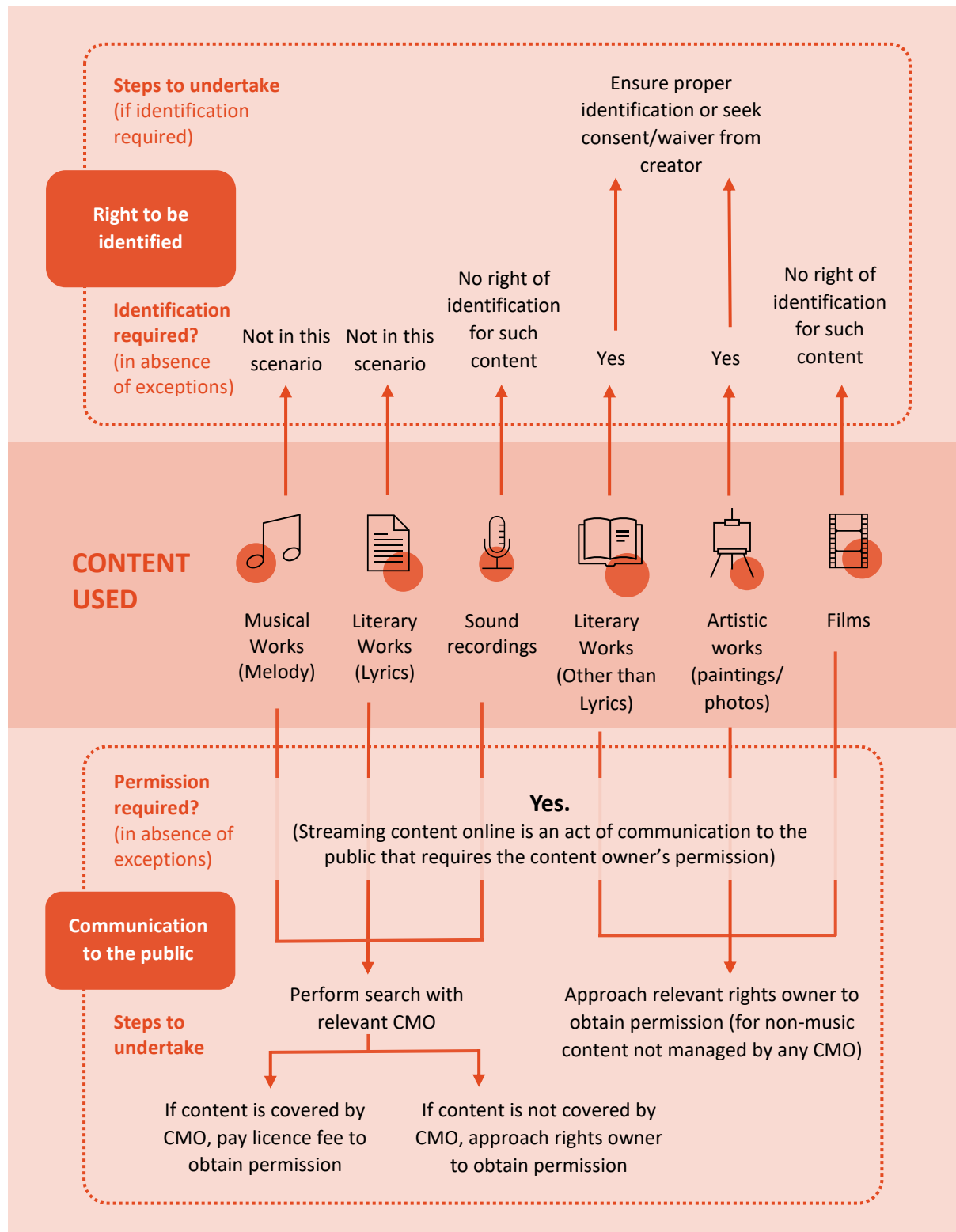
BigCo Pte Ltd commissioned a marketing video for a promotional event celebrating its 20<sup>th</sup> anniversary. It negotiated a contract with a creative freelancer, James, to create the marketing video and digital paintings to be featured in the video. The contract provided that BigCo would own the copyright to the marketing video and digital paintings, but did not contain any waiver of James' right to be identified as the creator of the digital paintings. James also did not consent to BigCo using the digital paintings in the marketing video without identifying him.

BigCo later streamed the marketing video on its website and other online social media platforms as part of the promotional event, but did not identify James as the creator of the digital paintings used in the marketing video. Even though BigCo has not infringed copyright (since it owns the copyright to the digital paintings), it has infringed James' right to be identified as the creator of digital paintings used in the marketing video.

Therefore, BigCo should have identified James as the creator of the digital paintings when it streamed the marketing video online. It did not need to identify James as the creator of the video because the right to be identified does not apply to films. Alternatively, it should have negotiated with James to waive his right to be identified or obtain his consent to use the digital paintings in the marketing video without identification.

The illustrative flowchart below summarises what you need to take into account streaming videos online for advertising or marketing purposes, taking into account the new licence required for use of sound recordings and the new right to be identified. Note that this covers only copyright requirements; other laws may also apply.

Scenario: If your business streams videos online for advertising or marketing purposes



## Need Legal or Business Advice on IP?



### IP Legal Clinic

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

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

### IP Business Clinic

IPOS also offers an **IP business clinic** which allows local individuals and businesses to make an appointment with a member of our panel of business consultants to obtain advice on IP strategies and options for businesses. Areas of expertise include IP strategy & IP portfolio management; IP commercialisation; and IP intelligence, audit, and valuation.

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