

SUMMARY OF CHANGES TO DRAFT COPYRIGHT BILL ISSUED FOR PUBLIC CONSULTATION IN FEBRUARY 2021

Public Consultation Draft Bill	Changes Made	Copyright Bill
Various	The language of copyright subsistence has been reinstated.	Various
Clauses 20, 159	The definition of “author” of a photograph and related presumptions as to authorship of a photograph have been removed. For photographs taken before the date on which the new Act comes into force (“ appointed day ”), the said definition and presumptions continue to apply.	N.A. (Clauses 536, 537 are the transitional provisions)
Clause 91	The guidance that the courts must give the appropriate weight to the various matters to be considered in deciding whether an online location is a “flagrantly infringing online location” has been reinstated for certainty.	Clause 99
Clause 106	An illustration has been added to show how duration of protection is calculated in the event of joint authors, one of whom is not identified.	Clause 116
Clauses 124, 125, 126, 127	Agreements that modify first ownership positions must be in writing. This requirement does not apply to agreements made before the appointed day.	Clauses 133, 134, 135, 136
Clause 125(3)	Whether the first ownership rules under the existing Copyright Act or the Copyright Bill apply to non-authorial works made by employees is determined according to the date on which the work is made, as opposed to the date on which the contract of service is made. The first ownership rules under the existing Copyright Act apply to such works made before the appointed day.	Clause 134(1)(b)
Clause 125(3)	The transitional provision did not accurately embody the existing Act’s first-ownership rules for non-authorial works made by employees. This has been corrected by subjecting the application of the Copyright Bill’s first ownership rules to such works if the works are made on or after the appointed day.	Clause 134(1)(b)
Clause 130	The provision allowing for partial assignment of copyright has been expanded to include the right to be paid equitable remuneration for causing the sounds embodied in a commercially published sound recording to be heard in public.	Clause 139
Clauses 141, 142, 148 and related provisions.	These provisions no longer rely on the concept of a “flagrantly infringing online location” for the purpose of establishing liability. Instead, liability is founded on knowledge that a device or service, which is capable of facilitating access to works communicated to the public without authorisation, has only a limited commercially significant purpose or use other than that capability.	Clause 150
Clauses 141, 142, 418, 422	A standalone offence for this wrongdoing has been added; criminal liability is no longer contingent on establishing an offence of wilful infringement of copyright.	Clause 445(b)

Clause 181	This provision has been amended to make clear that it is only applicable when the application of a foreign law has the effect of excluding or restricting the operation of any permitted use.	Clause 188
Clause 182	<p>The fair use provisions and the provisions relating to research and study, news reporting and criticism and review have been restructured in the following manner to make clearer their relationship with one another:</p> <ul style="list-style-type: none"> • A general provision provides that a fair use is a permitted use. • This is followed by a provision setting out the statutory fair use factors, i.e. relevant matters that must be considered by the court in deciding whether a use is fair. • The next provision provides that where a work is used for certain purposes, such as reporting news, an additional requirement of sufficient acknowledgment must be satisfied for a use to be fair. • The remaining provisions in the Division provide for circumstances where fair use is deemed and the statutory fair use factors do not need to be satisfied. 	Clauses 190, 191, 192, 193, 194
Clause 180, 223	The permitted use relating to supplying copies of published literary, dramatic or musical works or articles between libraries and archives has been removed from the list of mandatory permitted uses. Consequently, the applicability of this permitted use may be excluded by reasonable contract term.	Clause 187(1)(a)
Clause 190A	The provision has been amended to make clear that under certain conditions, it is the entirety of Clause 190 that is suspended.	Clause 199
Clause 195(2)(b)	<p>The condition relating to the accessibility of the relevant material for free has been refined for clarity. It has been amended to provide that the material must be “<i>generally accessible using the Internet by the public free of charge when [it was] accessed...</i>”</p> <p>Illustrations have also been included to illustrate the applicability of this condition in the circumstances involving paid subscriptions, one-time trial subscriptions, and a circumvention of an access control measure.</p>	Clause 204(2)(b)
Clause 195(2)(f)	The condition relating to knowledge of the relevant material being made available on the Internet in circumstances that constituted a rights infringement has been refined. Where the material is made available in such instances, the condition requires a person not to know or be notified of this fact when the relevant act of copying etc. is done. Furthermore, if the person is subsequently notified of this fact, the person must stop doing the relevant act and (insofar as the material has been communicated to the public) take reasonable steps to prevent the public from further accessing the material.	Clause 204(2)(g)
Clause 195	An additional requirement ensures that users of the relevant material must also cite the date on which the material was accessed.	Clause 204(2)(d)

Part 5, Division 5	The permitted use of a performance for the purpose of aiding persons with intellectual disabilities has been reinstated.	Clause 218
Clause 213	This permitted use has been restricted such that the act of public performance or causing to be seen or heard in public cannot be the sole or main purpose of the exhibition.	Clause 224
Clauses 215, 288	The expression “contain any materially false information” has been amended to “contain any material information that is false” to preserve the meaning under the corresponding provisions in the existing Act.	Clauses 226, 303
Clause 215(2)(e)	The condition that the articles must relate to the same subject-matter has been amended to reinstate its applicability, under the existing Act, to requests for copies of parts of 2 or more articles in the same periodical publication.	Clause 226(2)(c)(ii)
Clause 233, First Illustration	The first illustration has been modified to make clear that if the terms of use of a database include terms which purport to modify or exclude the applicability of the permitted use for computational data analysis, those terms would be void and would not affect the determination of whether a user has lawful access to the first copy of the relevant material.	Clause 244, Second Illustration
Clause 233(2)(e)(iii), Second Illustration	This condition has been modified to restrict the purposes for which it may be necessary to use infringing copies of the relevant material for computational data analysis only to purposes that are prescribed. The second illustration in clause 233, which relates to use of infringing copies to carry out computational data analysis for the purpose of research and study into copyright infringement, has been removed from the primary legislation and will instead be prescribed.	Clause 244(2)(e)(iii)
Division 15	References to materials “held by” the Government or public body have been amended to materials “in the possession, custody or control” of the Government or public body.	Clauses 280, 281, 282
Not in draft bill	A new permitted use has been added for public bodies to make copies of and communicate the relevant material if it is to comply with a data sharing direction under the Public Sector Governance Act 2018.	Clause 283
Clauses 290, 395	For clarity, the reference to “damages” in subsection (3) has been amended to specify that it refers to damages (with or without additional damages) under subsection 1(b) (and excludes statutory damages).	Clauses 304, 416
Part 6, Division 2	A new provision has been added to reiterate that section 26(1) of the Electronic Transactions Act (Liability of Network Service Providers) applies to any civil or criminal liability under the Copyright Bill other than liability in respect of a rights infringement (i.e. an infringement of copyright or an infringing use of a protected performance).	Clause 503
Clauses 355(1), 372(1)	The provisions that provide for the application and duration of protection of moral rights have been modified to make explicit that such rights are only available for the period during which	Clauses 370, 390

	copyright subsists or the protection period of the performance (as the case may be).	
Clauses 356, 373	Illustrations have been added to illustrate the application of the rule that the right to be identified is, in cases involving more than one author or performer, the right of each author or performer to be identified and is not infringed in relation to another author or performer (as the case may be).	Clauses 371, 391
Clauses 365, 381	The exception for acts done with consent have been expanded to differentiate between the concepts of “consent” and “formal waiver”, including in the following aspects: <ul style="list-style-type: none"> • Moral rights are not infringed by acts or omissions to which authors or performers consent, whether in writing or otherwise. • In contrast, moral rights may be formally waived by authors or performers but such waivers are only valid if made in writing and signed by the authors or performers. 	Clauses 382, 401
Clauses 395, 414	The provisions relating to remedies for infringements relating to electronic rights management information and technological measures have been amended to clarify that the statutory damages cap of \$20,000 applies to a single action, even if the action involves 2 or more such infringements.	Clauses 416, 438
Clause 419	The conditions in these offences have been reverted to those in sections 136(4) and 254A(4) of the existing Act, which require offending articles to be “specifically designed or adapted” for making copies of works or recordings of performances (as the case may be).	Clause 446
Part 8	Sections 136(8) – (11) and 245A(8) – (11) of the existing Act have been reinstated.	Clauses 455, 456, 457
Clause 428A	The definition of a collective management organisation has been amended to include further requirements that the organisation must formulate or operate one or more tariff schemes and at least one of such schemes must be available to the public (or a segment of the public) in Singapore.	Clause 459(1)(d), (e)
Part 10	The key functions of the Copyright Tribunals have been consolidated and listed in a single provision for easy reference.	Clause 485