

PUBLIC CONSULTATION ON THE PROPOSED COPYRIGHT BILL

Prepared by the Ministry of Law (“**MinLaw**”) and the Intellectual Property Office of Singapore (“**IPOS**”)

5 February 2021

SECTION 1: INTRODUCTION

1. MinLaw and IPOS are seeking views on the draft of a proposed Copyright Bill (“**draft Bill**”) to be introduced. The draft Bill will repeal and replace the current Copyright Act (Cap. 60, Rev. Ed. 2006) (“**Copyright Act**”). The consultation period is from **5 February 2021 to 1 April 2021**.

BACKGROUND

2. This consultation is part of an overall review of Singapore’s copyright regime that we have been undertaking since 2016 (“**Copyright Review**”). Public consultations were held on various proposals for amendments to the regime in 2016 and 2017 (“**2016 Consultation**” and “**2017 Consultation**” respectively), and a report was published in 2019 (“**2019 Report**”) setting out our recommendations. A further consultation on a class licensing scheme for collective management organisations was held in 2020 (“**2020 Consultation**”) pursuant to the recommendation in the 2019 Report.

3. The 2019 Report set out the changes we intended to make to the Copyright Act. It also stated our intention to restructure the Copyright Act and revise the language used in it, to make it more readable and understandable.

4. We annex the consultation paper for the 2016 and 2017 Consultations (“**2016 Consultation Paper**” and “**2017 Consultation Paper**” respectively) and the 2019 Report as **Annex A**. We recommend reading them before this paper, as they set out the necessary context and background to the preparation of the draft Bill, including the relevant legislative history, policy objectives, and the various needs that the draft Bill seeks to meet.

5. The underlying principles that have guided the technical aspects of the drafting of the draft Bill are:

- (a) **Use of Plain English.** One of the guiding principles of the Copyright Review is that our copyright regime should be clear and accessible so that creators, users, and intermediaries will understand how the law works to both protect and provide access to works. To achieve this, the draft Bill employs plain English to present the law in a manner that is clear, readable, and easily understood, while retaining a necessary degree of legal precision. For example, we have replaced phrases such as “edition which is stored on any medium by electronic means” (in section 7(2A) of the current Copyright Act) with “electronic edition”. The draft Bill also adopts an intuitive, thematic, and logical structure for better flow.

- (b) **Use of technology-neutral language.** The draft Bill seeks to be sufficiently broad to cater to modern technologies while being flexible enough to continue applying to emerging technologies in the digital age. This will allow it to accommodate new ways in which content will be created, distributed, and accessed. Where applicable, a principle-based formulation has been adopted to provide a degree of flexibility for our copyright regime to adapt to future technological changes. For example, the draft Bill introduces new civil and criminal liabilities for commercial dealings in devices that facilitate access to flagrantly infringing online locations. Both “device” and “flagrantly infringing online locations” are defined broadly so that these provisions can continue to apply to emerging technologies. Where relevant, the draft Bill also employs illustrations to show how such broad formulations should be applied in particular situations.

DRAFT BILL FOR CONSULTATION

6. For this consultation, a working version of the draft Bill is being released in 2 parts:

- **Part 1** (annexed here as **Annex B**): The draft Bill which incorporates provisions implementing the recommendations from the 2019 Report relating to the issues raised in the 2016 Consultation.
- **Part 2** (to be released later into the consultation period on **22 February 2021**): The provisions for the regulation of collective management organisations pursuant to the 2017 and 2020 Consultations, and the related issue of Copyright Tribunals.

PURPOSE OF CONSULTATION

7. This consultation seeks views on whether the draft Bill will appropriately implement the changes that have been set out in the 2019 Report. It is not seeking views on the policy positions set out in the 2019 Report or any refinements that we have made to those positions in the course of preparing the draft Bill, save where otherwise indicated in this paper.

SUMMARY OF PAPER

8. In this paper, we set out the following:

- (a) **Section 2** – The structure and main features of the draft Bill.
- (b) **Section 3** – A summary of the key provisions to be introduced as well as our questions in relation to those provisions.
- (c) **Section 4** – Directions on how to submit your feedback. For your convenience, we have also identified the specific proposals which particular interest groups may wish to focus on.

COMMENCEMENT OF NEW ACT

9. Given that most of the proposals in the draft Bill have been raised to the public since at least 2016, and that the recommended changes had been set out in the 2019 Report, stakeholders have had a considerable amount of time to consider and prepare ahead for the changes to be introduced. We plan for the new Copyright Act to be passed in the third quarter of 2021, and for the whole Act, with the exception of the provisions on collective management organisations, to commence 1 month thereafter. The latter will commence on a later date that will be announced subsequently, following further consultations on the regulations for the proposed class licensing scheme.

10. In addition, existing copyright subsidiary legislation will be amended to update all cross-references to their equivalent provisions in the draft Bill. The copyright subsidiary legislation will take effect at the same time as the new Copyright Act.

SECTION 2: MAIN FEATURES OF DRAFT BILL

11. The draft Bill is restructured into the following parts, which incorporate the provisions introduced pursuant to the recommendations in the 2019 Report:

Part of draft Bill	Topic
1.	Preliminary
2.	Interpretation
3.	Copyright in Works
4.	Protection of Performances
5.	Permitted Uses of Copyright Works and Protected Performances
6.	Remedies for and Enforcement Actions against Rights Infringements
7.	Additional Rights relating to Copyright Works and Protected Performances
8.	Offences
9.	Regulation of Collective Management Organisations <i>*Released in Part 2 of the consultation on the draft Bill</i>
10.	Copyright Tribunals <i>*Released in Part 2 of the consultation on the draft Bill</i>
11.	Miscellaneous
12.	Transitional <i>*Not released for consultation</i>

12. The main features of the draft Bill and the key differences from the current Copyright Act are:

- (a) **Thematic structure.** The draft Bill is structured thematically as far as possible and streamlined to remove unnecessary duplication. In particular, we have abolished the distinction between “works” and “subject-matter other than works” in the current Copyright Act, and have instead used the term “works” for both categories, with the term “authorial works” used to refer specifically to

literary, dramatic, musical or artistic works. Following from this, works and other subject-matter are collectively dealt with issue by issue, in contrast with the current Copyright Act which deals with issues relating to authorial works as a whole before dealing with identical issues relating to subject-matter other than works in a separate subsequent part of the statute.

In explaining the proposed legislative amendments, this paper employs the term “works” to refer to both categories, unless otherwise expressly stated.

- (b) **Consolidation of exceptions.** In keeping with the thematic structure described above, the exceptions in the draft Bill have largely been consolidated into a single Part on “Permitted Uses”. This covers exceptions relating to works and performances, and facilitates the easy location and comparison of relevant exceptions.
- (c) **Introduction of new rights and exceptions.** These include a new right of attribution for creators and performers, a new exception for computational data analysis, a new exception covering materials placed on a statutory register, and a new purpose-based exception in relation to freely available online works for educational uses at not-for-profit educational institutions.

13. For ease of reference, where there are provision(s) in the Copyright Act that are intended to correspond with a particular provision in the draft Bill (subject to any modifications that may be necessary to update or refine those provision(s)), we have included cross-references to those provision(s).

SECTION 3: KEY PROVISIONS OF THE DRAFT BILL

14. In this Section, we set out a summary of the key provisions of the draft Bill. When reviewing this Section and providing your feedback, please consider the following general questions that apply across these provisions or to the draft Bill as a whole:

- (a) Is there any situation which may possibly fall within the scope of a provision but there is a lack of clarity as to whether that is the case?
- (b) Is there any ambiguity or lack of clarity in how a proposed change or provision is framed, whether in terms of scope, definitions, or other technical aspects of the provision? If so, how may these be addressed in the draft Bill?
- (c) Is there any situation where the intended manner of how a proposed change would apply may cause practical difficulties? If so, how may these be addressed in the draft Bill?
- (d) Is there any situation or provision where the use of an illustration will be beneficial?
- (e) Is there anything else that needs to be provided for in the draft Bill to fully and accurately implement the policy positions as set out in the 2019 Report?

- (f) Is the plain English drafting clearer and more easily understood (including when applied to the drafting of definitions) compared to the current version of the provision? Does it result in any inadvertent change in meaning of the provisions?

15. In addition to the general questions above, we have, in the rest of this Section, raised specific questions relating to particular issues in the draft Bill.

A. Implementation of Recommendations from 2019 Report

16. In our 2019 Report, we concluded that not all the issues raised in the 2016 and 2017 Consultations require legislative changes. In this section, we set out a summary of those issues that require legislative changes, the proposed legislative amendments in the draft Bill, as well as questions we have on these amendments.

17. To assist in your review of this Section, we set out below a table listing the categories of these proposed legislative amendments, as set out in the 2019 Report.

Proposal	Reference
Granting creators default ownership of certain commissioned works (Proposal 2 in the 2019 Report)	See Part 3, Division 8 of the draft Bill and paragraphs 18 to 21 below
Setting an expiry date for protection of unpublished works (Proposal 3 in the 2019 Report)	See Clauses 106, 107, 113, and 116 of the draft Bill and paragraphs 22 to 25 below
Attributing creators whenever their works are used (Proposal 4 in the 2019 Report)	See Part 7, Divisions 1 and 2 of the draft Bill and paragraph 26 below
Strengthening general “fair use” exception (Proposal 6 in the 2019 Report)	See Part 5, Division 2 of the draft Bill and paragraph 27 below
Facilitating uses of work for text and data mining (Proposal 8 in the 2019 Report)	See Part 5, Division 8 of the draft Bill and paragraph 28 below
Facilitating educational uses by non-profit schools (Proposal 9 in the 2019 Report)	See Clauses 76(a) and 195 of the draft Bill and paragraph 29 below
Facilitating the work of galleries, libraries, archives, and museums (Proposal 10 in the 2019 Report)	See Part 5, Division 6 of the draft Bill and paragraphs 30 to 31 below
Adjusting existing provisions for print-disabled users (Proposal 11 in the 2019 Report)	See Part 5, Division 4 of the draft Bill and paragraph 32 below
Increasing the availability of materials on official government registers (Proposal 13 in the 2019 Report)	See Part 5, Division 15 of the draft Bill and paragraph 33 below

Protecting certain exceptions from being restricted by contracts (Proposal 14 in the 2019 Report)	See Clauses 179 and 180 of the draft Bill and paragraphs 34 to 37 below
Streaming of audio-visual content from unauthorised sources on set-top boxes (Additional proposal in the 2019 Report)	See Clauses 141 and 142 of the draft Bill and paragraph 38 below

Proposal 2 of the 2019 Report – Granting creators default ownership of certain commissioned works.¹

18. This change provides that, by default, creators of specific types of commissioned works (photographs, portraits, engravings, sound recordings, and cinematograph films) will own the copyright to those works. This contrasts with the current position where it is the commissioner of those works who owns the copyright by default.

19. Although this change shifts the default position, it does not prevent creators and their commissioners from contracting to provide for the commissioner to own the copyright instead.

20. Further, this change does not affect the operation of other laws such as the Personal Data Protection Act 2012 (“**PDPA**”). For example, individuals who commission the creation of wedding photographs will still be protected by the PDPA such that even if the photographer owns the copyright in those photographs, the photographer will still need to comply with the PDPA in using the photographs.

21. The draft Bill will also grant employers default ownership of copyright in all works created by employees in pursuance of their terms of employment. This is already the current position in relation to literary, dramatic, musical, and artistic works. The draft Bill extends this position to cover all other works as well. There is one exception to this change: journalist-employees. For journalists, the current position will remain (the employer will by default own the copyright in the work created only in certain specified situations).

Draft Bill	Summary of key proposed legislative amendments	Questions
Part 3, Division 8	The general provisions on first ownership of copyright apply to commissioned works (photographs, portraits, engravings, sound recordings, and films) as well; special provisions on ownership are no longer necessary for such works. The first ownership positions may be excluded or modified by contract. Employers are given first copyright ownership in all works created by	Please refer to the general questions listed in paragraph 14 above and respond to any questions that may be applicable.

¹ See page 14 of the 2016 Consultation Paper and page 9 of the 2019 Report.

	employees in the course of a contract of service (subject to any agreement between an employer and employee).	
	The position in the current Copyright Act is preserved for any commissioned works made pursuant to an agreement, so long as the agreement is made before the commencement date of the new Copyright Act. This applies even if the works are made after the new Act comes into force. This minimises disruption to existing contractual arrangements and recognises the contractual bargains struck based on the law prior to the commencement date of the new Act.	

Proposal 3 of the 2019 Report – Setting limits to the duration of copyright protection for unpublished, anonymous, and pseudonymous works.²

22. Certain types of unpublished works currently enjoy perpetual copyright protection. The draft Bill proposes to impose a limit to the duration of copyright protection for such works.

23. In addition, the draft Bill proposes to change the duration of copyright protection for certain types of anonymous and pseudonymous authorial works.

24. There will be no change to the following aspects of copyright duration:
- (a) computing duration of copyright protection (in so far as such duration is computed based on the expiration of the calendar year in which a relevant event (such as death of an author, making of a work or first publication of a work) occurs);
 - (b) determining when a work is made (in so far as the date on which a work is made is relevant to computing the duration of copyright);
 - (c) determining when a work is published (in so far as the date on which a work is published is relevant to computing the duration of copyright); and
 - (d) exceptions relating to unpublished material.

25. Subsequent to the 2019 Report, we have further reviewed this issue and made further refinements to the original positions as set out in the 2019 Report. The changes to the duration of copyright protection in the current Copyright Act and the draft Bill are summarised below:

² See page 18 of the 2016 Consultation Paper and page 14 of the 2019 Report.

COPYRIGHT WORKS	EXISTING		NEW (AMENDED)	
	Whether Work is Published or Made Available to the Public, and if so, When?	Expiry of Copyright	Whether Work is Published or Made Available ³ to the Public, and if so, When?	Expiry of Copyright
<ul style="list-style-type: none"> • Literary works • Musical works • Dramatic works • Engravings 	Unpublished or not made available to the public.	Perpetual.	70 years after death of the author.	
	Published or made available to the public before death of author.	70 years after death of author.		
	Published or made available to the public after death of author.	70 years after work is first published or made available to the public.		
<ul style="list-style-type: none"> • Artistic works (except photographs and engravings) 	70 years after death of author. (<i>Duration not dependent on whether or not published or made available to the public</i>)		Same as the works mentioned above.	
<ul style="list-style-type: none"> • Photographs 	Unpublished.	Perpetual.	Same as the works mentioned above. ⁴	
	Published.	70 years after first publication.		
<ul style="list-style-type: none"> • Anonymous and pseudonymous authorial works • Films⁵ 	Unpublished.	Perpetual.	Unpublished.	70 years after the making of the work.
	Published.	70 years after first publication.	Published more than 50 years after the making of the work and the work is not otherwise made available to	

³ What amounts to “making available to the public” is set out at clauses 106(6) and s116(3) of the Draft Bill.

⁴ The duration of protection for photographs has been updated to take into account Singapore’s obligations under the WIPO Copyright Treaty.

⁵ The duration of protection for anonymous and pseudonymous authorial works has been updated to take into account Singapore’s obligations under the Berne Convention.

COPYRIGHT WORKS	EXISTING		NEW (AMENDED)	
	Whether Work is Published or Made Available to the Public, and if so, When?	Expiry of Copyright	Whether Work is Published or Made Available ³ to the Public, and if so, When?	Expiry of Copyright
			the public within those 50 years.	
			Published more than 50 years after the making of the work, but the work is first made available to the public (other than by publication) within those 50 years.	70 years after making available to the public.
			Published within 50 years after the making of the work.	70 years after first publication.
• Sound recordings	Unpublished.	Perpetual.	Unpublished.	70 years after the making of the sound recording.
	Published.	70 years after first publication.	Published more than 50 years after the making of the sound recording.	
			Published within 50 years after the making of the sound recording.	70 years after the first publication of the sound recording.

Draft Bill	Summary of key proposed legislative amendments	Questions
Clauses 106, 107, 113, and 116	<p>The changes in duration of copyright protection apply to literary, dramatic, musical, artistic works, and sound recordings and cinematograph films.</p> <p>The new provisions apply to all works, including works existing prior to the commencement date of the provisions. A grace period (1 year after the commencement of the new provisions) is introduced to allow any works affected by these provisions to benefit from the position in the current Copyright Act, if those works are published or otherwise made available to the public before the expiry of the grace period.</p>	Please refer to the general questions listed in paragraph 14 above and respond to any questions that may be applicable.

Proposal 4 of the 2019 Report – Attributing creators whenever their works are used.⁶

26. The draft Bill will introduce a new right for creators of literary, dramatic, musical, and artistic works to be identified in relation to their works, as well as for performers to be identified in relation to their performances. This is a change from the current position where creators have only a right to prevent false attribution of authorship or a performer’s identity.

Draft Bill	Summary of key proposed legislative amendments	Questions
Part 7, Divisions 1 and 2	<p>Authors of literary, dramatic, musical, and artistic works have a right to be identified as the authors of those works. Performers have a right to be identified as the performers of their performances.</p> <p>The manner of identification must be clear and reasonably prominent. In</p>	<p>(a) Do any of the circumstances in which attribution must be given cause practical difficulties?</p> <p>(b) Are the exceptions sufficient? If not, what other exceptions are needed?</p> <p>(c) In general, is there anything else that needs to be prescribed in order for this new right to be clear and workable? For example, while we have catered for situations involving joint authors and performers, are there other situations which need to be catered for?</p> <p>Are the requirements on the manner of identification workable?</p>

⁶ See page 21 of the 2016 Consultation Paper and page 19 of the 2019 Report.

	<p>general, the identification must be made in the way the author or performer wishes to be identified, or by any reasonable form of identification.</p>	
	<p>This right is personal and not assignable.</p>	<p>Please refer to the general questions listed in paragraph 14 above and respond to any questions that may be applicable.</p>
	<p>This right subsists for the duration of the copyright in the work or protection period of a performance.</p>	
	<p>This right does not apply to specified works and performances (e.g. a computer programme or a work created in the course of employment).</p>	
	<p>The defence of consent extends to any infringement of this new right to be identified. This goes beyond the current defence which applies only in relation to the right to prevent false attribution.</p>	
	<p>This right to be identified will not apply to authorial works (and adaptations thereof) existing prior to the commencement of these provisions if the author died before the commencement date of these provisions.</p> <p>This right does not apply to a performance given before the commencement date of these provisions.</p>	
	<p>For authorial works made before the commencement date of these provisions, the right to be identified does not apply to anything which, by virtue of an assignment of copyright or licence, may be done without infringing copyright.</p>	
	<p>The intention here is to minimise disruption to existing assignment or licensing agreements, and recognise the contractual arrangements made on the basis of the state of the law prior to the commencement date of these provisions (when there was no right of</p>	

	attribution and hence no requirement to provide for the same).	
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Proposal 6 in the 2019 Report – Introducing a general “fair use” exception.⁷

27. The draft Bill will restructure the current fair dealing exception framework to remove the “fifth factor” and make other changes to restructure this exception into a more open-ended general “fair use” exception.

Draft Bill	Summary of key proposed legislative amendments	Questions
Part 5, Division 2	The general fair dealing exception in the current Copyright Act is restated as a “fair use” exception and the fifth factor is removed as a mandatory factor to be considered. All existing specific fair dealing exceptions are retained and restated under this broad exception as purposes for which a work or recording of a protected performance may be fairly used, and subject to the “fair use” factors.	Is there any ambiguity or lack of clarity arising from applying the statutory factors governing the general fair use exception to cases where a work or recording is fairly used for the purpose of research and study or criticism or review?
	The exception for reporting current events is subsumed under that for reporting news. This abolishes the distinction between what are now two distinct exceptions.	Please refer to the general questions listed in paragraph 14 above and respond to any questions that may be applicable.
	The exception for reporting news applies to all qualifying acts and is no longer restricted to specific media or carriers (i.e. newspapers, magazines, or similar periodicals, or by means or broadcasting, cable programme service, or in a film).	

Proposal 8 in the 2019 Report – Facilitating uses of work for text and data mining.⁸

28. The draft Bill will create an express exception to the exclusive right of reproduction, for all works and recordings of protected performances, for uses required as part of a technical process of using computational data analysis techniques. These uses would include text and data mining, analytics, and machine learning. While currently available exceptions may already cover such uses, the introduction of this new express exception will provide the level

⁷ See page 28 of the 2016 Consultation Paper and page 25 of the 2019 Report.

⁸ See page 34 of the 2016 Consultation Paper and page 32 of the 2019 Report.

of certainty needed to encourage them. This exception does not allow the works to be supplied to any person, except as required for such computational data analysis purposes.

Draft Bill	Summary of key proposed legislative amendments	Questions
Part 5, Division 8	This exception applies to uses of works and recordings of protected performances, for the purpose of computational data analysis (including preparing works for such analysis).	Please refer to the general questions listed in paragraph 14 above and respond to any questions that may be applicable.
	This exception prevents a person who relies on it from supplying copies of the works or recordings to other persons, unless this is for the purpose of verifying the results of the computational data analysis carried out by the person, or collaborative research and study relating to the purpose of such analysis carried out by the person.	
	<p>These provisions provide safeguards by imposing certain conditions on users relying on this exception.</p> <p>For example, the user must have lawful access to the work or recording, and must not use the reproduction of the work for any purpose other than computational data analysis.</p>	<p>Is there any ambiguity or lack of clarity in how these conditions are intended to apply or in the scope of these conditions?</p> <p>Is there any practical difficulty in complying with or proving compliance with these conditions?</p>

Proposal 9 in the 2019 Report – Facilitating educational uses at non-profit schools.⁹

29. The draft Bill introduces a new purpose-based exception for educational uses relating to not-for-profit educational institutions. This exception will apply to any online work or recording of a protected performance that is accessible without the need for payment at the time of access. The use of such online work or recording will be limited to reproducing, adapting, or communicating it in the course of an activity that has an educational purpose, and must be carried out in connection with a not-for-profit educational institution. The user of the online work must acknowledge the source of the online work or recording.

Draft Bill	Summary of key proposed legislative amendments	Questions
Clause 195	This exception applies to works and recordings of protected performances	Please refer to the general questions listed in paragraph 14

⁹ See page 36 of the 2016 Consultation Paper and page 35 of the 2019 Report.

	<p>that are available for free at the time a user accesses them using the Internet.</p> <p>Users relying on this exception are required to acknowledge the Internet source from which the work or recording is accessed, as well as give sufficient acknowledgment of the work or recording, if and to the extent that such information is available from the Internet source.</p> <p>This exception is available for any act that falls within a non-exhaustive definition of “educational purposes”. This includes (i) collaborative research, (ii) giving or receiving instruction, (iii) acts to prepare for giving or receiving instruction, and (iv) organising or participating in an exhibition or a competition, whether within an educational institution or at the national or international level.</p>	<p>above and respond to any questions that may be applicable.</p>
<p>Clause 76(a)</p>	<p>This exception is available to “educational institutions”, which term is now defined to include the additional category of institutions at which education is provided to children under the age of 7 years.</p>	

Proposal 10 in the 2019 Report – Exceptions for galleries, libraries, archives, and museums.¹⁰

30. The draft Bill will introduce new exceptions to allow galleries, libraries, archives, and museums (collectively, “**GLAM**”) to make copies of items, or publicly perform audio-visual materials for the purposes of exhibition under certain circumstances.

31. In addition, the draft Bill will restructure the existing GLAM exceptions to adapt them to technological developments and to ensure that they will be wide enough to cover public cultural institutions making copies for the purposes of preservation, internal record-keeping, cataloguing, and other similar administrative purposes.

¹⁰ See pages 39 and 41 of the 2016 Consultation Paper and page 40 of the 2019 Report.

Draft Bill	Summary of key proposed legislative amendments	Questions
Part 5, Division 6	The provisions relating to the exceptions for GLAM are restructured to consolidate and simplify the exceptions.	(a) Is there any other measure that should be taken to meet the objectives of this restructuring? (b) Has the operation or intent of any of the existing provisions been omitted through this simplification?
	These provisions include a new exception for making a copy for administrative purposes.	Please refer to the general questions listed in paragraph 14 above and respond to any questions that may be applicable.
	These provisions include a new exception for reproduction and public performance for the purpose of an exhibition.	
	These provisions include a new exception for reproduction or communication to the public for the purpose of publicising an exhibition. There should not be a fee charged for such materials, save for where the fee does not exceed the cost of making and supplying the copies plus a reasonable contribution to general expenses. The reproductions must not be a reasonable substitute for the authorial work, film, sound recording or recording of a protected performance (as the case may be).	
	The GLAM exceptions apply to works or recordings of protected performances acquired in electronic form, and to the making of electronic copies.	
	The exception for supplying copies between libraries and archives (section 46 of the current Copyright Act) also applies to foreign libraries and archives.	

Proposal 11 in the 2019 Report – Adjusting existing provisions for print-disabled users.¹¹

32. The draft Bill will improve and simplify the operation of the exceptions and statutory licence framework in sections 54 and 115C of the current Copyright Act.

Draft Bill	Summary of key proposed legislative amendments	Questions
Part 5, Division 4	<p>The record-keeping requirements and prescribed forms for the exception relating to print-disabled users will be streamlined and simplified in the relevant subsidiary legislation.</p> <p>The payment of equitable remuneration is no longer a condition for these exceptions to apply. To be fair to copyright owners, if the doing of certain acts attracts the payment of equitable remuneration under the current Copyright Act, such remuneration must be paid so long as the act is done before the commencement date of the relevant sections, even if a copyright owner only makes a request for payment (within the prescribed period) after the commencement date.</p>	Please refer to the general questions listed in paragraph 14 above and respond to any questions that may be applicable.

Proposal 13 in the 2019 Report – Increasing the availability of materials on official government registers.¹²

33. This proposal relates to materials maintained by the Government or its statutory boards for public inspection and information. The intention of this change is to ensure that copyright does not inadvertently prevent access, use, and distribution of such materials, which the law has mandated to be provided to the public for their information. To this end, the draft Bill will introduce an exception to permit copying and distributing of such materials.

Draft Bill	Summary of key proposed legislative amendments	Questions
Part 5, Division 15	These exceptions cover materials in public registers and public material. They generally permit acts of copying, and communication and supply of such	Please refer to the general questions listed in paragraph 14 above and respond to any questions that may be applicable.

¹¹ See page 43 of the 2016 Consultation Paper and page 46 of the 2019 Report.

¹² See page 47 of the 2016 Consultation Paper and page 52 of the 2019 Report.

	<p>materials to the public for limited purposes such as: -</p> <p>(a) to facilitate the inspection of the register, or the provision of copies from the register, as requested or permitted by law;</p> <p>(b) to facilitate the exercise of any right that the law is meant to facilitate; or</p> <p>(c) to maintain the register.</p>	
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Proposal 14 in the 2019 Report – Protecting certain exceptions from being restricted by contracts.¹³

34. The current Copyright Act provides a limited list of exceptions that may not be restricted by contract. These exceptions relate to backing-up a computer program; decompiling it; and observing, studying, and testing it. Any term or condition that purports to restrict any of these exceptions will be void.

35. The draft Bill will expand this list of exceptions. The following exceptions will be mandatory, i.e. cannot be excluded or restricted by contract in any circumstances:

- (a) Galleries, libraries, archives, and museums (Division 6 of Part 5);
- (b) Use of computer programs (Division 7 of Part 5);
- (c) Computational data analysis (i.e. text and data mining) (Division 8 of Part 5);
- and
- (d) Judicial proceedings or professional advice (Division 17 of Part 5).

36. All other exceptions, save for the exception in section 193F of the current Copyright Act (which expressly contemplates that certain express terms in a contract will affect whether the exception applies), will be non-mandatory exceptions. These may be restricted or excluded by contract if the contract is individually negotiated and the term or condition purporting to restrict the exception satisfies the requirement of reasonableness. If not, the term or condition will be void.

37. In addition, the draft Bill will introduce related amendments to limit the use of choice of law clauses to evade the outcome contemplated under this proposal.

Draft Bill	Summary of key proposed legislative amendments	Questions
Clauses 179 and 180	Rights owners may by contract, exclude or restrict the application of non-mandatory exceptions if:	Please refer to the general questions listed in paragraph 14

¹³ See page 26 of the 2016 Consultation Paper and page 55 of the 2019 Report.

	<p>(a) the contract is individually negotiated; and</p> <p>(b) the term purporting to exclude or restrict the exception is fair and reasonable.</p> <p>Otherwise, the said term would be invalid.</p> <p>Whether the term is fair and reasonable is determined by a set of statutory factors, which have been derived from the “reasonableness” test and guidelines for its application in section 11 read with the Second Schedule of the Unfair Contract Terms Act.</p> <p>Contractual terms that purport to restrict or exclude the operation of the mandatory exceptions listed above are void to that extent; it is irrelevant whether the contract is individually negotiated or whether the term is fair and reasonable.</p> <p>These provisions apply to all contracts, whether existing at the commencement date of the draft Bill or entered into after that date. However, they apply only to acts carried out from the commencement date of the draft Bill.</p>	<p>above and respond to any questions that may be applicable.</p>
	<p>Any term that purports to apply the law of a country other than Singapore is void if:</p> <p>(a) it is intended to evade the operation of any exceptions; or</p> <p>(b) one of the parties dealt as consumer, was a Singapore resident at the time of contracting, and the essential steps for the making of the contract were taken in Singapore.</p> <p>These provisions are derived from section 27(2) of the Unfair Contract Terms Act.</p>	<p>What further modifications, if any, should be made to section 27(2) of the Unfair Contract Terms Act (including the concept of “dealing as a consumer”) to apply this provision in the context of copyright contracts?</p>

Additional proposal in the 2019 Report – Streaming of audio-visual content from unauthorised sources on set-top boxes.¹⁴

38. The draft Bill will introduce civil and criminal liabilities on persons who engage in commercial dealings with set-top boxes that stream audio-visual content from unauthorised sources.

Draft Bill	Summary of key proposed legislative amendments	Questions
Clauses 141 and 142	<p>The liabilities under these provisions apply to making, commercial dealing in, importing for the purpose of commercial dealing, and distributing a device that a person knows, or has reason to believe, (i) is promoted, advertised, or marketed as being capable of facilitating access to any flagrantly infringing online location, (ii) has only a limited commercially significant purpose or use other than to facilitate such access, or (iii) is designed or made primarily to facilitate such access.</p>	<p>Please refer to the general questions listed in paragraph 14 above and respond to any questions that may be applicable.</p>
	<p>The liabilities under these provisions apply to offering or providing a service that a person knows, or has reason to believe, is (i) promoted, advertised, or marketed as being capable of facilitating access to any flagrantly infringing online location, (ii) has only a limited commercially significant purpose or use other than to facilitate such access, or (iii) is performed primarily to facilitate such access.</p> <p>This includes services such as subscription services and the provision of information.</p>	
	<p>The rights owner's work must be or have been made available on a flagrantly infringing online location, and the device or service in question must be capable of facilitating access to that location.</p>	

¹⁴ See page 64 of the 2019 Report.

	The new liability provisions are supported by a procedure for creating a presumption on the infringer's part that an online location (to which a device or service facilitates access) is a flagrantly infringing online location.	
Clauses 418 and 422	The acts above can also attract criminal liability if done wilfully, either to gain a commercial advantage (Clause 418), or if the extent of the infringement is significant (Clause 422).	

B. Other New Key Provisions

39. In addition to the changes introduced pursuant to the conclusions in the 2019 Report, we have also introduced other changes to deal with general issues such as the overall structure of the draft Bill, our international obligations, and other issues which arose in the process of preparing the draft Bill. We set out below a summary of these changes and our questions on them.

40. **Sound recording rights.** Article 10.6 of the European Union-Singapore Free Trade Agreement obliges Singapore to provide a right to a single equitable remuneration for the producers of phonograms where their commercially published phonograms are used for broadcasting or public performance. The draft Bill does this by introducing a right of communication to the public and a right to be paid equitable remuneration when the sounds embodied in these recordings are caused to be heard in public for the owners of copyright in sound recordings. The draft Bill also introduces the procedures for legal action in the event of failure to pay such remuneration as well as new exceptions for the communication of sound recordings to the public under certain circumstances.

Draft Bill	Summary of key proposed legislative amendments	Questions
Clause 112(1)(b)	An owner of copyright in sound recordings which is published for commercial purposes has a right to be paid equitable remuneration of an amount either (i) agreed between the copyright owner and the person causing the sounds embodied in the recording to be heard in public or (ii) in default of such an agreement, decided by a copyright tribunal.	Please refer to the general questions listed in paragraph 14 above and respond to any questions that may be applicable.
Part 5, Division 9	The equitable remuneration right is subject to certain conditions and exceptions. These include the limitation to commercially published sound recordings and exceptions	

	relating to communication by analogue broadcasts, non-interactive digital broadcasts, and other analogue or non-interactive digital transmissions.	
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41. **Criminal provisions.** On top of the changes introduced pursuant to the 2016 and 2017 Consultations, the draft Bill will introduce amendments to the criminal provisions in our copyright regime.

Draft Bill	Summary of key proposed legislative amendments	Questions
Part 8	The term “article” includes electronic copies.	Please refer to the general questions listed in paragraph 14 above and respond to any questions that may be applicable.
	Criminal offences distinguish between those with a commercial element and those without a commercial element.	
	For the same offence, the fine cap for a corporate offender is double that for an individual offender.	
	Provisions relating to powers of police officers under the current Copyright Act are removed. The standard police powers under the Criminal Procedure Code will apply to all offences under the new Copyright Act.	

42. **Exceptions.** One of the common changes across various topics is the introduction of exceptions in the draft Bill. In parallel to these changes, the draft Bill also contains provisions on the general operation of exceptions. The draft Bill introduces the term “permitted use” to explain an exception as an act that is not an infringement of any copyright in a work or an infringing use of a performance, so as to enhance readability and understanding of the Bill (see Clause 176).

Draft Bill	Summary of key proposed legislative amendments	Questions
Clause 177	An exception is independent of, and does not affect the application of, any other exception. This allows a user to rely on an exception even if it turns out that he or she does not satisfy the requirements of another exception. This clarifies the currently ambiguous situation where it is not clear whether this is permissible.	Is there any particular exception which you think should not operate independently and should instead affect the application of another exception? If so, which ones and why?

	For example, a particular act may potentially be non-infringing under both the new exception for computational data analysis (see the section on Proposal 8 in the 2019 Report below) and the fair use exception. In the event that a person carrying out that act cannot satisfy the conditions of the computational data analysis exception, he or she can still rely on the fair use exception if its conditions are satisfied.	
Clause 196	Section 23 of the current Copyright Act is framed as an exception to copyright infringement (rather than a deeming provision).	Is there any problem or change in meaning by framing this as an exception rather than a deeming provision?
Clause 255	Copyright in an artistic work is not infringed by, among other things, an incidental inclusion of the work in a film, television broadcast, or cable programme. The inclusion must be only incidental to the main content of the film, broadcast or programme.	Is this provision clearer and more easily understood by using the phrase “main content of the film” instead of the phrase “principal matters represented in the film or broadcast” in the original provision (section 65 of the current Copyright Act)?

43. **Performers’ rights.** The various changes to be introduced pursuant to the 2019 Report, such as strengthening the general “fair use” exception and facilitating educational uses by non-profit schools, necessitate corresponding amendments to performers’ rights as well. The draft Bill overhauls our existing performers’ rights regime to incorporate these changes.

44. As part of this overhaul, the draft Bill will bolster the protection that performers will enjoy under the law. For example, a performer’s right to prevent the reproduction of his or her performance will become an unqualified right. This contrasts with the current right, which is qualified by a knowledge element on the reproducer’s part (i.e. the question of whether the reproducer knew or ought to have known that the reproduction was unauthorised).

45. In parallel with this strengthening of performers’ rights, the draft Bill also expands the exceptions available to users of performances. In particular, the draft Bill reframes the exceptions to performers’ rights as permitted uses, which are incorporated in Part 5 of the draft Bill and treated similarly as copyright exceptions. This means that uses falling within a certain category of permitted uses will not be considered an infringement of performers’ rights. This contrasts with the current framework, which presents the exceptions in a less than intuitive manner through various definitions, and so are applicable only within those definitions, potentially creating arbitrary distinctions between different types of acts even where those acts may be carried out for the same permitted use purpose.

46. In this regard, the draft Bill achieves consistency between the exceptions available in performers’ rights and those available in copyright. Where relevant, the draft Bill harmonises both sets of exceptions while ensuring that any consequential expansion of the exceptions to

infringements of performers' rights is balanced by corresponding enhancement of the relevant rights. This harmonisation will eliminate many situations where users of content that involves both copyright and performers' rights may avail themselves of copyright exceptions and yet still infringe performers' rights, or *vice versa*.

Draft Bill	Summary of key proposed legislative amendments	Questions
Part 5	<p>Performers' rights exceptions are harmonised with copyright exceptions so that, where relevant, the equivalent to existing copyright exceptions are extended to performers' rights if there are currently no such equivalent exceptions.</p> <p>The exceptions are now reframed as permitted uses, which focuses on the purpose for and circumstances in which a performance is used (this is a change from the current definition-based model where exceptions arise from the definition of "exempt recordings" in section 246 of the current Copyright Act).</p> <p>The new fair use exception in performers' rights mirrors the new equivalent exception in copyright. This exception imposes identical conditions, including the "sufficient acknowledgement" requirement.</p>	<p>(a) Is there any equivalent exception in copyright which should or should not be extended to performances?</p> <p>(b) Should any of the exceptions to performers' rights be adjusted on account of differences between performances and copyright works, whether through a modification of their conditions or otherwise?</p> <p>Does providing for the "sufficient acknowledgement" requirement for performances give rise to practical difficulties, ambiguity, or a lack of clarity? Is it impracticable to impose such a condition for performances (which can sometimes involve a large number of performers playing roles of varying levels of significance)? Please take into account that in the case of reporting news, the draft Bill expressly provides that such acknowledgement does not need to be provided if it is impossible to do so, for reasons of practicality or otherwise.</p>
Clause 173	The provisions on transfer and assignment of performers' rights are now aligned with those provisions concerning the transfer and assignment of copyright. This ensures clarity and consistency across both subject-matters.	Is there any practical difficulty that may arise from aligning these provisions with those in copyright?

Clause 291	The limitation of remedies in cases of innocent infringement of copyright (under section 119(3) of the current Copyright Act) is extended to apply to cases of innocent infringement of performances.	Is there any practical difficulty that may arise from aligning performers' rights with the rights available in copyright?
Part 4	The terms "direct" and "indirect" recordings of performances are defined (at clause 165) as "recording the live performance" and "recording from a communication of the performance" respectively. In alignment with copyright, the right to prevent reproduction is no longer qualified by, or limited to, whether the person carrying out the reproduction knows or ought reasonably to know that the recording being reproduced is an unauthorised recording.	Please refer to the general questions listed in paragraph 14 above and respond to any questions that may be applicable.
Part 2, Division 5, Subdivision 1	Assignees of a right to bring an action for infringing use of a performance enjoy the protection of the performers' rights regime through a general provision that recognises them as rights owners.	
Part 8	Offences relating to performances are consolidated in the same part as offences relating to copyright. Where appropriate, a single provision creates an offence in relation to both copyright and performance rights, as opposed to separate provisions creating offences of the same nature, where one provision relates to copyright and another relates to performances. This treatment streamlines the offences provisions in the draft Bill.	

47. **Structure and other miscellaneous matters.**

Draft Bill	Summary of key proposed legislative amendments	Questions
(General structure)	The draft Bill features new titles for the different parts and sections.	Do the new titles in the draft Bill accurately describe the provisions and make it easier to identify what the provisions are about? If there are titles that do not, how may they be improved?

(General structure)	The draft Bill abolishes the existing distinction between “works” and “subject-matter other than works” and uses the term “works” for both categories. Provisions relating to subsistence, nature, duration, and ownership of copyright now apply to works collectively. The two categories of works are dealt with separately only where particular issues treat the categories differently.	Is there any problem arising out of this change? Is there any other change which can improve the flow or structure of the legislation in this respect?
(General structure)	The provisions in the draft Bill are structured thematically (e.g. consolidating all copyright and performance rights exceptions under a single Part).	Is there any problem arising out of this change? Is there any other change which can improve the flow or structure of the legislation in this respect?
Clause 47	The draft Bill defines what constitutes a “reasonable portion” when copying a literary, dramatic or musical work in a published edition. This is based on existing requirements in section 7(2) and 7(2A) of the current Copyright Act.	Would it provide greater certainty if the “reasonable portion” definition is extended to cover acts of communication to the public? Is there any difficulty that may arise from applying this definition to acts of communication to the public?
Clause 151	For simplicity, the fiction of assignment in section 123 of the current Copyright Act is removed. Whereas the current Copyright Act provides that an exclusive licensee shall have the same rights and remedies as the copyright owner “if the licence had been an assignment”, the draft Bill simply states that the exclusive licensee is entitled to the same remedies that the copyright owner would be entitled to if the action had been brought by the copyright owner.	Is there any practical difficulty that may arise from replacing the fiction of assignment? In particular, what implications would such a change have on the existing position in common law?
Clauses 156, 157, 163	The draft Bill simplifies the language in certain provisions relating to presumptions in infringement actions: <ul style="list-style-type: none"> In the case of clauses 156 and 157, the phrase “...the facts [asserted in the affidavit made by or on behalf of the claimant] are <u>presumed to be true</u>” is used. This phrasing is intended to correspond with section 130(1B) of the current 	Do the changes in language preserve the meaning and effect of the original provisions, including as regards matters concerning burden of proof? What is the impact (if any) of these changes on copyright proceedings?

	<p>Copyright Act, which uses the following language: “...[the affidavit] shall be <u>prima facie proof of the matters stated therein until the contrary is proved...</u>” (our emphasis)</p> <ul style="list-style-type: none"> In the case of clause 163, the provision is expressly framed as a presumption, compared to section 134 of the current Copyright Act, which uses the phrase “shall be sufficient evidence of the facts”. 	
Part 2, Division 3, Subdivision 3	Online publications are covered by the provisions relating to publication.	Is there any ambiguity or lack of clarity with how online publications will be covered?

SECTION 4: SUBMISSION OF FEEDBACK

48. Your feedback is important in helping us build a copyright regime where rights are clear, reasonable, and efficiently transacted, and which strives to take into account and balance the interests of all stakeholders.

49. **Feedback sought:** In contrast to the 2016 and 2017 Consultations, which were aimed at policy formulation, this is intended to be a technical consultation directed at the draft Bill. Thus, we are particularly interested in obtaining feedback on these aspects of the draft Bill:

- (a) Legal clarity and/or workability;
- (b) Operational and implementation issues; and
- (c) Language and structure.

50. **Who should provide feedback:** We invite feedback from the public, including legal practitioners, academics, content creators, content users, performers, and interested institutions.

Groups	Suggested topics of interest
(a) Legal practitioners and academics – Individuals and organisations involved in the enforcement of, or in a practice relating to, intellectual property rights.	All topics.
(b) Content creators and owners – Individuals who create or own copyright material (e.g. songs, artworks, and	<ul style="list-style-type: none"> Granting creators default ownership of certain commissioned works

<p>books) as well as their affiliated organisations. These include:</p> <ol style="list-style-type: none"> i. Authors, bloggers, and scriptwriters; ii. Computer programmers; iii. Songwriters and musical composers; iv. Artists, designers, and photographers; v. Filmmakers and animators; vi. Production companies; and vii. Video game creators. 	<ul style="list-style-type: none"> • Setting an expiry date for protection of unpublished works • Attributing creators whenever their works are used • Strengthening general “fair use” exception • Protecting certain exceptions from being restricted by contracts • Enhancing the collective rights management landscape • Streaming of audio-visual content from unauthorised sources on set-top boxes
<p>(c) Content users – Organisations and individuals that utilise copyright material in the course of their trade or activities, or associations that represent users’ interests. These include:</p> <ol style="list-style-type: none"> i. Research institutions; ii. Cinema operators; iii. Entertainment venues; and iv. Intermediaries such as publishers and art dealers. 	<ul style="list-style-type: none"> • Granting creators default ownership of certain commissioned works • Setting an expiry date for protection of unpublished works • Attributing creators whenever their works are used • Strengthening general “fair use” exception • Facilitating uses of work for computational data analysis • Adjusting existing provisions for print-disabled users • Protecting certain exceptions from being restricted by contracts • Enhancing the collective rights management landscape • Streaming of audio-visual content from unauthorised sources on set-top boxes
<p>(d) Institutions – Organisations that utilise or otherwise deal with copyright material in the course of their operations, whether or not to generate profit. These include:</p> <ol style="list-style-type: none"> i. Galleries, libraries, archives, and museums; ii. Schools and other educational institutions; iii. Religious organisations; iv. Collective management organisations; and v. NGOs (such as the International Federation of Libraries and Archives). 	<ul style="list-style-type: none"> • Granting creators default ownership of certain commissioned works • Setting an expiry date for protection of unpublished works • Attributing creators whenever their works are used • Strengthening general “fair use” exception • Facilitating educational uses by non-profit schools • Facilitating the work of galleries, libraries, archives, and museums • Adjusting existing provisions for print-disabled users • Increasing the availability of materials on official government registers

	<ul style="list-style-type: none"> • Protecting certain exceptions from being restricted by contracts • Enhancing the collective rights management landscape
<p>(e) Performers – Individuals who perform creative works. These include:</p> <ul style="list-style-type: none"> i. Theatre performers; ii. Dancers; and iii. Live musicians. 	<ul style="list-style-type: none"> • Attributing performers whenever their performances are used • Strengthening general “fair use” exception • Protecting certain exceptions from being restricted by contracts

51. **Format of submission:** We request that your submissions be clearly and concisely written, with a reasoned explanation for any proposed revision.

52. **How to submit feedback:** We have provided 2 options for providing your feedback.

53. On our feedback website <http://go.gov.sg/copyright2021>, we have set out the various topics that have been identified in this paper. Please submit your responses to the topics which you want to provide feedback on, through the editable feedback fields below each of those topics.

54. Alternatively, if you prefer to write to us, please email your feedback with the subject header “**Feedback on Draft Copyright Bill**” to MLAW_Consultation@mlaw.gov.sg. Please include your name, contact number, and, if you are representing an organisation, the name of that organisation. Please also identify the topics and questions to which your feedback relates.

55. Please submit your feedback by **1 April 2021**. Thank you.

56. We reserve the right to make public all or parts of any written submission and disclose the identity of the source. Commenting parties may request for confidentiality for any part of the submission that is believed to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If we grant confidential treatment, we will consider, but will not publicly disclose, the information. If we reject the request for confidential treatment, the information will be returned to the party that submitted it and will not be considered as part of this review. As far as possible, parties should limit any request for confidential treatment of information submitted. We will not accept any submission that requests confidential treatment of all, or a substantial part, of the submission.

Annexures:

Annex A – Consultation papers from 2016 and 2017 Consultations, and the 2019 Report

Annex B – Part 1 of draft Bill