



AMENDMENTS TO SINGAPORE'S COPYRIGHT LAWS

Singapore will soon have a new Copyright Act. A Copyright Bill was recently tabled in Parliament, after several years of public consultation on the proposed amendments. The new Act, to be called The Copyright Act 2021 ("the Act"), will bring changes to some key aspects of copyright law, including the ownership of creative works, accreditation of rights and fair use provisions, with a seeming shift in favour of protecting creators of content, and to re-balance their relationship with users of content. The new laws are intended to better recognise creators for their work, allow easier access to copyrighted materials for educational purposes and offer support to creators and users in the collective licensing of copyrighted works.

We offer you a discussion of some of the changes to Singapore's copyright laws, in the context of the particular business issues, which they might apply.

Right of Attribution

At present, a creator of a work (as opposed to the owner of a work) does not need to be attributed as the creator of the work when others use the work. Although the identification of an author of an original work must be known,¹ attribution as a specific right and entitlement is new.

There will now be an application of moral rights in relation to authorial works in which copyright subsists, under new section 370 of the Act.

Under the new laws, the author of an authorial work has the moral right to be so identified, which is infringed if a person fails to identify the author. The Act provides a list of circumstances determining when an author should be identified, under new section 372, as well as provisions stating how the author should be identified, under section 373.

¹ *Asia Pacific Publishing Pte Ltd v Pioneers & Leaders (Publishers) Pte Ltd* [2011] 4 SLR 381

Significantly, the moral rights of an author are not infringed by any act done outside Singapore or any omission in relation to an act done outside Singapore.

The new Act provides creators of a work the right of attribution, so that the creator of a work is accredited as the creator of the work, regardless of whether he or she still own or have sold the copyright in the work. This will offer the creator public recognition in relation to the work. It will also allow creators and performers due respect and recognition for their creative efforts. The underlying aim is to incentivize innovation and creativity, and to empower creators.

Such a right of attribution would be supplemental to the creator's existing rights under the current Copyright Act. Currently, only certain moral rights are protected. For example, creators have the right to prevent false attribution,² a right to prevent false representation of non-alteration,³ and a right to prevent false representation of source of reproduction.⁴ However, given the ease with which works can be shared, distributed and accessed by others with the advancement of technology and the proliferation of the Internet and social media, it was felt that these

rights needed to be supplemented with a further right of attribution for authors.

The new right of attribution applies to authors of literary, dramatic, musical and artistic works in relation to those works and adaptations of them, and for performers for performances. The right will be personal to the author or performer, and not transferable.

The right will last for the duration of copyright or protection period of a performance (as the case may be), and will not apply to specified works and performances (for example, a computer programme or a work created in the course of employment).

It follows that the failure to attribute will be an infringement of the creator's rights. However, in certain circumstances, for example in the case of orphan works where the author of a work cannot be identified, the implementation of this right may prove to be onerous and may impede the use of such works for fear of sanction. Additionally, in the case of computer programs where there might be multiple programmers who have contributed to the work, it could be impractical to make attribution compulsory. Therefore, there are specific defences to the right of attribution.

² Section 188, Copyright Act

³ Section 189, Copyright Act

⁴ Section 190, Copyright Act

The right can be waived, and consent may be provided to acts which would otherwise be an infringement, and general defence of reasonableness would apply. The specific facts and circumstances of each case would be considered in context.

Ownership & Transactions Affecting Ownership

The general rule under the present Copyright Act is that the creator of a work is the first owner of copyright in the work. The creator can transfer this ownership of copyright in a work, through a written contract in exchange for consideration. However, there are three situations where this general rule doesn't apply – 'employment situations', 'journalist-employee situation' and 'commissioning situation'. Under the present Copyright Act, where a party commissions the creation of a particular work, the commissioning party owns the commissioned work.

First owner — maker of work - is default first owner

The new Act will change the default position such that the creator (or maker) of a work, will generally own the copyright in the work. Such works would include photographs, sound recordings and films, even if the work was commissioned.

This change is proposed because it is perceived that often creators might not be familiar with the legal implications of commissioned works, especially in situations where commissioning happens without a formal contract and simply through payment for services. There is a possibility that the creator of a work is inadvertently relinquishing more than might be intended. With the change, the creator of the work would remain as the default owner of copyright in the work, unless there is a written agreement to the contrary. This is provided for in section 133 of the new Act. The new law aims to safeguard and incentivize the local creative industry. It will be up to the parties to negotiate and assign the ownership to the party commissioning the works, if that is the intention. The parties' bargaining positions would of course ultimately affect the negotiated position.

Employment

The position is different in an employer-employee relationship. Under the present Copyright Act, where a work is created by an employee in the course of her employment, the work is owned by the employer, under Section 30(6) of the present Copyright Act. The employee is the author, but the employer is the owner of the work. Journalist employees are specifically provided for under Section 30(4) of the Copyright Act.

Where the author is a journalist employed by a newspaper, for example, and the work is created for the purpose of publication in that newspaper, the proprietor of the newspaper is entitled to the copyright in the work. The current situation will be retained and under section 134 of the new Act, the default position will be that employers will still have ownership over the copyright of works of their employees. This can of course be overridden by an agreement to the contrary.

New Enforcement Measures Against Streaming

In a digital age of easy, fast and inexpensive replication technologies, copyright law is constantly having to play “catch up”. Newer technologies, not contemplated by current laws, often enable certain acts to fall between the cracks of the provisions of the present Copyright Act. One key example is the current ability to sell set-top boxes which enable the streaming of audio-visual content from unauthorised sources on set-top boxes. A set-top box is connected to a display device (e.g. a television).

Through apps which may be installed on the set-top box, the set-top box is able to stream audio-visual content to the display device from a source on the internet, which may not be authorised by the rights-holders or the content owners.

The consumer can then access the content from the unauthorised source, without payment. As a set-top box does not contain the unauthorised content, the sale of the set-top box does not come within the present provisions of the Copyright Act which prohibit the sale or distribution of infringing content.

New legislation will be introduced to impose civil and criminal liability on people who willfully make, import for sale, commercially distribute or sell a product where the product can be used to access audio-visual content from an unauthorised source and additionally must be designed or made primarily for providing access to such content, advertised as providing access to such content, or sold as providing access to such content, where the retailer sells a generic device with the understanding that “add-on” services such as the provision of website links, instructions or installation of subscription services will subsequently be provided; and where the product can be a hardware device or a software application.

The new law will impose civil and criminal liability on those who, for a fee, provide a service to enable devices to access content from unauthorised sources such as the provision of website links, instructions or installation of subscription services.

These changes will offer new enforcement measures to copyright owners, so that they may deter retailers and service providers from profiting from providing access to content from unauthorised sources, such as through the sale of set-top boxes that enable access to content from unauthorised sources. Such practices are also commonly known as “grey boxes” or illicit streaming devices. The policy behind the proposed new law is that rights holders’ content should be protected and should not be by-passed with the aid of new frontier or advanced technology or gadgets which enable third parties to do so.

Fair Use – Fair Dealing

The new Act introduces the concept of Fair Use (under section 190 of the new Act), which will replace the Fair Dealing provisions of the present Copyright Act.

This is generally seen as a welcome change as the new laws should allow more flexibility in deciding whether copyright is infringed by a user. The new law recognizes the need to consider as fair use certain acts as ‘permitted use’ of a work.

In deciding whether a work is fairly used, the courts will look to the purpose and character of

the use, including whether the use is of a commercial nature or is for non-profit educational purposes; the nature of the work or performance; the amount and substantiality of the portion used in relation to the whole work or performance; and the effect of the use upon the potential market for, or value of, the work or performance. Fair Use for purposes of research or study will be determined by separate criteria, such as whether the work copied is an article in a periodical publication, or if no more than a reasonable portion of the work is copied. Fair Use provisions for copying work by non-reprographic means for education will also allow for copying to be permitted if it is for educational purposes, and the copy is made either by a person conducting the course, for example a teacher or instructor, or a person undergoing the course, namely a student.

We have highlighted some of the changes introduced by the new Act. There are many other aspects of copyright law which are also revised, and which with the forthcoming enactment of the new Copyright Act, will become effective law in Singapore before the end of the year. Look out for further updates from IP COMPASS.

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