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1 INTRODUCTION AND FUNDAMENTALS

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

Introduction

Copyright protects works like novels, software programs, plays, sheet music and paintings. Generally, the author of a copyright work has the right to reproduce, publish, perform, communicate and adapt his work. These rights enable him to control the commercial exploitation of his work.

Copyright is a form of property, it can be licensed or assigned, either as an individual right (e.g., the right to reproduce) or in a bundle (all the rights an author owns in his work).

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

Works Protected by Copyright

Copyright protects literary, dramatic, musical and artistic works. Protection also applies to other works like films, sound recordings, broadcasts, cable programmes, performances and published works (often referred as neighbouring or related rights).

>> Copyright protects the expression of ideas such as in words and illustrations. Ideas alone are not protected. Please refer to Works Not Protected by Copyright on page 3.

The following may be protected under the Copyright Act:

Literary works such as	<ul style="list-style-type: none">• Written works / Books• Articles in journals or newspaper	<ul style="list-style-type: none">• Lyrics in songs• Source codes of computer programs
Dramatic works such as	<ul style="list-style-type: none">• Scripts for films & drama (as applied)	<ul style="list-style-type: none">• Choreographic scripts for shows or dance routines
Musical works	<ul style="list-style-type: none">• Music, i.e. melody	
Artistic works such as	<ul style="list-style-type: none">• Paintings• Drawings• Photographs• Works of artistic craftsmanship, e.g. designer furniture that are not mass produced	<ul style="list-style-type: none">• Sculptures• Engravings• Buildings or models of buildings
Published editions of	<ul style="list-style-type: none">• Literary, dramatic, musical or artistic works, i.e. typographical arrangements of a published work	

The following may be protected under the Copyright Act: (cont'd)	
Sound recordings	• An aggregate of sounds recorded on tapes, CDs etc
Films	• Cinematographic works including video, digital videodiscs and television productions
Television and radio broadcasts	• Broadcasts by way of television or radio
Cable programmes	• Programmes (visual and sound) included in a cable programme service sent by means of a telecommunication system
Performances	• By performers such as musicians, singers and comedians

Legislation Governing Copyright

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

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- >> View the Copyright Act (Cap. 63) online at <http://statutes.agc.gov.sg> and visit the IPOS website for the latest legislation update.
 - >> Copies of the legislation are available at www.myejb.com or the Legal Publications Retail Outlet at 491, River Valley Road, #01-20, Valley Point, Singapore 248371. Tel (65) 6733 5794
-

Automatic Protection

In Singapore, copyright protection is automatically conferred on the author from whom the work originates, as soon as a work is created and fixed in a material or tangible form. Thus, an author of a work does not need to file for registration to get copyright protection.

As long as the work is independently created, it has copyright protection. However, if two separate works, based on the same idea, are created independently, there would be copyright in each independent work.

Overseas Protection for Copyright Works Created in Singapore

Generally, a copyright work created by a Singapore citizen or resident is protected overseas by virtue of an international convention (Berne Convention for the Protection of Literary and Artistic Works) and agreement signed by countries (The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994) of the World Trade Organisation). International conventions and agreements obligate the member countries and World Trade Organisation member countries (including Singapore) to grant uniform protection for copyright works. This means that the protection of a work of a Singapore resident would be protected as though the work was made in those countries. Some countries such as Canada and the US provide for registration to facilitate proof of copyright in infringement proceedings.

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

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

The Symbol ©

The use of the symbol is an indication or notice of an assertion of copyright. It does not give the copyright owner any substantive right and is therefore not essential for a claim of copyright.

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

In practice, the © symbol is usually followed by the name of the copyright owner and the year when copies of the work were first made available. E.g. © Intellectual Property Office of Singapore 2005. Sometimes there may be a statement indicating the terms of the protection, i.e. All Rights Reserved or Private Use Only.

Proof of Originality

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

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

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

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

Works Not Protected by Copyright

What is not protected include:

- ideas (e.g., a new business idea that has not been documented);
- concepts (e.g., an idea for a new game show that has not been written down);
- discoveries (e.g., a research finding that has not been known before);
- procedures (e.g., the steps involved when applying for a travel visa);
- methods (e.g. the unique solution to a mathematical problem);
- works that have not been made tangible in a recording or writing (e.g., a speech or a dance that has not been written or recorded); and
- works which are not of original authorship (e.g., works which contain information in the public domain such as standards and the like).

2 OWNERSHIP AND RIGHTS

Ownership

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

Employment: If the work is created by an employee in the course of his work as an employee, in pursuance of the term of employment, the employer owns the copyright in the work.

Commissioning: If the painting/portrait/photograph/engraving of a person is commissioned by another party, the commissioning party owns the copyright in the work. For other commissioned works, ownership rests in the commissioned party who created the work although the copyright may be transferred or assigned as established by the contract between the commissioner and commissioned party.

The owner of the copyright may assign his rights to another party or entity. He may assign his rights partially or license his rights in a manner of his choice. The separate rights given under copyright (e.g. right of reproduction) can also be assigned separately from other rights.

>> Special situations for certain professions:

Journalist or writer: In the course of employment as a journalist or writer for a newspaper, magazine or periodical OR under a contract of service or apprenticeship, the proprietor of the newspaper, magazine or periodical owns the copyright for the purpose of publication or reproduction in the newspaper, magazine or periodical.

Photographer or artist: If a photographer is engaged to take a photograph of a person or an artist is engaged to draw a portrait of a person, that person owns the copyright.

Ownership Rights

Literary, dramatic, musical, artistic works	Authors enjoy the exclusive rights to <ul style="list-style-type: none">• reproduce the work;• publish the work;• perform the work in public;• communicate the work to the public; and• make an adaptation of the work.
Published editions of literary, dramatic, musical or artistic works	The publisher has the exclusive right to make a reproduction of the edition.

Sound recordings	<p>The producer of a sound recording enjoys the exclusive rights to:</p> <ul style="list-style-type: none"> • make a copy of the sound recording; • rent out the sound recording; • publish the sound recording if it is unpublished; and • make available to the public a sound recording by means or as part of a digital audio transmission.* <p>*Where the sound recording is made available to the public through a non-interactive digital audio transmission, the producer of the recording need only be compensated by an equitable remuneration.</p>
Films	<p>The producer of a film enjoys the exclusive rights to:</p> <ul style="list-style-type: none"> • make a copy of the film; • cause the film to be seen in public; and • communicate the broadcast to the public.
Television and radio broadcasts	<p>The broadcaster enjoys the exclusive rights to:</p> <ul style="list-style-type: none"> • make a recording of the broadcast; • rebroadcast; • communicate the broadcast to the public; and • cause the broadcast to be seen or heard by a paying audience.
Cable programmes	<p>The producer of the cable programme enjoys the exclusive rights to:</p> <ul style="list-style-type: none"> • make a recording of the cable programme; • rebroadcast; • communicate the cable programme to the public; and • cause the cable programme to be seen or heard by a paying audience.
Performances	<p>The performer has the right to authorise the following uses:</p> <ul style="list-style-type: none"> • allow the performance to be seen and heard, or seen or heard, live in public; • make a direct or indirect sound recording of his live performance; • make available a recording of the performance to the public in such a way that the recording may be accessed by any person from a place and at a time chosen by him; • distribute or sell or import for distribution or sale such recordings; • publish a recording of a performance (if not previously published); and • communicate the live performance to the public (including broadcast, Internet dissemination and inclusion of the performance in a cable programme).

- >> "Communicate" is defined as to transmit by electronic means (whether over a path or combination of paths or otherwise) a work or other subject matter, whether or not it is sent in response to a request and includes:
- (a) Broadcasting
 - (b) Inclusion in a cable programme
 - (c) The making available of the work in such a way that the work or subject matter may be accessed by any person from a place and at a time chosen by him.

Term

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

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

Seeking Permission from Copyright Owners

The mere acknowledgement of the source is not sufficient to constitute the permission of the copyright owner. Therefore, to do any of the things that only the copyright owner has the exclusive rights to do (e.g. reproduction), permission/consent has to be sought.

To seek permission from copyright owners, one may:

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

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

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

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

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

For more details, please refer to the IPOS website www.ipos.gov.sg (About > Copyright)

Copyright Tribunal

The Copyright Tribunal, is a forum for resolving certain disputes between copyright owners and users of copyright materials. The Tribunal's jurisdiction is set out in Part VII of the Copyright Act (Cap. 63).

The Tribunal is empowered to:

- resolve disputes relating to rates for licences to perform, broadcast or include in cable programme services for literary, dramatic or musical works;
- settle disputes over such licences;
- ascertain the royalty payable for the recording of musical works and, where applicable, apportion the royalty in respect of a record;
- determine the terms on which the government can use copyright material;
- determine what constitutes "equitable remuneration" for the right to film artistic works for permitted broadcasts or cable programmes;
- determine what constitutes "equitable remuneration" for the making available to the public of a sound recording through a non-interactive digital audio transmission;
- determine what constitutes "equitable remuneration" payable by educational institutions when they use copyright materials within the permissible limits allowed under the Copyright Act.

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

The procedure for applications to be made to the Tribunal is set out in the Copyright Tribunal (Procedure) Regulations 1988. The forms are available on IPOS website ([Download > Copyright Forms > Copyright Tribunal Forms](#))

Copyright Tribunal (cont'd)

IPOS is the secretariat of the Copyright Tribunal. For more information, please contact:

Secretariat of the Copyright Tribunal
Intellectual Property Office of Singapore
51 Bras Basah Road
#04-01 Plaza By The Park
Singapore 189554
Tel: (65) 6339 8616
Fax: (65) 6339 0252
(Attention: Ms Christine Chua Kiat Tze)

Infringement

Infringement occurs when one does something that only the copyright owner has the exclusive rights to do or when one engages in an unauthorised use. For example, if one were to reproduce any copyright materials without the prior permission of the copyright owner.

It is important to note that it is not necessary to have reproduced the entire copyright work before it is considered as an infringement. It is an infringement as long as a substantial amount has been copied.

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

It is also an infringement to:

- a) import infringing copies for sale or distribution;
- b) distribute infringing copies for trade;
- c) distribute infringing copies to an extent that will prejudicially affect the owner of copyright; or
- d) falsely attribute the authorship of a work.

>> Please refer to page 10 on Exceptions to Copyright Infringement.

Remedies

The civil remedies for the copyright owner or his exclusive licensee may include an injunction, an order for delivery up of infringing copies, and either damages, an account of profits or an award of statutory damages of not more than \$10,000 for each work and a ceiling amount of \$200,000 in total for each infringement action.

Where it is appropriate to do so, such as where the flagrancy of the infringement was shown, the Court may also order, as appropriate, additional damages.

>> An award of statutory damages is a remedy that the Court may order as against the infringing party without the need for the copyright owner to show the damages he has suffered as a result of the infringement. This is subject to the ceiling amounts as stated above.

Factors in determining Statutory Damages

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

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

Criminal Offence

It is a criminal offence if a person;

- makes (or manufactures) infringing copies for sale;
- sells infringing copies for the purpose of trade; or
- possesses or imports infringing copies and it can be shown that the infringing copies are for the purposes of sale/trade or distribution for the purposes of trade.

In any of the instances above, it must be proven that the infringing party knows or ought reasonably to know that the copies were infringing copies at the relevant time.

The law provides that where a person is found to have more than 5 copies of any one work, it is presumed that the infringing copies were not for personal use.

The penalties for the above acts are:

- a \$10,000 fine per infringing copy, up to a total of \$100,000.00 per charge; and/or
- imprisonment up to 5 years.

It is also a criminal offence to distribute infringing copies for the purposes of trade or for other purposes to an extent as to affect prejudicially the copyright owner. If guilty, the penalties are:

- a fine not exceeding \$50,000.00 and/or
- imprisonment up to 3 years.

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

- a fine not exceeding \$20,000.00 for each such article; and/or
- imprisonment up to 2 years.

Criminal Liability for Wilful Infringement

It is also a criminal offence, if a person wilfully infringes copyright either for the purpose of obtaining a commercial advantage or to a significant extent.

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

The penalties for such wilful copyright infringement are:

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

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

- circumventing a technological measure (page 10); and
 - falsely removing or altering the rights management information electronically attached to a work (page 12).
-

3 OTHER COPYRIGHT PROVISIONS

Border Enforcement Measures

Restriction of Importation of Infringing Copies

A copyright owner or licensee may serve on the Director-General of Customs a written notice stating that he objects to the impending importation of infringing copies of his works. The person would have to provide sufficient information to enable the Director-General of Customs to identify the alleged infringing copies and to ascertain the time and place where the copies are expected to be imported. The person would also have to satisfy the Director-General of Customs that the copies are infringing copies. Copies of the relevant notice can be found on IPOS website ([Forms Download > Copyright Forms > Border Enforcement Notices](#)).

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

Detention of Infringing Copies

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

Upon detention, the Director-General shall notify the copyright owner and the importer/exporter/consignee, and hold the infringing copies for 48 hours for the copyright owner to serve a formal notice authorising the further detention of the seized copies. If the copyright owner serves such a notice, the seized copies will be detained for a further period of 10 days within which the copyright owner has to institute an action for infringement in Court. If the copyright owner does not do so, the detained goods will be released to the importer/exporter/consignee.

In addition, an authorised officer also has wide powers to examine any goods which he reasonably suspects to be infringing copies of any copyright material and these wide powers extend to goods in transit through Singapore as well.

Exceptions to Copyright Infringement

Fair Dealing

Under the provisions for 'fair dealing' in the Copyright Act, a certain amount of copying for legitimate purposes, such as for the purpose of research or study, is permissible as long as it is a 'fair dealing'.

The following factors will be taken into account in deciding whether the use is a fair dealing:

- purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;
- nature of the work or adaptation e.g. for certain works, like photographs, a taking of any part can constitute a taking of the whole;
- amount and substantiality of the part copied taken in relation to the whole work;
- effect of the dealing upon the potential market for, or value of, the work;
- the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price.

In other cases, a fair dealing for the purpose of criticism or review; for the purpose reporting of current events; for the purpose of judicial proceedings or professional advice would not constitute an infringement. In the case of criticism or review and the reporting of current events, a sufficient acknowledgment of the work is required.

Other Exceptions

It is not an infringement if a person:

- makes a copy from an original copy of a computer program which he owns for the purpose of using that duplicate copy as a back-up in the event that the original copy is lost, destroyed or rendered unusable;
- decompiles a computer program from a lower level language to obtain the information necessary to create an independent non-infringing computer program which can be operated with the computer program decompiled or with another computer program if the information is unavailable and subject to the information not being used for other purposes and not being supplied to other persons; or
- decompiles a computer program for which he has licence to use from a lower level language for the purposes of observing, studying or testing the functioning of the computer program in order to determine the underlying ideas principles.

Circumvention of Technological Measures

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

Where technological measures are applied to copyright works, the owner of a copyright work may take action against a person who:

- (a) knowingly circumvents a technological measure that effectively controls access to a work;
- (b) manufactures, imports, distributes, offers to the public, provides or otherwise traffics in any device, product or component which serves to circumvent a technological measure ("circumventing device") which
 - (i) is promoted as to circumvent the technological measure,
 - (ii) has limited commercial significance other than to circumvent the technological measure, or
 - (iii) is designed or made primarily for the purpose of circumventing the technological measure;
- (c) offers to the public or provide any service which relates to circumventing a technological measure (that either effectively restricts access or that effectively limits or prevents any unauthorised/infringing act) ("circumventing service") which
 - (i) is promoted, advertised or marketed for the purpose of circumventing the technological measure,
 - (ii) has limited commercial significance other than to circumvent the technological measure, or
 - (iii) is performed primarily for the purpose of circumventing the technological measure.

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

Criminal Liability for Wilful Infringement

Where a party performs any of the above acts wilfully and for the purpose of obtaining any commercial advantage, if convicted, he may be liable to

- a fine not exceeding \$20,000 for (a); or
- a fine not exceeding \$20,000 or imprisonment for a term not exceeding 2 years or both for (b) or (c).

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

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

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

For (c)(iii), it is not considered wilful unless the person knew or had reason to believe that the alleged circumventing service was performed for the purpose of circumventing the technological measure.

Civil Remedies

The owner of the copyright may take civil action against the person who does the acts described above.

Civil remedies for the copyright owner include:

- an injunction;
- either
 - damages;
 - account of profits; or
 - an award of statutory damages in lieu of damages or account of profits, of not more than \$20,000; and/or
- delivery up or destruction of contravening articles.

Please refer to page 7 on the considerations by the Court in awarding statutory damages.

Exceptions to Prohibition on Circumvention

There are exceptions where acts to circumvent a technological measure are not violations. They include acts done for:

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

Exceptions to Prohibition on Making Circumventing Devices and Offering Circumventing Service

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

- the sole purpose of achieving interoperability with another computer program;
- the sole purpose of conducting research on any encryption technology;
- the sole purpose of preventing access by minors to any material on the Internet;
- the sole purpose of testing, investigating, or correcting a security flaw or vulnerability of a computer, computer system or computer network; or
- the purpose of law enforcement, intelligence, national defence, essential security or other similar purposes.

Rights Management Information (RMI)

Rights management information includes information identifying the author of a work, and the terms and conditions relating to the use of the work. Such information in electronic form

- may be attached to or embodied in a copy of a work; or
- appear in connection with the communication or making available to the public a copy of a work.

It is used by authors of digital works to identify their works or provide information about the copyright work. An example of an RMI is a digital watermark that authenticates the source of a digital photograph.

An action may be brought against a party if, without the consent of the owner or exclusive licensee of the copyright in the work, the party does any of the following acts:

- a) knowingly removes or alters the rights management information relating to any work;
- b) distributes or imports for distribution the rights management information relating to any work being rights management information which has been altered; or
- c) distributes, imports for distribution, communicates or makes available to the public copies of a work in which the rights management information has been removed or altered.

Criminal Liability for Wilful Infringement

Where a party performs any of the above acts wilfully and for the purpose of obtaining any commercial advantage, if convicted, he may be liable to

- a fine not exceeding \$20,000 for (a); or
- a fine not exceeding \$20,000 or imprisonment for a term not exceeding 2 years or both for (b) or (c).

Civil Remedies

The civil remedies for the copyright owner include

- an injunction
- either
 - damages;
 - account of profits; or
 - an award of statutory damages in lieu of damages or account of profits, of not more than \$20,000; and/or
- delivery up or destruction of the infringing copies.

Please refer to page 7 on the considerations by the Court in awarding statutory damages.

Copyright and the Internet

Copyright Materials on the Internet

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

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

Web Page

Generally, a web page is considered a piece of copyright work. The individual works within a web page can also be separately protected by copyright.

Downloading Materials from the Internet

Downloading material from the Internet can constitute a copyright infringement except where the dealing can be considered as a fair dealing or is expressly exempted. Please refer to page 10 on Exceptions to Copyright Infringement.

Browsing

The Copyright Act provides a specific limited exception for the act of browsing of copyright materials made available on the Internet. Browsing means viewing, listening or utilising materials made available on networks.

Hyperlinking

Generally, linking may not be infringing if it does not implicate any of the exclusive rights given to copyright owners. Otherwise, it would constitute an infringement.

Email Forwarding

If an email contains copyright materials and the email is forwarded without the consent of the person who wrote or created that work, it is an infringement.

Liability of Network Service Providers

The Copyright Act provides network service providers (NSP) with limited legal immunity from liability.

An NSP is defined as a person who

- (a) provides services relating to, or provides connections for, the transmission or routing of data (for transmission, routing or providing connections); and/or
- (b) provides or operates facilities for, online services or network access (for system caching, storage and referral).

Under certain conditions, an NSP would not be liable for copyright infringement for tasks carried out such as the transmission, routing or provision of connections, system caching and storage and referral.

Transmission, Routing or Provision of Connections

The NSP would not be liable for monetary relief provided:

- the NSP does not initiate the transmission;
- the transmission is an automatic technical process without any selection of the copyright content by the NSP;
- the NSP does not select the recipient except in response to the requestor; and
- the NSP does not modify the content.

In such a case, the Court's order is limited to:

- an order requiring the NSP to take reasonable steps to disable access to the copyright content; and/or
- an order requiring the NSP to terminate a specific account.

System Caching

The NSP would not be liable for monetary relief for making a cached copy of the copyright content on his network provided the NSP:

- does not modify the content of the cached copy;
- takes reasonable steps to expeditiously remove or disable access to the cached copy of the copyright content on his network after being notified by the copyright owner of copyright infringement in the prescribed manner;
- complies with certain conditions with regard to the caching process.

In such a case, the Court is limited to:

- an order requiring the NSP to remove an infringing electronic copy of the copyright content from his network or disable access to an infringing electronic copy of the copyright content on his network or another network;
- an order requiring the NSP to terminate a specified account;
- such other order(s) as may be necessary that is least burdensome to the NSP among other non-monetary orders.

>> System caching occurs when the NSP makes an electronic copy of copyright content ("cached copy") on his network from another electronic copy hosted on another network ("originating network") through an automatic process initiated by a user of his network and the cached copy is made to facilitate an efficient access to the content by users.

Storage

The NSP would not be liable for monetary relief for the infringement of copyright content stored on his network provided the NSP:

- has no knowledge that the copyright in the content has been infringed or of facts or circumstances which would lead inevitably to the conclusion that the copyright in the content has been infringed;
- takes reasonable steps to remove or disable access to the copyright content on his network after being notified by the copyright owner of copyright infringement in the prescribed manner;
- does not receive any financial benefit directly attributable to the infringement of the copyright content; and
- has designated a representative to receive notices of infringement and published requisite information on the designated representative.

Linking

The NSP would not be liable for monetary relief for the infringement of copyright content by referring a user to an online location of the electronic copy of the copyright content via a hyperlink, directory listing or results of a search engine provided the NSP:

- has no knowledge that the copyright in the content has been infringed or of facts or circumstances which would lead inevitably to the conclusion that the copyright in the content has been infringed;
- takes reasonable steps to remove or disable access to the copyright content on his network after being notified by the copyright owner of copyright infringement in the prescribed manner;
- does not receive any financial benefit directly attributable to the infringement of the copyright content; and
- has designated a representative to receive notices of infringement and published requisite information on the designated representative.

Designated Representative

To enjoy the limited liability for the infringement of copyright content in the storage of materials or in linking users to materials made available on the Internet, an NSP must designate a representative to receive any notice of infringement served by copyright owners.

All designated representatives together with prescribed information thereof must be notified to IPOS and be listed in the Directory of NSPs administered and maintained by IPOS. The Directory of Designated Representatives of NSPs is published on IPOS website (Our Services).

To notify IPOS of the designated representative, an NSP can obtain the form from the IPOS website (Forms Download > Copyright Forms > NSP Forms). The completed form can be submitted by hand, mailed, faxed or emailed to IPOS. The administrative fee of \$32 will apply.

Please send the forms to:

Directory of Designated Representatives of NSPs
Intellectual Property Office of Singapore
51 Bras Basah Road
#04-01 Plaza by the Park
Singapore 189554
Tel: (65) 6339 8616
Fax: (65) 6339 0252
Email: ipos_ensp_directory@ipos.gov.sg
(Attention: Ms Christine Chua Kiat Tze)

Payment can be made by NETS, CashCard, cheques (crossed), money order and bank draft (in Singapore dollars) made out to Intellectual Property Office of Singapore.

Prescribed Notice

The prescribed notice of copyright infringement to be furnished to an NSP by the copyright owner must substantially contain the following:

- information about the complainant;
- information to enable the NSP to identify the infringing material;
- information identifying the location of the the infringing material;
- a statement of objection (i.e. instruction to remove or block access);
- a statement that the complainant is the copyright owner or exclusive licensee as the case may be or that he is authorised to act on behalf of such owner or exclusive licensee;
- agreement that he submits to the jurisdiction of Singapore Courts; and
- that the information and statement is accurate and true.

If a party is found to have made a false statement in his notice, he would be liable in damages to any party who suffers any loss/damage as a result of that notice. In addition, if convicted, he can be fined up to \$10,000 or be sentenced to imprisonment for a term not exceeding 2 years.

Upon the removal or disabling access to the electronic copy of the copyright content, the NSP will notify the website owner who had put up the material. If the website owner disputes the notice, he may, within a prescribed period, submit a counter notice to require the NSP to restore the material on his website.

Copyright and Software Programs

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

Please refer to Exceptions to Copyright Infringement, Other Exceptions on page 10.

Copyright and Registered Designs

When an artistic work, such as a drawing or a sculpture, is applied to a product and, industrially produced (i.e. more than 50 copies of the products have been produced), the copyright in that work will no longer apply. It can or should be protected as a registered design under the Registered Designs Act (Cap. 266).

>> For more information on registered design and its registration criteria, please refer to the IPOS website ([About IP>Registered Designs](#)).

Special Provisions for Educational Institutions

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

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

- For work divided into chapters
 - Not more than one single chapter OR
 - Not more than 10% of the total number of pages of the work.
- For work that is not divided into chapters
 - Not more than 10% of the number of pages of the work.
- For where the work is an edition stored on an electronic medium and is not divided into pages
 - Not more than 10% of the total number of bytes in the edition.

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

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

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