

## Beginning of a Fresh Chapter – Singapore’s Overhaul of its Copyright Act

24 August 2021

### Introduction

1. The Copyright Bill was recently introduced in Parliament on 6 July 2021 for First Reading. It seeks to replace the current Copyright Act (Cap. 63, 2006 Ed.) (the “**current Act**”) and consolidates years of wide-ranging reviews and consultations by the Ministry of Law and the Intellectual Property Office of Singapore with relevant stakeholders and members of the public.
2. This article seeks to highlight several key changes introduced in the Copyright Bill, which can be encapsulated along the following key themes:
  - (a) Ensuring copyright continues to reward the creation of works;
  - (b) Ensuring copyright works are available for the benefit of society at large; and
  - (c) Strengthening the copyright ecosystem.

For any queries relating to this article, please contact:

Tan Tee Jim, S.C.

[tanteejim@leenlee.com.sg](mailto:tanteejim@leenlee.com.sg)

Jasper Lim

[jasperlim@leenlee.com.sg](mailto:jasperlim@leenlee.com.sg)

Yan Chongshuo

[yanchongshuo@leenlee.com.sg](mailto:yanchongshuo@leenlee.com.sg)

Authors:

Tan Tee Tim, S.C.  
Jasper Lim  
Yan Chongshuo  
Annette Yeo

**Lee & Lee**  
50 Raffles Place  
#06-00 Singapore Land Tower  
Singapore 048623  
Tel: +65 6220 0666

### **ENSURING COPYRIGHT CONTINUES TO REWARD THE CREATION OF WORKS**

#### ***Moral rights for creators and performers***

3. Moral rights of creators and performers, which include the right to be identified with and to preserve the integrity of one’s work and performance, are not provided for under the current Act. Creators and performers are only entitled to prevent the false attribution of another person as the author or performer of their works or performances.
4. This is set to change with the Copyright Bill which statutorily enshrines the moral rights of the creator or performer. The Copyright Bill expressly provides that, when a work or performance is used, the creator or performer must be identified in the way that the creator / performer reasonably wishes to be identified or, if the wishes of the creator or performer are not known, in a reasonable manner. The identification must in each case be clear and reasonably prominent. Moreover, creators and performers have a right not to have an altered copy of an authorial work or an altered recording of a performance (as the case may be) represented as being unaltered. This ensures that the reputation of creators or performers is not damaged by unauthorized alterations of their works or performances.

For more legal updates, please visit the News & Publication Section of Lee & Lee’s website at

[www.leenlee.com.sg](http://www.leenlee.com.sg) or follow Lee & Lee’s Facebook page at [www.facebook.com/leenlee.com.sg/](https://www.facebook.com/leenlee.com.sg/) and Lee & Lee’s LinkedIn page at <https://lnkd.in/g6bNfv8G>.

**Disclaimer:** The copyright in this document is owned by Lee & Lee.

No part of this document may be reproduced without our prior written permission.

The information in this update does not constitute legal advice and should not form the basis of your decision as to any course of action.

5. The above moral rights are personal to the creator or performer and cannot be assigned. The rights last for as long as copyright subsists in the work, or the performance is protected.
6. While the amendments incentivize creators and performers to continue to produce content, ensuring the proper identification of creators and performers with their unaltered works or performances may present practical difficulties, given the current realities of the digital era and the fact that such content is likely to be proliferated outside of Singapore. In this regard, the Copyright Bill provides that acts outside Singapore do not infringe the moral rights of creators or performers.

### ***Granting creators default ownership of certain commissioned works***

7. Under the current Act, the copyright in certain commissioned works, such as photographs, portraits, engravings, sound recordings and films, is owned by the person commissioning the work (i.e. the person paying for such work), unless otherwise agreed between the parties. The Copyright Bill changes this default position by providing that creators commissioned to create such works (such as photographers and artists) are the owners of the copyright in the works. The parties are however free to change the default position by a written agreement.
8. The new provision affords greater protection to creators who are commissioned to create the aforesaid works, and who may otherwise unknowingly relinquish their copyright. This is intended to invigorate the local creative industry by placing creators in a strong bargaining position and encouraging the commercialisation of such works by the creators.

### ***Granting employers default ownership of sound recordings and films created by employees in the course of employment***

9. Under the current Act, the employer is the default first owner of a copyright work created by its employees in the course of their employment. This default ownership of copyright of employers will be expanded in the Copyright Bill to include sound recordings and films. The justification is that employers would benefit the most from the default ownership and would be the party that is most incentivized to create and commercialize more works.

### ***Deterring commercial dealings in products or services which stream audio-visual content from unauthorised sources***

10. Under the Copyright Bill, copyright owners may sue anyone who knowingly engages in commercial dealings (e.g., sell, offer for sale, distribute for trade, etc.) with devices or services (such as set-top boxes and software applications) which have the commercially significant purpose of facilitating access to copyright infringing works. This bridges an important gap in the current Act by providing copyright owners with recourse against retailers of devices or services which do not contain infringing content *per se* but which are intended to facilitate access to such content.
11. The new provision is intended to have the effect of encouraging the use of copyright works from legitimate sources. In practice, however, it may be difficult to enforce the provision due to the difficulty of proving that a device or service has commercially significant purpose of facilitating access to copyright infringement works.

## ***Rights to equitable remuneration when sound recordings are broadcasted or publicly performed***

12. Under the current Act, copyright owners of sound recordings have rights only in respect of sound recordings which are heard in public via digital audio transmission. The Copyright Bill states that the copyright in a sound recording (which has been published for commercial purposes) is infringed if a person (i) communicates the sound recording to the public, whether by digital audio transmission or otherwise, and (ii) fails to pay equitable remuneration to the copyright owner. This would allow creators and sound recording companies to better protect their rights and to be fairly compensated for the use of their sound recordings.

## **ENSURING COPYRIGHT WORKS ARE AVAILABLE FOR THE BENEFIT OF SOCIETY AT LARGE**

### ***Use of works for computational data analysis***

13. Computational data analysis, such as text and data mining, can provide insights and information that have far-reaching economic and social impact. However, computational data analysis may lead to inadvertent copyright infringement as it involves the extraction and copying of data in large quantities.
14. The proposed amendments in the Copyright Bill allow for copyrighted works to be copied or communicated for the purpose of computational data analysis and preparing the work or recording for computational data analysis. This is subject to other conditions intended to preserve the copyright holder's commercial interests, such as conditions providing that the person performing computational data analysis does not use the copy for any other purpose, and had lawful access to the material from which the copy is made (i.e. such access did not involve the circumvention of any paywall or breach the terms of use of any database).
15. The Copyright Bill appears to espouse a calibrated balance between the public interest in permitting the use of computational data analysis and the legitimate interests of copyright owners. That said, it remains to be seen how the safeguards for copyright owners will be interpreted in light of the growing use of artificial intelligence and machine learning platforms to perform autonomous data mining.

### ***Use of online materials for educational purposes by non-profit schools***

16. Online materials are now freely available in this digital age, and such materials undoubtedly play an important role in children's learning in educational institutions. In order to make the materials more widely available, the Copyright Bill expressly provides that non-profit educational institutions are permitted to use material which is publicly available free of charge on the internet for educational purposes, provided that sufficient acknowledgement of the source is made. However, students and/or teachers must stop using the material if they are made aware of copyright infringement by the source.

### ***Setting an expiry date for protection of unpublished works***

17. The Copyright Bill addresses the fact that unpublished works seem to enjoy perpetual copyright protection. It does so by stipulating that such works will be of a finite duration, regardless of whether the work is published.

18. For authorial works with identified authors, copyright subsists for life plus 70 years. For authorial works without identified authors as well as for sound recordings and films, the duration of copyright depends on whether they are made available to the public within 50 years after they were made. If so, they will enjoy longer periods of copyright protection (i.e. 70 years after the year in which the work was made public); if not, a shorter period of copyright protection will be applicable (i.e. 70 years after the year in which the work was made).

### ***Clarification of the “Fair Dealing” exception***

19. Presently, fair dealing with literary, dramatic, musical, or artistic works or adaptations of these works (such as research and study) will not constitute an infringement of copyright in the works. The current Act sets out a number of factors to determine if there is “fair dealing” (to be called “fair use” when the Copyright Bill is enacted). One of the factors is the “possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price”. This factor will be removed. Its removal will dispel the misconception that users of copyrighted works must always try to seek a licence before they can rely on the “fair dealing” defence.

### ***Facilitating the work of galleries, libraries, archives, and museums***

20. Under the Copyright Bill, galleries, libraries, archives and museums are permitted to make a copy of a copyright work such as a sound recording, film or a recording of a protected performance when engaging in activities which are required to support their operations. This is however subject to certain conditions, such as the work is part of a public collection and the copy is made by or on behalf of the custodian of the public collection. This would better support the needs of galleries, libraries, archives, and museums.

### ***Adjusting existing provisions for users with print disabilities***

21. The Copyright Bill aims to provide persons who are print disabled (e.g., blind or visually impaired) greater access to copyright works. Presently, under the current Act, an equitable remuneration will need to be paid to the owner of the copyright work for converting the work into an accessible format. Under the Copyright Bill, such persons will no longer be required to pay equitable remuneration in situations where a print copy needs to be converted into other formats.

### ***Facilitating the dissemination of information / materials by the government to the public***

22. The Copyright Bill introduces specific clauses which are targeted at increasing the availability of certain documents maintained by the Government and public bodies. For example, the following are now permitted:
- (a) The copying or communicating of material (i.e. a work or a recording of a protected performance) in public registers.
  - (b) The copying of literary or artistic works in public registers.

## ***Protecting certain exceptions from being restricted by contracts***

23. Parties may negotiate the terms and conditions regarding copyright use in contracts. The Copyright Bill however expressly provides that certain permitted uses may not be excluded or restricted by contracts, such as permitted uses for computational data analysis and by galleries, libraries, archives, and museums. Any provision that seeks to exclude or restrict such permitted uses would be considered void.

## **STRENGTHENING THE COPYRIGHT ECOSYSTEM**

### ***New class licensing scheme for collective management organisations (“CMOs”)***

24. CMOs are in the business of collectively managing the use of copyright works or protected performances (or both) for the collective benefit of their members who are authors, makers, publishers, performers or rights owners. CMOs also operate schemes that are available to the public in Singapore. The schemes set out the terms on which they will grant permission to use the works and performances under their management. At present, CMOs are not regulated by any public agency. Under the Copyright Bill, they will be regulated by the Intellectual Property Office of Singapore which has the power to impose financial penalties of up to S\$20,000 on a CMO and its officers who are responsible for contraventions of the licence, regulatory directions, and cessation orders. The Copyright Bill also seeks to establish minimum standards of transparency, governance, accountability, and efficiency for CMOs.

## **CONCLUSION**

25. The Copyright Bill is expected to take effect from November 2021. The actual date will be announced by the Minister in the Gazette.
26. If you have any question on any aspect of the Copyright Bill, please contact our Mr. Tan Tee Jim, SC ([tanteejim@leenlee.com.sg](mailto:tanteejim@leenlee.com.sg)), Mr. Jasper Lim ([jasperlim@leenlee.com.sg](mailto:jasperlim@leenlee.com.sg)) or Mr. Yan Chongshuo ([yanchongshuo@leenlee.com.sg](mailto:yanchongshuo@leenlee.com.sg)).

### ***About Lee & Lee***

*Lee & Lee is one of Singapore’s leading law firms being continuously rated over the years amongst the top law firms in Singapore. Lee & Lee remains committed to serving its clients’ best interests, and continuing its tradition of excellence and integrity. The firm provides a comprehensive range of legal services to serve the differing needs of corporates, financial institutions and individuals. For more information: visit [www.leenlee.com.sg](http://www.leenlee.com.sg).*

The following partners lead our departments:

Kwa Kim Li  
Managing Partner  
[kwakimli@leenlee.com.sg](mailto:kwakimli@leenlee.com.sg)

Quek Mong Hua  
Litigation & Dispute Resolution  
[quekmonghua@leenlee.com.sg](mailto:quekmonghua@leenlee.com.sg)

Owyong Thian Soo  
Real Estate  
[owyongthiansoo@leenlee.com.sg](mailto:owyongthiansoo@leenlee.com.sg)

Tan Tee Jim, S.C.  
Intellectual Property  
[tanteejim@leenlee.com.sg](mailto:tanteejim@leenlee.com.sg)

Adrian Chan  
Corporate  
[adrianchan@leenlee.com.sg](mailto:adrianchan@leenlee.com.sg)

Louise Tan  
Banking  
[louisetan@leenlee.com.sg](mailto:louisetan@leenlee.com.sg)