PUBLIC CONSULTATION ON PROPOSED CHANGES TO SINGAPORE'S COPYRIGHT REGIME

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

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PART I: INTRODUCTION

1.1 MinLaw and IPOS are seeking views on proposed changes to Singapore's copyright regime. The public consultation period is from **23 August 2016 to 24 October 2016**.

1.2 Copyright is a form of intellectual property right which gives creators and producers of creative works the right to prevent or allow other people to use these works in certain ways for a limited period of time. It is an economic incentive for creative activity that benefits society. For a copyright regime to spur and support innovation, it must appropriately balance the interests of creators, rights owners, users, businesses and future creators to ensure (a) the provision of exclusive rights as an incentive to create and disseminate new creative works, and (b) that access to those works be broad enough for the benefit of other creators and for society.

1.3 **The objective of this review is to ensure a copyright regime where rights are reasonable, clear and efficiently transacted.** The proposed changes are listed in Paragraph 3.1 of Part III of this consultation paper. In drawing up the proposed changes, we have taken into consideration feedback from focus group discussions with various stakeholders and similar reviews in other jurisdictions. We invite interested persons to comment on the issues highlighted in this consultation paper, as well as on other copyright-related issues.

1.4 We will also be publicly consulting on proposals relating to the area of Collective Management Organisations in early 2017.

PART II: BACKGROUND

A. Overview of Current Copyright Regime

2.1 **Copyright is a form of intellectual property right which gives creators and producers of creative works the right to control specific uses of their works for a limited period of time**. Once that period is over, the work becomes part of the public domain and is free to be used. Their rights during the period of protection are also limited by certain exceptions provided in the law.

2.2 **In Singapore, the copyright regime is governed by the Copyright Act (Cap. 63) ("CA").** Copyright legislation is supplemented by case law - the recorded decisions of our courts. Case law has the function of clarifying or interpreting certain provisions of the CA when the need arises.

2.3 **Copyright protects certain categories of works specified in the CA, listed below**:

a) Literary works such as books, poetry, blogs, articles, song lyrics, source codes of computer programs;
b) Dramatic works such as scripts for films and theatre shows;
c) Musical works such as melodies of songs;
d) Artistic works such as fine art, sculpture, photography;
e) Published editions of the above works;
f) Sound recordings, where melodies and lyrics are performed and recorded for distribution;
g) Cinematograph films, which includes video footage and moving images that appears in movies, on television, on the Internet or within computer programs like games;
h) Television and radio broadcasts, cable programmes; and
i) Performances such as those by live musicians

2.4 **Copyright protection comes in the form of being able to prevent or allow other people to use the creative work in certain ways as specified in the CA, differing by type of creative work.** In general, the types of uses of a work that creators or producers have the ability to control include the copying and publishing of their work, performing or communicating the work to the public, and adapting the work to a different language or different medium.

2.5 **When a third party intends to use a work still within the duration of copyright protection, permission from the owner of the copyright must be obtained.** Creators and producers are allowed to assign or license their copyright protection to other parties, and generally we refer to the people with copyright vested in them as "right-holders" or "copyright owners", as they may or may not have been the original creators.

2.6 **The CA sets out exceptions for the use of works without permission for specific users (e.g. schools, libraries and archives etc) or for specific purposes (e.g. research and reporting of current events), as well as an open-ended "fair use" exception, which is not limited to specific situations, but based on specified factors**[1].

2.7 Lastly, the CA also sets out what acts would be considered infringement of copyright, and what civil remedies or criminal penalties may apply.

Example:
John writes regularly in his personal blog. He automatically gets copyright protection over his blog entries as they are a type of literary work. This means that anyone who wants to copy his blog entries word-for-word (even if it is only a portion of the blog entry) needs to seek his permission.

Other rights which he has over his blog entry include the right of adaptation, so if anyone wishes to translate his blog entry into another language and share it, they will also need to get his permission.

One way that someone can copy his blog entry without having to seek his permission is if the intended use falls within an exception under the CA. For example, if a school comes across his blog entry and wishes to use it as a passage in their examinations, they can do so without his permission as the CA has an exception for any use for the purpose of examinations.

B. Reasons for Review of Copyright Regime

Basis of copyright regimes

2.8 **A well-functioning copyright regime has to balance between providing rights to creators and producers as an incentive to create and disseminate new creative works, and providing increased access to, and use of, those works for the benefit of society at large.** The latter is provided through ensuring that there are good distribution methods for creative works, and also through targeted copyright exceptions, which improve access and sometimes allow for use of creative works without the need to ask permission. This inherent balance in copyright encourages the creation and dissemination of knowledge and ultimately contributes to the larger drive to foster innovation.

2.9 Although they are commonly framed as competing interests, incentives to create do not only benefit creators and producers of creative works, and better access to works do not only benefit the users of creative works. Society as a whole benefits from having (and being able to use) more creative works if

[1] Please refer to paragraphs 3.47 and 3.48 for an explanation of "fair use".

incentives to create exist. And easier access to, and use of, creative works also benefit existing creators, in allowing them to work off and be inspired by the works of others, as well as help to cultivate the next generation of new creators and producers.

Evolution of copyright regimes

2.10 **How copyright regimes actually achieve this balance is something that should be reviewed due to the significant technological and market changes in the digital age.** For much of copyright's long history, copyright regimes have largely assumed that creative individuals who create new works would be aided by organisations [2], which represented the individuals, packaged their various creations and developed the distribution channels for the works to be consumed.

2.11 However, in the last decade, **new technologies and the Internet have reshaped the ways in which content is created, distributed, and accessed**, greatly changing the profile of copyright creators and the behaviours of copyright users. For example, with sophisticated but easy-to-use technology, new ways of creating content have emerged, such as the proliferation of mobile phone cameras or easy-to-use apps like Apple's GarageBand. Distribution of content has also evolved using technology which was never envisaged by copyright regimes, e.g. streaming.

2.12 **The digital era has allowed amateurs and technology companies to become a growing group of creators, and at the same time, users today value on-demand access to creative works across multiple devices.** With the rise of amateur creators, increasingly the users of creative works today are building on existing works to become creators themselves.

Singapore's Copyright Act

2.13 Singapore's CA was first enacted in 1987 and was largely based on Australia's and the United Kingdom's copyright regimes of that period. Major additions to the CA were made in 1998, 1999 and 2004[3], which ensured that Singapore's copyright regime was aligned to international norms and bilateral treaties, technology-neutral, and applied to content which was being created, distributed and consumed digitally. This public consultation is the first

[2] Such organisations include, for instance, IP-rich industrial corporations in various sectors, such as IBM and Apple in the IT field, entertainment companies such as Disney, book publishers such as Penguin, record producers such as Sony, national collective management organisations organised under umbrella groups such as the International Confederation of Authors and Composers Societies ("**CISAC**") (representing authors across all artistic repertoires) and the International Federation of the Phonographic Industry ("**IPFI**") (representing recording companies)] and local distributors.

[3] The changes were made in order to implement Singapore's obligations under the World Trade Organisation Trade Related Aspects of Intellectual Property Agreement ("**TRIPS**"), the United States-Singapore Free Trade Agreement ("**USSFTA**") and the World Intellectual Property Organisation's ("**WIPO**") Performances and Phonograms Treaty ("**WPPT**") and the WIPO Copyright Treaty ("**WCT**").

comprehensive review of the CA in a decade — much has changed since then, both online and offline.

2.14 Like copyright regimes worldwide, Singapore's copyright regime is not immune to the significant technological and market changes in the digital age. Although the current copyright regime is generally effective in incentivising traditional creators and producers of copyright, and providing reasonable access to physical copyright goods, some modifications and refinements are required to incentivise newer creators and producers, as well as to address current and future ways of using creative works.

Objectives for Singapore's review of copyright

2.15 Many elements of the CA, especially those pertaining to the level of protection that creative works receive, are based on international norms and Singapore has less leeway in fundamentally changing those elements given our international obligations. These include what kind of creative works are protected, the type of acts that are protected and the duration of protection. These elements are also extremely important to maintain in order to continue incentivising creation of works as well as ensure reciprocal protection of locally-created works overseas, and apply to both traditional as well as newer creators and producers. **However, as international norms generally require a minimum level of protection, Singapore can propose changes that improve on current protection, especially to address any existing gaps, taking into account the changing profile of individual creators.**

2.16 Singapore also has some leeway in adjusting the current level of access to creative works. Having already implemented a US-style open-ended "fair use" exception concurrently with a system of specific exceptions for specific situations, the current copyright regime has coped reasonably well to allow for new types of uses and demands. However, given the risk-averse attitudes of some local organisations, an open-ended "fair use" exception may not provide enough certainty for them to use copyright in certain permitted ways, as there is little case law in Singapore. **Some of the proposed changes in relation to access to creative works deal with codifying and clarifying what should be permitted uses of creative works, and ensure that institutions like schools, libraries and archives, museums and galleries etc, continue to play an important and relevant role to provide access to creative works.**

2.17 In short, we are reviewing the CA with the objectives of ensuring a copyright regime where rights are:

a) **Reasonable** – keeping in mind that the copyright regime needs to balance the interests of creators and producers, with the interests of users of copyright, and also not to neglect future creators, producers and users;

b) **Clear** – so that creators, producers, users and intermediaries all understand the regime and how it can incentivise creation or provide access to works; and

c) **Efficiently transacted** – to ensure that creators and producers are able to reach out to their audiences, and that interested users can easily seek permission to use creative works.

PART III: PROPOSED CHANGES TO SINGAPORE'S COPYRIGHT REGIME

3.1 Our proposals on the possible changes to the Singapore copyright regime are categorised by the topics below:

3.2 The proposed areas may affect creators, producers and users to different extents:

a) If you are an individual who directly creates any of the creative works in paragraph 2.3 (such as an author, a fine artist, a photographer, a filmmaker, a choreographer, a scriptwriter, a song or lyric writer, a live performer etc) ("**creator of creative works**"), the **topics 1 to 5, 7, 8, and 10 to 12 may be most relevant to you**.

b) If you are representing a business in the copyright sector which works with creators and helps to further process creative works (such as a publishing house, a music record company, a broadcaster, a cable company, a movie studio, a television or short film production house, a computer or console game producer, a theatre company, a collecting society etc) ("**producer or publisher of creative works**"), the **topics 1 and 2, 4 to 13, and 15 may be most relevant to you**.

c) If you are an individual who uses creative works at work or school or at home, either to enjoy the work or to transform the work into another creative work ("**general user of copyright**"), the **topics 1, 6 to 8, 10 and 16 may be most relevant to you**.

d) If you are representing a corporation which deals with copyright but is not in the copyright sector (such as a digital service provider which helps to distribute creative content, an organisation which commissions or outsources creative work, a business which uses creative works (either via a licence or under a copyright exception) etc) ("**corporate user of creative works**"), the **topics 1 to 4, 6 to 9, 15 and 16 may be most relevant to you**.

e) If you are a school, museum, gallery, library or archive, **the topics 1, 3, 4, 6, 8, 10 to 12 may be most relevant to you**.

3.3 Regardless of the above recommended relevant areas, views and comments from any interested party on any of the topics are welcome.

Proposal 1: Copyright registry

3.4 **In Singapore, copyright protection over works arises automatically once the work has been created into physical form (analogue or digital) without the need for registration.** Due to its international obligations, Singapore is not permitted, in general, to require registration (or any other formalities) before copyright protection is conferred on works. This is similar to the position of most countries in the world[4].

3.5 **Nevertheless, in some countries, voluntary copyright registries have been established.** This means that while copyright registration may confer certain advantages to the copyright owner, registration is not a condition for the work to have copyright protection. In these countries, copyright protection would still be conferred upon creation of the works even if the copyright owners do not register their copyrights with the copyright registry.

3.6 Currently, copyright owners and users may face the following issues:

a) **Lack of Clarity in Establishing Copyright Ownership.** Copyright owners may find that there is a lack of clarity as to how to establish copyright ownership in their works. Under the current system, the most common ways for creating evidence of copyright ownership include: (i) the copyright owners mailing themselves a copy of their works; (ii) the copyright owners depositing a sealed copy of their works with a law firm or a third party depositary; and (iii) the copyright owners swearing a statutory declaration in the presence of a commissioner of oaths, attaching their works. Besides these methods, there is no central/national body which certifies that copyright ownership resides with the copyright owner.

b) **Lack of Certainty in Resolving Issues of Copyright Ownership.** Currently, copyright ownership can only be conclusively decided through a dispute resolution process. If there is a dispute as to the copyright ownership over a certain work, a final and authoritative decision (i.e. certainty) as to the issue of copyright ownership can only be decided by a dispute resolution body (e.g. the Singapore courts or an arbitral tribunal, etc.). Such dispute resolution processes are often expensive and are measures of last resort. However, prior to engaging in such dispute resolution processes, there is uncertainty as to copyright ownership in the works.

[4] Please refer to the "List of Contracting Parties to the Berne Convention for the Protection of Literary and Artistic Works" (http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/berne.pdf) for the countries which share this international obligation.

c) **Lack of Clarity in Tracing Copyright Ownership.** Copyright users may find it difficult and challenging to locate the copyright owners of works. For example, copyright users may be interested in using pictures found on the Internet for their presentations, but then find it difficult to locate the copyright owners of each of these pictures. In the absence of a central platform to trace the copyright owners, copyright users will have to employ their own methods to trace the rightful copyright owners.

Question 1(a): Do you think having a copyright registry will be useful?

Question 1(b): Have you personally encountered any of these issues/problems, and do you think a copyright registry would solve it?

Question 1(c): What other issues and/or problems in relation to copyright in Singapore might a copyright registry help to resolve? Please give a brief description of the issue and/or problem and how a copyright registry might help to resolve it.

3.7 **We are studying the feasibility of setting up a voluntary system of copyright registration in Singapore.** We have reviewed the copyright registration systems in several countries such as the United States, Canada, India, Malaysia, Japan and Korea, and generally there seems to be two models of copyright registries set up in those countries.

Types of copyright registries

3.8 **A "title" registry is one where only basic information of a work is required to be submitted and is then captured and displayed on a public register.** Such basic information could comprise: (i) the title of the copyrighted work; (ii) details of the copyrighted work (such as the date of creation, a brief description of the scope of the work, etc.); (iii) the name of the copyright owner; and (iv) the contact details of the copyright owner. The copyright registries in Canada and India do not require a deposit of the registered work.

3.9 **A "deposit" registry is similar to a "title" registry in most aspects, except that the copyright owner is required to also deposit a copy of the work with the national office.** A benefit of a "deposit" registry would be that in the case of a dispute brought before a dispute resolution body, the copyright owner can call upon the national office to release the deposit of the copyrighted work as further evidence and proof of his copyright ownership. This increases the strength of the collective evidence available to the copyright owner. However, the fees for a "deposit" registry will naturally be higher than that of a "title" registry. The copyright registries in the United States, China and Japan require a copy of the registered work to be deposited.

3.10 From a preliminary study of the various countries, it is anticipated that the fees associated with a "title" registry could go up to **S$50 per submission**, while the fees associated with a "deposit" registry could range from **S$50 to S$120 per submission**.

Example:
Dylan is taking a part-time course on creative writing. He wrote a short story and wishes to register his copyright in the short story with a copyright registry.

If the registry is a "title" registry, he only needs to submit (i) the title of the story; (ii) a short description of the story; (iii) the date of creation of the story; and (iv) his name and contact details. Dylan does not need to submit an actual copy of the entire short story to the copyright registry.

However, if it is a "deposit" registry, then for the application to be processed and for the work to be registered, Dylan is also required to submit an actual copy of the story to the copyright registry.

Question 1(d): Should a "title" registry or a "deposit" registry be established? If your preference is that of a "deposit" registry, please let us know if there are any features of such a registry that you feel are beneficial and why. For example, the copyright owner may have the option of allowing copying of the deposited work by the public for a fee.

Presumption of validity and ownership of copyright from registration

3.11 **Both models of copyright registries would allow copyright owners more clarity in establishing ownership of their works.** A copyright owner need not rely on his individual efforts and evidence to prove his copyright ownership in a particular work. Instead, he can rely on any certificate(s) issued by the national office as evidence in proving his copyright ownership. The strength of such evidence may be viewed as stronger since it originates from an independent and neutral party. In countries such as the United States, Japan and China, the certificate of registration constitutes *prima facie* evidence of validity and ownership of copyright in the registered work.

3.12 The issue arises as to whether registration of a work should give rise to a legal presumption of the validity and ownership of copyright as stated in the certificate. This means that in a copyright dispute, **if the person claiming copyright ownership of a work is able to produce a certificate from the national copyright registry, then the burden shifts to the other party to prove that the person is actually not the owner.** Currently, if the other party questions the validity or ownership of copyright in good faith, the burden is on the person claiming copyright ownership to prove that he is the owner[5].

[5] Please refer to section 130(1B) of the CA.

3.13 While such a presumption may assist a copyright owner in proving ownership, it may not resolve the issue of lack of certainty in resolving issues of copyright ownership. This is because registration is not a guarantee of ownership and the parties still need to go through a dispute resolution process for a conclusive and authoritative decision on ownership.

Example:
To carry on the example of Dylan, he has successfully registered the copyright in his short story with the copyright registry. He shared the short story during a class and later finds out that one of his classmates, Stephen, published a similar short-story under Stephen's name in a literary magazine. Dylan brings a claim in court against Stephen for copyright infringement and Stephen puts into issue the question of whether Dylan is truly the copyright owner of the short story by making the assertion that the story was written with several other classmates as an assignment.

Under the current CA, Dylan now has to prove that he created the short story in question and that he is the rightful owner of the copyright in the work. If registration of the short story with a copyright registry creates a legal presumption of ownership, then Dylan need only show his copyright registry certificate, and the onus is on Stephen to prove that Dylan is not the owner of copyright in the short story.

Question 1(e): Do you agree that registration of a work with a national copyright registry should give rise to a presumption of the validity and ownership of copyright as stated in the certificate?

Record of dealings in copyright beyond first ownership

3.14 **Both models of copyright registries would also allow for more clarity in tracing copyright ownership for copyright users.** Instead of having to conduct individual research across multiple platforms in order to trace the right copyright owner for a particular work, the copyright users can simply search the publicly accessible copyright register to locate the work and obtain more details about the work. This reduces transaction costs for the copyright user, and may potentially increase the number of transactions (and hence, revenue) associated with a particular piece of work for the copyright owner.

3.15 In order to provide such information easily, the proposed registry should allow any assignments, licences and security interests of the rights to be recorded together with the registered copyright work (known as "recordation").

Example:
Dylan has gone on to have his short story published in an anthology by a local publisher. Being a first time author, the terms of the publishing contract

assigns all copyright in his work to the publisher. The publisher then records an assignment of the rights in the copyright registry.

A well-known filmmaker wants to make a film adaptation of the story. He is unsure whether he should get permission from Dylan or the publisher. He is able to check the copyright registry which shows the assignment and that the copyright owner is the publisher. The filmmaker can proceed to negotiate directly with the publisher.

Question 1(f): Do you have any views/comments on the proposed recordation of rights/dealings in a relation to a registered copyright work?

Proposal 2: Ownership of commissioned works

3.16 **As a general rule, the first owner of copyright in a work is the creator of the work**. Ownership of copyright can then be transferred to another party through a written contract [6], usually together with payment of fees to compensate the original creator of the work.

3.17 **The CA currently provides for three situations[7] where this general rule is not applied** i.e. the creator of the work is not, by default, the first owner of copyright. In some of these cases, these situations might already be overridden by an agreement.

a) "Employment situation" – **if a person creates a literary, artistic, dramatic or musical work in the course of his employment, the employer will automatically have first ownership of the copyright in the work instead of the employee**. This applies to all employees except in the journalist-employee situation described in (b).

b) "Journalist-employee situation" – if a person creates a literary, artistic or dramatic work because he/she is employed by a newspaper, magazine or other periodical ("newspaper etc") company, and the work is created for the purpose of publication in a newspaper etc, the employer will automatically own the copyright in the work for purposes of publication in any newspaper etc. However, the journalist has the copyright to the works for other purposes such as collation into a book. **Thus, the owner of a newspaper, magazine or other periodical has first ownership of certain rights (but not all) in the works that his journalist-employees create**.

c) "Commissioning situation" – if a person is paid under an agreement for the creation of certain specified types of works, namely, photographs, painted or drawn portraits, engravings, sound recordings or cinematograph films, the person who paid for the creation of the work (i.e. commissioned the work) will automatically have first ownership of the copyright instead of the creator of the work. **Thus, the person who paid for the creation of these types of works would be the copyright owner, instead of the actual creator of the work**.

Employees including journalists

3.18 **The "journalist-employee situation" and the "employment situation" take into account the normal industry practice, and generally fit in with**

[6] Section 193(3) of the CA requires assignments of copyright to be in writing and signed by or on behalf of the assignor in order to be legally binding.
[7] Please refer to sections 30(4), 30(5), 30(6), 97(3) and 98(3) of the CA.

people's expectations of which party should own the copyright. Most countries also have a similar "employment situation" in their copyright regimes. Having an employment relationship also means that standard contracts can be used by the employer, and any intention to change this default first-ownership can be discussed during contract negotiations.

Example:
David is a journalist employed at a newspaper company to write a regular column. His employment contract does not have any clauses on copyright ownership. Under the "journalist-employee situation", the newspaper company will own the copyright of David's articles only for publication in any newspaper, magazine or similar periodical, or to copy the articles for the purpose of publication, and does not have to seek his permission for such publication. However, David will still own the copyright to his articles if he wishes to publish them separately, for example, as a collection in a book in the future.

Later on, David changes careers and moves to become an in-house copy-writer for the media relations department of a school. Likewise, his employment contract does not have any clauses on copyright ownership. Unlike when he was working at the newspaper, this time, by default the school owns all the copyright in the writing that he does for them, in all media and formats, and if he wishes to publish the press releases that he wrote for the school in a book on how to write press releases, he will need to seek permission from the school.

In both situations, David could have negotiated for copyright clauses that differ from the situation in the CA, and what was stated in his employment contract will override the CA's position.

Question 2(a): Do you agree that the current "employment situation" should remain unchanged?

Question 2(b): Do you agree that the current "journalist-employee situation" should remain unchanged?

<u>Commissioned Works</u>

3.19 However, the "commissioning situation" can occur even without a written contract, merely via payment for specified services. Where a creator is commissioned to produce a work (such as photos, portraits or engravings), he may assume that he is the owner of the copyright in the work. This is especially so where there is no formal written contract or the contract terms are silent on ownership of copyright. **His fees may not take into account his inability to deal further with the work, or he may inadvertently breach**

copyright by dealing with it (even by the reproduction of the work in his portfolio).

3.20 **We propose to change the "commissioning situation", for photos, portraits and engravings, so that creators of such works have first ownership of the copyright over the work he/she created.** This is intended to help prevent unsuspecting creators from unknowingly giving up their copyright. This is the general position adopted in the United Kingdom, the United States, Canada and Japan.

Example:
Hakim is an amateur photographer who has decided to start his own photography business. His friend has started an interior design business and has asked him to take photos of a few apartments which she had decorated to put on her company's website to showcase her expertise. Hakim agrees, but does not negotiate an official written contract between them. His friend sends him an email stating the date, time and venues for the shoot, a description of the type of photos she wants, and the fee payable.

In this case, by default under the current CA, Hakim's friend will own the copyright over the photos that Hakim took of the apartments, and Hakim is not actually allowed to use these photos in his portfolio, or put them up on his business website without first seeking his friend's permission.

With the proposed changes, Hakim will, by default, be the owner of the copyright in his photos even though his friend paid for them. His friend will only have a right to use the photos for the use which she had informed Hakim of.

Question 2(c): Do you agree that creators of commissioned photos, portraits and engravings should have first ownership of the copyright of the works?

3.21 **In the case of sound recordings and cinematograph films, the first owner of copyright of the work may not necessarily be an individual and can be a company or business.** Under the CA, the first owner of copyright in sound recordings and cinematograph films is defined as[8]:

a) In the case of a sound recording, the party who owned the first record produced embodying the sound recording at the point of producing the record; and

[8] Please refer to sections 16(3) and 16(4) of the CA.

b) In the case of a cinematograph film, the party by whom the arrangements for the doing of the things necessary to produce the first copy of the film were undertaken.

As mentioned in paragraph 3.17, if a person or company or business is paid under an agreement to create a sound recording or cinematograph film, then by default, the commissioner will have first ownership of the copyright instead.

Example:
Ning is a recent film graduate who wrote, directed and produced as her final year project, a short documentary film on the lives of the people who grew up on Pulau Ubin.

Under the CA, Ning is the owner of the copyright in the short film as she undertook the arrangements necessary for the making of the short film (such as hiring of the film crew and rental of the editing suite).

Ning was recently engaged by a production house to direct a television series that the production house was producing. Although Ning was the director of the television series, the production house was the one that made all the arrangements necessary for the making of the television series as it hired the other crew members, actors, editors, secured locations for filming and provided all the necessary facilities and equipment to produce the television series. As such, the copyright in the television series is owned by the production house, and not Ning, the individual.

If a television broadcaster had paid the production house to produce the television series (i.e. commissioned the television series), then under the current CA, the broadcaster would own the copyright in the television series instead of the production house.

3.22 **We are interested to understand whether the "commissioning situation" in relation to sound recordings and cinematograph films, should be similarly removed to protect unsuspecting creators from unknowingly giving up their copyright.** As creators of sound recordings and cinematograph films could be companies or businesses as well, which might be better informed about copyright and commercial practices than individual creators, the impact of the "commissioning situation" for sound recordings and cinematograph films may be less apparent than that for photographs, portraits and engravings.

Question 2(d): Should the makers of commissioned sound recordings and cinematograph films have first ownership of the copyright of the works, or should the current situation be retained?

Proposal 3: Duration of protection for unpublished works

3.23 Copyright protection for creative works generally exists for a certain period of time, after which the works can be used freely by anybody without needing to seek permission from the original creator. Copyright protection starts from the date of creation of the work in a physical form. In the case of works created by individuals, such protection generally lasts till the expiry of a specified period of years calculated from the date of the death of the creator[9]. **For some types of creative works listed below, the expiry of the duration of copyright protection is calculated from the date of publication[10] of the work, and thus, so long as the work remains unpublished, it technically enjoys perpetual protection[11]**:

a) Literary, musical, dramatic works, and engravings, which have not been published before the death of the creator[12];
b) Photographs;
c) Sound recordings; and
d) Cinematograph films.

3.24 **The grant of a perpetual copyright is inconsistent with the wider bargain underlying copyright policy**, as the work will be withheld from the public indefinitely, even long after the creator or his/her estate ceases to have any reasonable or legitimate interest in preventing copying or other uses of the work by the public. Placing unpublished works in the public domain at some point encourages use of copyright materials, aids scholarship and furthers the public's right to know by making unpublished works available. Around the world, many countries such as the United States, United Kingdom, Canada and New Zealand have since made changes to end perpetual copyright in such materials.

3.25 Thus, we propose to limit the copyright protection duration in such unpublished creative works. **For literary, musical, dramatic works, and engravings and photographs, duration of protection of copyright is proposed to be simplified to 70 years after the death of the creator, regardless of when and if the work is published.** This makes the duration

[9] Literary, musical, dramatic works and artistic works (excluding photographs) which have been published before the death of the creator have copyright protection of 70 years after the death of the creator.
[10] The meaning of publication is set out in section 24 of the CA, and may differ from the layman understanding of the term. Essentially, publication takes place only when the work is supplied to the public (whether by sale or otherwise). For cinematograph films, publication only takes place if the film is sold, rented out or offered to be sold or rented.
[11] Please refer to sections 28(3), (6), 92 and 93 of the CA.
[12] There is no similar provision for artistic works other than engravings. This means that artistic works such as sculptures, drawings and paintings only enjoy protection of 70 years after death of the creator, even if the work was not published before death.

of protection of all literary, dramatic, musical and artistic works consistent, and is the approach taken by the United Kingdom.

Example:
During spring cleaning, Jenny discovered a stack of half-written Chinese poems and letters from her great-great-grandfather, who was a renowned poet in his time. The poems and letters were never published.

Under the current CA, the letters and poems are still protected by copyright today, and will continue to have copyright protection as long as they are not published. Once published, they will then have an additional 70 years of protection after the end of the year of publication. All the other poems previously published by Jenny's great-great-grandfather were already free-to-use (e.g. in the public domain), as it was already more than 70 years since he had passed away.

With the proposed changes, such letters and poems will have the same copyright duration as the other poems that were published within Jenny's great-great-grandfather's lifetime, i.e. 70 years after he had passed away.

3.26 In the case of **sound recordings and cinematograph films**, where the creation is often not by a single identifiable human creator, and **where the creator of a literary, musical, dramatic or artistic work is unknown,** the duration cannot be calculated from the death of a creator in both situations. We propose that such works will continue to enjoy **70 years of protection after first publication, if they have been published within 50 years after their creation. If such works are only published after 50 years post-creation (or continue to remain unpublished even now), they will only enjoy copyright protection for up to 70 years after their creation.**

Example:
Jenny is also part of an indie band, and they have a few recordings of their own original songs from sessions at a jamming studio. However, the band has yet to decide on whether or not to go the next step and distribute their recordings, either by self-producing or to approach a recording company.

In the meantime, the sound recordings continue to be protected under copyright, until such time they are published, after which they will then have an additional 70 years of protection after publication. This is the case even if the sound recordings are discovered 60 years later and published then.

With the proposed changes, the sound recordings will be protected for 70 years <u>after creation</u>, unless they are published within 50 years after creation. However, if the sound recordings are published within 50 years after creation, they will have 70 years of protection <u>after publication</u>.

Question 3(a): Do you agree that there should be a limit on how long creative works can be protected under copyright?

Question 3(b): Should all literary, musical, dramatic and artistic works (regardless of whether they had been published within the creator's lifetime) have the same duration of copyright protection i.e. 70 years after death of creator?

Question 3(c): Should the duration of protection for sound recordings, cinematograph films, and works with an unknown creator be as follows:

(i) 70 years after first publication, but only if they were published within 50 years of creation; or

(ii) 70 years after creation, if published after 50 years of creation.

Proposal 4: Right of attribution

3.27 **The term "moral rights" refers to the rights given to individual creators to protect their personal connection to their literary, dramatic, musical or artistic works.** These rights generally include the right to be attributed or credited as the "author" (i.e. the creator) and the protection of the work from derogatory treatment. Moral rights are a separate set of rights from copyright (i.e. the need to give credit is different from the need to seek permission for use) and even if the creator has transferred his/her copyright in a work to a third party, the creator still has the moral rights to the work.

3.28 The scope of moral rights differs from country to country. **In Singapore, individual creators of works currently enjoy the following moral rights**[13]:

a) **Right to prevent false attribution** – Being able to prevent others from attributing authorship of his/her work to someone else;

b) **Right to prevent false representation of non-alteration** - Being able to prevent a false representation that his/her work is original when it has been altered; and

c) **Right to prevent false representation of source of reproduction** - Being able to prevent the false representation that reproductions of an artistic work were made by the creator when the reproduction was done by someone else.

Performers also enjoy rights similar to (a) and (b) for recordings of their performances[14].

3.29 **Proper attribution of authorship to individual creators not only helps preserve our cultural heritage, it also helps creators build up their reputation, thereby incentivising the creation of new works.** The same reasoning applies to the right of performers to be identified in recordings of their performances. This right has also become increasingly important in the digital era where copyrighted works can be so easily misattributed or modified.

New right of attribution

3.30 Under the current CA, a creator or a performer does not have a right to be attributed or credited as the creator of a work or the performer of a recorded performance (as the case may be), only a right to prevent false attribution. We **propose to create a new right of attribution for creators and performers in the CA, which is personal to the creator or performer.** This

[13] Please refer to sections 188, 189 and 190 of the CA.
[14] Please refer to sections 188 and 189 of the CA.

new right would not be able to be assigned to a third party, as the intention is to protect the creator's or performer's (as the case may be) personal connection to their works.

3.31 **This new right of attribution is proposed to expire upon the expiry of copyright protection in the work.** This means that the estate of the creator or performer may exercise this right of attribution after the death of the creator or performer. This is consistent with the durations of the current moral rights which continue only for as long as the work enjoys copyright protection.

Example:
Kavitha is a freelance graphic designer and she was engaged by a company to design a series of e-greeting cards for the company. In her contract of engagement, it was stated that the company would own all copyright in the designs provided by her in exchange for payment of an agreed fee.

One day, Kavitha's friend forwarded to her an e-greeting card which she had received from the company and commented that the design looked like something Kavitha would have produced. Kavitha was shocked to see that the design of the card was exactly one of the designs provided by her to the company but that the card contained a statement crediting the design to the art director of the company.

Under the current CA, even though the company owns the copyright to her designs, Kavitha can still assert her moral right against false attribution, and contact the company to rectify the attribution.

However, if there had instead been no mention of the designer on the card, Kavitha would not have any rights under the CA to compel the company to credit her as the designer. The proposed change allows for Kavitha to insist that the card contains a credit of her role as the designer of the card. Further, Kavitha may not assign (i.e. sell) her right of attribution to the company such that she no longer has such a right.

Question 4(a): Do you agree to the proposed right of attribution and that this new right is only for the duration of copyright protection in the work?

3.32 **The CA provides that there is no breach of moral rights if the false attribution or false representation was carried out with the permission, whether express or implied, of the creator or performer**[15]. It is proposed to extend this defence of consent for any claim of infringement of the new right of attribution.

[15] Please refer to section 191 of the CA.

3.33 Certain countries provide also **other defences to a claim for infringement of the right of attribution**. In the United Kingdom, for example, some of these defences are the reporting of current events, inclusion in an examination question and incidental inclusion of the work in another work. In Australia, a defence to the right of attribution is that the infringement is "reasonable" in all the circumstances[16].

Question 4(b): Do you agree that there should be a defence of consent against a claim of infringement of the new right of attribution?

Question 4(c): Should there be other defences to an infringement of the right of attribution, other than consent?

[16] Australian law specifies certain factors to be taken into account when determining reasonableness, such as the nature of the work, the context in which the work is used, any relevant industry and the difficulty or expenses that would be incurred to identify and attribute the author.

Proposal 5: Relationship between creators and publishers/producers

3.34 **Creators of creative works would either interact directly with the users of their works, such as when the user commissions a work from a creator, or work with a publisher or a producer in order to reach their audiences**. Some examples would be how authors often work with book publishing houses, or how songwriters often work with music publishing houses. Scriptwriters and film directors might end up working together with producers such as broadcasters, television programming production houses and movie studios.

3.35 **For certain types of works, the role of the publisher/producer is almost as important as the original creator.** The publisher/producer is dependent on the creator to create the work, whilst the creator is dependent on the publisher/producer to help package, distribute and advertise the work. In some cases, publishers/producers are also integral in putting the creators in touch with other creators (such as lyric-writers or book cover artists) in order to finish creating the work.

3.36 With new technology, more and more creators are reaching out directly to their audiences without working together with publishers or producers, such as through self-publication on their own websites or through online platforms. **Nevertheless, the relationship between creators and publishers/producers is still an important one today, with technology also allowing more amateur creators to consider turning professional**.

3.37 Fundamentally, the relationship between creators and publishers/producers is one between an individual and a corporation. A problem sometimes faced in such relationships is the difference in awareness of rights and bargaining power. **In the case of creators and publishers/producers, creators can be much less aware of copyright laws and the rights they have over their creative works, than the corporations they deal with.** This is often the case between inexperienced creators working with established publishers/producers. A possible end-result could be that contracts and agreements between creators and publishers/producers might not have been agreed upon with full understanding on both sides, leading to disputes in the future.

3.38 We are aware of the problem, and over the years have stepped up on our public education efforts, ranging from taking phone enquiries to providing free legal clinics, and issuing copyright notices. **Nevertheless, the problem of a lack of understanding of copyright laws and the contracts that result from the information gap is one that we feel may benefit from more targeted efforts.**

3.39 A possible solution can be found in other jurisdictions, such as in Australia and the United States, where either the government or non-profit organisations have recognised the same issue and have provided easily digestible information tailored towards creators. Some of these informational websites also provide template model contracts, explanations of common terms used in copyright-related contracts, and even in one case, a showcase of actual contract terms used by publishers/producers and whether they were phrased fairly or too restrictively from the viewpoint of a creator. We **propose that a similar website, tailored to the local context, would also be useful to resolve the issue in Singapore.**

Examples of similar websites online:
Keep Your Copyrights by Columbia Law School:
http://web.law.columbia.edu/keep-your-copyrights
Section on contracts on the Australian Society of Authors website:
https://www.asauthors.org/contracts-0

Question 5(a): As a creator or a publisher/producer operating in Singapore, what are some of the problems you have faced in dealing with the other party relating to copyright?

Question 5(b): As a creator or a publisher/producer operating in Singapore, do you think it would be useful to have an informative website that would provide information which supports creators in managing their works? What content on the website would be useful for your purposes?

Proposal 6: Exceptions that cannot be restricted by contracts

3.40 The CA sets out exceptions for uses of works that would otherwise infringe copyright. **However, copyright owners can prevent a user from benefiting from a copyright exception via contracts, except if the specific exception in the CA prevents such restrictions**[17]**.**

3.41 A common example is the use of End User Licence Agreements ("**EULAs**"), or website terms and conditions. Agreement to the terms and conditions of a EULA or a website is required before users can use a software product or a social media service, and **it is common for these terms to provide that the user waives any copyright exceptions available to them**.

3.42 We recognise that organisations and individuals should generally be allowed to fine-tune the application of the copyright regime to their specific situations through the freedom of contract. **However, certain exceptions were created in order to apply in all situations given their resultant benefits to society**, for example, where copies of books are allowed to be made to be converted to formats accessible by people with print disabilities. The application of contractual waivers frustrates the policy behind such exceptions.

> *Example:*
> Shouwen is currently pursuing his undergraduate studies. He has an online subscription to a newspaper which allows him to access all its articles, but as part of the subscription sign-up process he had clicked "Agree" to a long list of terms and conditions, including one which said that he agreed to waive any copyright exceptions available to him.
>
> In order to study for his upcoming exams, he intends to collate articles which reported on his field of study into a word document, an action which involves copying of such articles. Under the CA, he is allowed to do so as there is an exception for fair dealing for research and study, but his contract with the online newspaper service would restrict his ability to use that exception.

3.43 **Thus, we propose that the CA should be amended to specify that the application of certain exceptions cannot be restricted by contracts.** The exceptions in the CA can be categorised broadly based on the objective they try to achieve, and a subset of the exceptions directly facilitates either the creation of new works by the public, or provides greater access to knowledge. This subset of exceptions supports one of the primary objectives of a copyright regime, and therefore should apply in all situations. A number of jurisdictions, such as the United Kingdom, Australia, New Zealand and Ireland,

[17] Sections 39, 39A and 39B of the CA are exceptions which specifically prevent restriction of the use of the exception via contracts.

have also made clear that some of their exceptions cannot be restricted by contracts.

3.44 **The initial list of exceptions that is proposed to be prevented from restriction via contracts generally cover exceptions from the following categories:**

a) Fair dealing and "fair use";
b) Education;
c) Libraries and archives;
d) People with print disabilities;
e) Certain uses of software;
f) Parallel importation; and
g) Interface with registered designs.

3.45 Certain new exceptions proposed in this consultation paper, such as those for text and data mining (see Proposal 9), museums and galleries (see Proposal 12), and non-patent literature (see Proposal 14) have the same kind of objectives as the subset of exceptions in paragraph 3.44. **We propose to also specify that these new exceptions, if implemented, cannot be restricted by contracts as well.** A full list of the exceptions that are proposed to be prevented from restriction via contracts can be found in **Annex A**.

3.46 **A possible result of preventing full contractual freedom is that copyright owners may "price-in" these additional rights of usage by raising prices.** For example, if the exception for text and data mining is made mandatory, databases may raise subscription prices on the basis that users can carry out text and data mining without the need for consent and additional payment. This will affect users of the database who do not carry out such activities. Nevertheless, the copyright monopoly does allow copyright owners to adjust prices as they deem fit.

Question 6(a): Do you agree that certain exceptions in the CA should not be restricted by contractual terms?

Question 6(b): What specific exceptions within the CA (including existing exceptions, new ones proposed in this public consultation document, and any other new exceptions you wish to propose) should not be restricted by contractual terms?

Proposal 7: Factors used in determining "fair use"

3.47 Singapore currently has an open-ended "fair use" exception[18], which permits uses of copyrighted works without the need to ask permission from the copyright owner, as long as the courts would deem the specific use as being "fair". The fair use exception is not limited to specific circumstances. **In order to guide the courts, the CA has a list of five non-exhaustive factors by which the courts should take into account when determining whether a particular use is "fair" or not.**

3.48 The five factors are:

a) **The purpose and character of the use**, including whether the use is commercial in nature or for non-profit educational purposes;
b) **The nature of the creative work**;
c) **The amount of the creative work that has been copied**, or whether the part that is copied is substantial to the whole of the creative work;
d) **The effect of the use on the potential market** for, or value of, the creative work; and
e) The possibility of obtaining the creative work **within a reasonable time at an ordinary commercial price**.

The courts may take into account other factors that are not listed, and **the focus is on the inquiry of the fairness of the use. Fulfilling a specific factor or a number of factors is not determinative of whether fair use applies.** For example, if the use involved copying the whole of the work, or was commercial in nature, it does not necessarily mean that it would definitely not be considered "fair".

3.49 As the "fair use" exception was adopted from the US, four of the above factors (factors (a) to (d)) are identical to those used in the US copyright regime**. The last factor (e) was adopted in 2004, a time when copyright works were still largely distributed in a physical medium.** This meant that it might have been difficult to obtain a legal copy of the work if it was not being officially distributed within Singapore, and thus a copy made without permission might have been considered "fair" due to unavailability.

3.50 **Whilst this was the case more than a decade ago, the current technology landscape as well as globalisation means that true unavailability of copyrighted works is less common.** In addition, the last factor seems to have less relevance in light of certain new platforms and uses for content creation and distribution, such as the use of music in the background of home videos put up online.

[18] Please refer to sections 35(1) and 109(1) of the CA.

3.51 **Given the above, we propose to remove the fifth factor (e) from the defence of "fair use".** As the list of factors in the CA is non-exhaustive, the courts can still consider the situation in the last factor on a case-by-case basis, but it will no longer be specifically identified in the CA.

Question 7(a): Do you agree to the removal of the fifth factor, which relates to obtaining a copy of the work within a reasonable time at an ordinary commercial price, from the exception of "fair use"?

Question 7(b): Are there any other changes to the "fair use" defence that can better fulfil the purposes of a balanced copyright regime?

Proposal 8: Orphan works

3.52 **A copyrighted "orphan work", is a creative work protected by copyright for which the copyright owner is unknown, thus "orphaned".** Orphan works are still protected by copyright, and thus people or organisations wishing to use the creative work need to seek permission from the owner, but are prevented from doing so because they cannot find out who the owner is. Classic examples of orphan works include old photographs, poetry or letters with no identified author, or works for which ownership details have been lost over time.

3.53 **There is currently no exception under the CA which allows for the use of orphan works even though the user may have already searched extensively but inconclusively for the owner of the work.** Prospective users potentially may incur high time and effort costs to search for the copyright owner of the work, without getting confirmation on whether or not they can use the work. The defence of "fair use" may not always apply in every situation involving an orphan work.

3.54 **This means that risk-averse users usually would choose not to use the work at all, leading to less use and access to creative works, whilst risk-ready users would use the work without permission, and be exposed to potential infringement.**

Approach to address orphan works

3.55 Internationally, orphan works has been an issue that many jurisdictions recognise has to be resolved. For example, in the United States, there is a proposal to **limit the remedies** available to copyright owners. This would allow potential users, after first trying to find the owner of the copyright and failing, to be shielded from having to pay exorbitantly high fees to the copyright owner if he/she should turn up eventually and bring them to court. **The resultant fees that the owner can obtain from the court case are limited to a reasonable licence fee (which would have been charged if the user managed to find the owner in the first place)**.

3.56 In the United Kingdom, a different approach was adopted. **The UK has an orphan works register, where potential users can approach the UK government, after first trying to find the owner of the copyright and failing, with a description of the creative work they wished to use and the type of use.** The UK government would then examine the situation and charge the user a reasonable licence fee, determined by the UK government according to market rates. By paying the licence fee, the user would not be considered to have infringed copyright, and the UK government would hold the licence fee in escrow until the owner of the copyright appears to claim the fee. The creative work, type of use and licence fees would all be recorded on

a public orphan works register, which owners of the copyright work can check in order to claim their licence fees.

3.57 Generally, for orphan works, there is a recognition by jurisdictions that the owners of the creative works should be allowed to seek appropriate licence fees if they discover, after the fact, that their works had been used, but that the use of the works should not be prevented or impeded because the user tried but could not find or contact the owner. **We propose that one of the following three options could be put in place in Singapore to facilitate the use of orphan works:**

a) **Limitation of remedies** – Similar to the US model, potential users, after failing to locate or reach the copyright owner, can use the works. The remedies/fees to be paid to the owner in a subsequent court case or case brought to a tribunal determining the user has infringed copyright will be limited to a reasonable licence fee, which the court or tribunal will determine. In addition, any use of orphan works would need to register the use on a Singapore orphan works registry, administered by the government, to facilitate owners of copyright to know whether their works have been used.

b) **Government-determined licence fee to be paid to government body** – Similar to the UK model, potential users, after failing to locate or reach the copyright owner, can apply to the Singapore government for their proposed use to be included on the orphan works registry. The government will determine the appropriate licence fee which will need to be paid by the user to the government (held on behalf of the copyright owners), before the use of the orphan work is allowed. Copyright owners can then check the orphan works registry and approach to the government to obtain the licence fees.

c) **Government-determined licence fee to be paid to owner of copyright if and when he/she appears** – This is a modification of the UK model, where instead of paying the determined licence fee to government, the users will pay the licence fees directly to the copyright owner if he/she approaches them. The benefit of this approach over the UK model is that payment is only made when the copyright owner eventually turns up.

Example:
Janice has been asked by her company to help put together a commemorative book that celebrates the company's 40th anniversary. As part of the research for the book, she finds old photos showing the company's buildings and founders from 40 years ago, but is unable to find out whether the copyright to those photos belong to the company or to the original photographer, who is also unknown. She reaches out to several

photographers which the company had hired in the past, and also uses online tools which search using the original image, but is still unable to determine the photographer of the photos.

Under the first option (a), Janice's company registers the details of the works, and the intended use (e.g. thumbnail of the photos, use in a company publication) with the orphan works registry, and then uses the photos in the book. If and when the copyright owner appears, he can only demand (either through a lawyer's letter or through a court or tribunal hearing) a reasonable licence fee for the use of his works.

Under the second option (b), Janice's company registers the same details with the orphan works registry, but has to wait for the registry to determine the appropriate fee, and has to pay the registry the fee, before using the photos. If and when the copyright owner appears, he should approach the registry to claim the fees paid for the use of his works. Janice's company would not be liable for copyright infringement or need to deal with the copyright owner.

Under the third option (c), Janice's company registers the same details and waits for the registry to determine the appropriate fee, but does not pay the fee to the registry. Instead, the company can use the photos, and if and when the copyright owner appears and approaches the company, the company will directly pay the fee to him.

Question 8(a): Which of the three options do you view as most desirable and why? Please help to state whether you would potentially be a copyright owner or a copyright user in your response. Will the proposed options change how you currently deal with the issue of orphan works?

Threshold of due diligence search required

3.58 In order for a creative work to be considered an orphan work, the potential user must have tried to locate or reach the copyright owner. This search is commonly known as a due diligence search. **We propose that, in order for a potential user to benefit from the eventual solution adopted to solve the orphan works issue, the user must have first performed a minimum level of due diligence search**. For example, the user may be required to show evidence of their searches together with their application to the orphan works registry.

3.59 Some possible activities that could count towards performing a due diligence search could be:

a) **Internet searches** for copyright owners;
b) Search through **local and foreign orphan works registries or copyright registries**; or

c) **Enquiries made at appropriate organisations**, such as libraries, archives, known organisations operating in the copyright industry in the same sector.

Question 8(b): What should the minimum level of due diligence searches be? Are there any activities that you think should be mandatory and what can be optional?

Extension to unreachable owners

3.60 **Besides searching for the owner, there are situations where the owner may be known, but the potential user is unable to receive a response (either favourable or unfavourable) from the owner for a long time.** We propose that such situations should also be able to benefit from the three options proposed in paragraph 3.57.

Example:
Following the example of Janice, she has found a photograph of the family of one of the founders of the company and it has been clearly labelled as taken by the only child of the founder, a daughter. Janice's company wishes to use this photograph to depict the founder's strong family ties and they try to contact the daughter who is now residing in Canada. They contact her by letter at her last known residential address and even try calling her home several times a day but nobody answers the phone. They are unsure who else to contact to reach the daughter as both the founder and his wife have passed on. It has been a month and the company still has not received a response or been able to contact the founder's daughter.

If any of the three proposed options are applied in such a situation of an unreachable copyright owner, the company has the choice of whether to use the photograph without worry of being sued for copyright infringement by the founder's daughter.

Question 8(c): Should works with unreachable owners also benefit from any of the proposed three options? How long should the appropriate duration be, in order to consider the owner to be unreachable?

Proposal 9: Text and data mining

3.61 **Technological advances have led to the invention and use of new (and still-evolving) research tools and methods collectively referred to as "text and data mining".** Such techniques involve the automated analysis of a large volume of information and data (e.g. text, photos, videos, sound recordings) in order to draw out insights that were not possible or not feasible to obtain previously through manual effort.

3.62 In order to prepare for analysis, the researcher often has to copy the information, in order to collate them in one place or to format them in the same way. Subsequently, the actual process of analysis may involve the making of further copies, such as those in a computer's storage. Some of the information and data used could be protected by copyright, such as academic papers, Internet articles or posts. **Thus, if the researcher did not seek permission for every piece of copyright-protected information that he/she used, the researcher might end up infringing copyright through the act of text and data mining**.

3.63 **Although text and data mining in Singapore has yet to develop to an advanced stage as compared to other countries, the concept is integral to Singapore's Smart Nation initiative and allowing for such activities to operate freely would indeed help to create and disseminate knowledge**, one of the fundamental goals of the copyright system. In addition, a quirk of technology means that if the analysis had been done manually, it would not have infringed copyright (as the researcher can just read each legitimately obtained piece of information without copying), but by using machines to do the same activity, suddenly copyright is infringed.

3.64 **We propose to create a new exception in the CA, which allows the copying of copyrighted works for the purposes of data analysis.** The user of the work must have had legitimate access to the work in the first place (e.g. a subscription to an academic journal, or collating online articles which are not locked behind a pay-wall), and the exception would not differentiate between commercial or non-commercial activities, which means the final analysis can be commercialised. However, the exception is not intended to cover situations where commercial benefit came from the actual copies of the works instead of the analysis. An example is where someone copies the works to collate into a large database for sale as a service without doing any analysis on it.

Example: Muthu works at a media monitoring company, which has taken on a project by a fast food chain to help determine customer sentiment towards their latest menu item. Muthu starts by collating any social media and food blog posts which mentioned the menu item's name, as well as comments left on review

websites and replies on the fast food chain's websites and social media outlets. As part of the collation, he ends up making a copy of all of the posts, comments and reviews. He then uses his company's proprietary tool to analyse the data and determine whether general customer sentiment was good or bad towards the new menu item. This sentiment analysis was then passed on to the fast food chain.

Under the current CA, any of the people who had made the posts, replies or comments could potentially claim that Muthu did not ask their permission to make copies of their creative works. With the proposed exception, the copying of such creative works can be done without permission as long as the purpose is for data analysis. However, if Muthu's company simply forwarded the copies of all of the posts, comments and reviews without analysing them, to the fast food chain, the exception would not apply.

Question 9: Should there be a new exception for copying of works for the purposes of data analysis?

Proposal 10: Educational uses

3.65 Educational institutions perform an important role, and how education is conducted in Singapore is constantly evolving in order to ensure the best learning environment for children. **The use of materials protected by copyright is integral and impossible to avoid in education, and the way that schools, teachers and students make use of copyrighted material changes with time**.

3.66 **Today, the role of our non-profit educational institutions, such as primary, secondary and tertiary schools, is recognised and catered for with exceptions in the CA**. In particular, the CA allows for the following activities without the need to seek permission from the copyright owner[19]:

a) Any activity done for the purpose of examination[20];
b) The copying (of up to 10% of the work) for research and study, provided the copying is fair[21];
c) The copying (of up to 5% of the work) initiated from or on the premises of a non-profit educational institution[22]; and
d) The copying (of more than 5%) on behalf of, or by the non-profit educational institution, provided that the educational institution records details of the copying and pays a pre-agreed licence fee[23].

3.67 **However, these exceptions were formulated in a time when educational use of copyright material was envisioned to involve standardised syllabuses, physical textbooks, hand-written worksheets and homework, and face-to-face instruction from teachers to students.** This does not reflect the current situation in schools, where much learning takes place in an online environment and education does not merely flow from the educator but can be from the students themselves.

3.68 A common situation in schools today is the use of student learning portals, where teachers and students alike may disseminate materials such as papers, websites, photographs etc. for learning purposes, and may sometimes also be used for distance learning. **This is fundamentally different from the situations envisioned in the existing copyright exceptions, and as a result, there is uncertainty as to whether such use is permitted under these exceptions.** Whilst the defence of "fair use" may arguably apply, the manner in which it will be applied by the courts is uncertain. Based on

[19] The list does not reflect the full list of possible exceptions that might be applicable for educational purposes, but captures the main ones that might be applicable to classroom learning.
[20] Please refer to section 52A and 115B of the CA.
[21] Please refer to section 35(1A) of the CA.
[22] Please refer to section 51 of the CA.
[23] Please refer to section 52 of the CA.

feedback, schools are generally risk-adverse and will not use such materials, resulting in students being deprived of the educational benefit of those materials. Some schools may be unaware of the copyright implications and may find themselves the subject of a claim of copyright infringement.

New exception for giving or receiving instruction

3.69 **To alleviate the situation, we propose to create a new copyright purpose-based exception for non-profit educational institutions, which allows for the use of copyrighted material without the need to seek permission, if the purpose of which is for giving or receiving instruction, regardless of the media or platform of instruction.** This is aligned with similar exceptions available in the United Kingdom and New Zealand. Such instruction need not be limited to being performed by teachers only, and peer-to-peer sharing between students can also be allowed if they were in the role of educating each other, or indeed, educating their teacher. However, this exception is not intended to allow for the copying of whole books. Schools and teachers should still require their students to purchase their textbooks and copies of books used for classes.

Example:
Asraf teaches English literature at a secondary school. His students all purchase a physical copy of George Orwell's "1984", for his class, but to make the subject more interactive, he also wants to illustrate how the ideas in the book continue to be relevant today by placing on the student learning portal newspaper articles which show examples of "Big Brother" state monitoring happening around the world. These articles can then be downloaded by students to be read at home. Asraf also wants his students to do their group projects on the same topic, and each group to come up with examples of how George Orwell's ideas had inspired a modern novel and to present to the class, as well as put up their materials on the student learning portal for other classes to be able to learn from them.

Under the current CA, Asraf might have been able to make copies of the newspaper articles under the exception in Paragraph 3.65(d) but it is unclear whether the students' copying would be covered under the exception. Also, current exceptions might not cover the use of any works by the students for their group projects as well as the use of the student learning portal in general. The proposed exception will make it clear that such activities are allowed as they are part and parcel of instruction.

Question 10(a): Should there be a new exception for non-profit educational institutions for giving or receiving instruction?

Question 10(b): Are there any other situations that might be useful to provide an exception in the CA for educational purposes, but would not be covered under this

new exception?

Alignment of copying thresholds

3.70 Separately, we recognise that there is currently a grey area when more than 5% but less than 10% of a work has been copied, given the intersection between the exceptions in Paragraphs 3.66b), 3.66c) and 3.66d). To avoid confusion, we propose to:

a) **Retain the 10% threshold for research and study**;
b) Align the threshold for copying **by or on behalf of non-profit educational institutions** that requires recording and a fee **to be anything above 10% of a work**; and
c) **Remove the current exception for copying on the premises of a non-profit educational institution** as it would overlap with the exception for research and study.

Question 10(c): Do you agree that the threshold for copying by or on behalf of a non-profit educational institution should be aligned with the threshold for the purposes of research and study (i.e. changed to 10%)?

Question 10(d): Do you agree that exception for insubstantial copying on the premises of a non-profit educational institution should be removed?

Proposal 11: Libraries and archives

3.71 **Libraries and archives preserve and disseminate knowledge and information for the public benefit**. They enable Singaporeans to access an immense range of material, whether print or digital, and are vital in helping to maintain an informed and well-educated populace.

3.72 **Today, the important role played by libraries and archives of facilitating the preservation and dissemination of materials in their collection is recognised and catered for with exceptions in the CA**[24]. In particular, the CA allows libraries to preserve and disseminate published and unpublished materials from their collections in the following ways:

a) **Preservation** – libraries and archives may make a copy of materials in their collection in three situations: to preserve the original against loss or deterioration, to replace a damaged or lost copy, and for research;

b) **Dissemination of published works** – libraries and archives may provide copies of materials to any member of the public upon request, and may even copy an entire copyrighted work if that work cannot be obtained in a reasonable time and at an ordinary commercial price; and

c) **Dissemination of unpublished works** – libraries and archives can copy and share sufficiently old unpublished works that are part of their publicly accessible collection to members of the public for research, study, or publication.

Exhibitions by libraries and archives

3.73 Besides the traditional activities of preservation and providing copies upon request for research and study, **libraries and archives have started to provide access to material in their collections through exhibitions open to the public. Such exhibitions often exhibit rare books and artefacts with a heritage nature, such as letters or journals, which otherwise would not be known by the general public.** Similar to museums and galleries, libraries and archives may sometimes need to make copies of these rare materials if they are too fragile for exhibiting, and photographs of certain works may be used for publicity for the exhibition, such as in brochures and posters.

3.74 We recognise that exhibitions help libraries and archives in their role to preserve and disseminate knowledge and information, and in line with

[24] Please refer to sections 44 to 50 of the CA.

proposing to provide new exceptions for museums and galleries[25], **we propose to create a new exception for libraries and archives to be able to make a copy of the materials in their collection for the purpose of exhibition to the general public.** Copies can also be made in relation to publicity for the exhibition, for example, in posters or brochures. However, if the material is something that is commercially available (for example, books that are currently in print), then only a reasonable portion can be reproduced for this purpose (for example, 10%).

Question 11(a): Do you agree with the proposed new exception for libraries and archives to be able to make copies for the purpose of exhibiting to the public?

Simplifying existing exceptions

3.75 **Although the current exceptions for libraries and archives fulfil their intended purposes, the language used and the requirements for use have been seen as complex and cumbersome**. For example, a person requesting for a copy of materials held by a library or archive must first provide a declaration that the copy is for research and study, and in return the library or archive may have to investigate as to whether the copy can or cannot be obtained within a reasonable time at an ordinary commercial price before providing the copy to the person[26].

3.76 Consultations with librarians and archivists revealed that they find the exceptions hard to understand and generally might not make use of them. Members of the public may also be unaware of how they can approach libraries and archives for copies of materials, given the technical nature of the language of the copyright exceptions. **This denies the public from wider access to copyrighted works.**

3.77 **We propose to redraft the existing exceptions for libraries and archives so as to make them easier to understand and to apply. Where the current exceptions do not accurately reflect the digital needs of libraries and archives, the language will also be changed.** This means that while the substance of the existing exceptions will remain largely unchanged, rewriting the exceptions and making tweaks to both reduce legal uncertainty and remove unnecessary obstacles will help our librarians and archivists more efficiently carry out their mission of preserving and disseminating knowledge.

Question 11(b): Are there any restrictions in the existing exceptions for libraries and archives which you believe would benefit from additional clarity, or which are an unnecessary impediment?

[25] Please refer to paragraphs 3.78 to 3.82 for more details of how museums and galleries deal with copyright and Proposal 12 for museums and galleries.
[26] Please refer to sections 45(1)(b) and 45(5)(b) of the CA.

Proposal 12: Museums and galleries

3.78 Similar to libraries and archives, **museums and galleries have a socially beneficial function of curating, preserving, and providing the public with access to artefacts of historical, social, and cultural significance**. In addition to providing the public with access to culture, these institutions also connect Singaporeans with their heritage.

3.79 **However, in contrast to libraries and archives, museums and galleries have not received the benefit of any exceptions under the CA.** At the same time, museums and galleries have increasingly encountered copyright-related obstacles in carrying out their core functions of disseminating and providing access to knowledge and culture.

3.80 Museums and galleries typically acquire the physical item which they display, either directly or through auctions or donations by third parties. For example, Singapore's National Collection (handled by the National Heritage Board) comprises of over 250,000 items, broadly divided into two categories: artworks and artefacts (e.g. day-to-day items, which may include copyrighted works such as posters, publications, newspapers, photographs etc). The display and exhibition of the physical items that have been acquired would not constitute an activity in which copyright would be concerned with.

3.81 **However, museums and galleries do not just display their artworks and artefacts.** Items may be photographed, digitised, or reproduced in other ways for record-keeping purposes, as well as for purposes of preservation. For certain items, a reproduction might be used for display during exhibitions as the item may be too fragile for display. Photographs of items may be used to publicise upcoming events or exhibitions, including the creation of catalogues, which serves as a form of record-keeping as well as being educational in nature. Such activities would effectively require permission from the copyright owner.

3.82 **We recognise the important role played by museums and galleries in Singapore, and propose to create the following new exceptions that will apply to museums and galleries** which are non-profit in nature, or when they display items from the National Collection:

a) **Preservation** – museums and galleries may make a copy of materials in their collection in two situations: to preserve the original against loss or deterioration, and for record-keeping.

b) **Exhibition and related publicity** – museums and galleries may make a copy of materials in their collection for the purpose of exhibition. Copies can also be made in relation to publicity for the exhibition, including inclusion in catalogues specific to the exhibition.

c) **Research and study** - museums and galleries may make a copy of materials in their collection on request by people requiring access for research and study purposes, as the material in question could be the only article of that item in the world.

However, museums and galleries will have to continue to seek permission from copyright owners for all other uses, including for example if the museum or gallery wishes to use a photograph of an item in their collection for merchandising or other commercial activities.

Question 12: Do you agree with the proposed exceptions for museums and galleries which are non-profit in nature or when they display items from the National Collection?

Proposal 13: Print-disabled users

3.83 **Singapore acceded to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled ("Marrakesh Treaty") in March 2015**, and a series of legislative amendments were introduced in 2015 to implement the Marrakesh Treaty.

3.84 **The current CA benefits the visually impaired and print disabled community, by allowing these users, and organisations that assist such people (called "authorised entities"), greater flexibility to create and distribute copies of copyrighted works in formats accessible to the print-disabled users.** The CA allows (among other things):

a) Institutions assisting people with reading disabilities to create copies of works in additional formats (such as electronic audiobooks and Digital Accessible Information System ("**DAISY**") formats) that are accessible by people with reading disabilities;

b) Such accessible format copies to be distributed; and

c) The import of accessible format copies from, and export of accessible format copies to, similar institutions in other countries that are party to the Marrakesh Treaty.

3.85 Currently, the CA uses the phrase "*persons with reading disabilities*" and we have received feedback that this unfairly suggests a cognitive or learning disability. **The phrase "*persons with print disability*" is proposed instead on the basis that it more accurately captures the blind/visually-impaired community's difficulty with reading printed works.** This would necessitate amendments to both the CA and the corresponding subsidiary legislation.

Question 13(a): Do you agree with the change of terminology to "*persons with print disability*"? If not, please provide your reasons. Please also provide any alternative phrases you may have in mind and provide your reasons for supporting the alternative.

3.86 **The Marrakesh Treaty does not require countries to provide that copyright owners can seek equitable remuneration (i.e. a licence fee) for conversion of their works into accessible formats.** Nevertheless, the CA currently provides that they can do so[27]. The amount may be agreed between the copyright owner and the authorised entities, or where agreement cannot be reached, be determined by the Copyright Tribunal.

[27] Please refer to section 54(15) of the CA.

3.87 We have received feedback that the process of converting a book into an accessible format is typically expensive and time-consuming (a textbook could take an entire year to transcribe), and the conversion of works is being carried out only on a negligible scale (less than 10 copies per year for each typical work). **Since conversion of the works is on a negligible scale and is done for a social cause, we propose that there should not be any demand of compensation or remuneration from the authorised entities.**

Question 13(b): Do you agree with the removal of the right of owners to seek equitable remuneration for conversion of their works into accessible formats? If not, please provide reasons.

3.88 Authorised entities are required to keep records of the works that they convert into accessible formats [28] . This facilitates accountability and allows identification of the works converted. Given that conversion is done on a negligible scale, we have received feedback that the current record keeping requirements can be a heavy burden to authorised entities already facing resource constraints and which are typically non-profit institutions. **Thus, we propose to lower the level of detail in the prescribed forms for record-keeping** (contained in the Eleventh and Twelfth Schedules of the Copyright Regulations).

Question 13(c): Do you support the following amendments:

(i) To delete the International Standard Book Number ("**ISBN**"), page numbers, and total number of bytes in an electronic medium from the form recording conversion of printed works (Eleventh Schedule of the Copyright Regulations); and

(ii) To delete the ISBN and the name of the holder of the broadcasting licence from the form recording conversion of sound recordings or other works (Twelfth Schedule of the Copyright Regulations).

If not, please provide your reasons.

[28] Please refer to sections 54(4)(a), 54(6)(b) and 54(10)(c) of the CA.

Proposal 14: Non-patent literature

3.89 **A patent is a right granted to the owner of an invention that prevents others from making, using, importing or selling the invention without his permission**. The owner of the invention must apply to IPOS for a patent and in order for a patent to be granted, the invention must fulfil three criteria of: being new; having an inventive step; and being capable of industrial application. Singapore is also a party to the Patent Cooperation Treaty ("**PCT**"), which is an international treaty that allows the owner to seek patent protection for his invention in several countries simultaneously by filing an international application with a single office such as IPOS.

3.90 **In assessing patent applications based on the three criteria stated above, patent examiners will check what has already been made available to the public by written or oral description, by use or any other way. This includes non-patent literature ("NPL") which covers any type of document or literature that is not part of a patent or patent application**. Common forms of NPL are journal articles (e.g. relating to science, technology or engineering), technical papers, conference proceedings papers, academic theses or dissertations, articles from magazines and newspapers, chapters from books and product manuals, specification sheets and industry publications, whether in hard copy or electronic form. NPL may even include video clips and photographs.

3.91 Patent examiners will issue written opinions on a patent application which may contain citations of NPL used to assess the invention. Applicants may request for a copy of the NPL cited. It is a requirement under the PCT Regulations for IPOS to provide a copy to the applicant where requested. **As NPL is often material which would be protected by copyright, copies of NPL would usually require seeking permission from the owners of the copyright in the NPL.**

3.92 **The provision of NPL is generally regarded by intellectual property offices ("IP offices") as important to strengthen patent quality** for the following reasons:

(a) By providing applicants with the NPL cited, it aids them in assessing their invention and responding to the written opinions from examiners. For example, a patent applicant may restrict the scope of his claims as a result of the NPL cited against the application.

(b) The sharing of NPL between IP offices in relation to patent applications commonly being assessed would facilitate patent examination searches, examination work-sharing and expedite the patent examination process.

3.93 **In the case of non-PCT applications, Singapore's patent laws and regulations do not require IPOS to furnish the applicant with a copy of the cited NPL.** If the applicant requests for a copy, the current practice is to provide the applicant with the source of the NPL such as a link to the online publication or website. This is unlike the practices of other major IP offices such as the US Patent and Trademark Office, European Patent Office, the Japan Patent Office, the UK Intellectual Property Office and IP Australia, where they provide NPL for little or no fees.

3.94 **To support the dissemination of knowledge, thereby strengthening patent quality, we propose** to create a new exception to copyright infringement when the following activities are carried out:

a) The **making and giving of copies of NPL by and between IPOS, its patent examiners and other third-party experts engaged by IPOS for patent office functions** such as but not limited to search and examination and re-examination; and

b) The **giving of copies of NPL by IPOS to applicants and other IP offices** upon request, for PCT, or for search and examination and other patent office functions.

Question 14(a): Do you have any views/comments on IPOS' current practice as described above? Do you think IPOS should furnish the applicant with a copy of the cited NPL instead, and should a fee be payable by the applicant for a copy of the NPL?

Question 14(b): Do you agree with the proposed exception for use of NPL?

Proposal 15: Materials on official government registers

3.95 **Many public agencies maintain official or statutory registers containing data or documents which are open for the public to inspect, including making copies if required.** Such documents are usually factual in nature and there is a benefit to individual citizens or private organisations to be able to access the material. Some examples are lists of government-approved service providers, or certain legal documents.

3.96 The material in the register may originate from within the government or may be collections of documents which are submitted to the government by private parties. **Where the documents are deposited by private parties, the private party has the copyright to the documents, if the document is a type of creative work that has copyright protection.** Some examples of material which are also creative works are written reports (i.e. literary work) or drawings or diagrams (i.e. artistic work).

3.97 **It is currently unclear, depending on the public agency and the specific official or statutory register, whether or not prior permission had been sought from private parties for the copying by members of the public for the purpose of inspection.** In jurisdictions such as the United Kingdom, Hong Kong and New Zealand, specific exceptions in their copyright legislations make clear that copyright would not prevent them making such material available for public inspection and copying.

3.98 In order to minimise impediments to the practical functioning and use of official registers, we propose to create a new exception that **clarifies that when material is collected by public agencies for the purposes of making available for public inspection, the copyright of such material is neither infringed by the public agencies, in making it available, nor by the members of the public, in making copies of the material with the authority of the public agency or government.**

Question 15: Do you have agree with this proposed exception for materials on official government registers?

Proposal 16: Allowed circumventions of technological protection measures

3.99 **Technological protection measures ("TPMs") are akin to digital locks intended to restrict the access or use of copyrighted works.** Examples range from region coding on DVDs and Blu-ray discs which restrict the access to the content on the disc if the user is in a different geographical region, to coding on older versions of digital music tracks which prevent them from being copied more than five times.

3.100 Generally, the CA prohibits users from circumventing TPMs (i.e. breaking the lock), or from selling products and services to help others do so. **Like copyright protection, there is also a list of exceptions in the CA for certain situations where circumventions of TPMs are allowed**. The general principle for allowing exceptions for circumventions of TPMs is that the TPMs must be considered to adversely impair legitimate non-infringing uses (which includes preventing interoperability, repairs, and innovation, and shutting out competition). Such uses are clearly beneficial to the public and are not piracy-related.

3.101 Besides the set of exceptions in the CA, there is also an option to provide for temporary exceptions for circumvention of TPMs through the Copyright (Excluded Works) Order ("**EWO**"), which is refreshed regularly, in order to take into account the fast pace of technological change. Each exception on the EWO has effect for four years before it needs to be reviewed. The last round of review took place in 2012 and the current exceptions on the EWO will need to be reviewed again by December 2016. A full list of the current exceptions can be found in Part 1 of **Annex B**.

Question 16(a): Do you agree with the existing list of exceptions that allow for circumvention of TPMs listed in Part 1 of Annex B? Should they continue to be exceptions in the next EWO or are any of them irrelevant?

3.102 As part of the overall copyright review, we have also proposed a set of new exceptions that allow for circumvention of TPMs, to be added to the current list. The full list of new proposed exceptions can be found in Part 2 of **Annex B**. In determining new exceptions, we took into account feedback gathered during stakeholder engagement for the copyright review, reference from foreign jurisdictions, and what relevant problems users had faced locally and abroad in relation to TPMs.

Question 16(b): Do you have any views/comments on the proposed exceptions that allow for circumvention of TPMs listed in Part 2 of Annex B?

Question 16(c): Are there any other copyrighted works or specific uses of copyrighted works, which you think should be exempted from the prohibition against circumvention of TPMs, which are not already listed in Annex B?

PART IV: SUBMISSION OF COMMENTS

4.1 MinLaw and IPOS are seeking views and comments on the above issues as well as any relevant issues that may not have been highlighted.

4.2 All submissions should be clearly and concisely written, and should provide a reasoned explanation for any proposed revisions. Where feasible, parties should identify the specific section on which they are commenting and explain the basis for their proposals.

4.3 Your views are important and will help us in designing our future copyright regime in a way that takes into account the interests of all stakeholders. Comments should be submitted in electronic or hard copy, with the subject or header "Public Consultation on Proposed Changes to Singapore's Copyright Regime", to:

MinLaw	**IPOS**
Intellectual Property Policy Division, Ministry of Law 100 High Street, #08-02, The Treasury Singapore 179434 **Email:** MLAW_Consultation@mlaw.gov.sg	Intellectual Property Office of Singapore 51 Bras Basah Road, #01-01, Manulife Centre Singapore 189554 **Email:** ipos_consultation@ipos.gov.sg

4.4 When providing your responses, please also include your name, contact number and e-mail address, so that you may be contacted for follow-up questions.

4.5 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 not 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.

4.6 Please submit your inputs by **24 October 2016**. Thank you.

ANNEX A: Proposed List of Exceptions That Would Not Be Restricted by Contracts

Section in Act	Title of Exception
Broad fair dealing ("fair use")	
35	Fair dealing in relation to works
109	Fair dealing in relation to other subject-matter
Specific fair dealings	
35(3)	Fair dealing (study/research exception)
36	Fair dealing for purpose of criticism or review
37	Fair dealing for purpose of reporting current events
110	Fair dealing for purpose of criticism or review
111	Fair dealing for purpose of reporting news
Exceptions for Educational Institutions	
50A	Copying by non-reprographic means for purpose of a course of education
51	Multiple copying or communication of insubstantial portions of works
52	Multiple copying or communication under statutory license by educational institutions
52A	Things done for purposes of examination
53	Application of division to illustrations accompanying articles and other works
115	Use of broadcasts for educational purposes
115A	Copying for course of instruction in making of film or sound-track
115B	Things done for purposes of examination
Exceptions for Libraries and Archives	
44	Interpretation of library exceptions division
45	Copying by libraries and archives for users
46	Copying by libraries and archives for other libraries or archives
47	Copying or communication of unpublished works in libraries or archives
48	Copying of works for preservation and other purposes
49	Publication of unpublished works kept in libraries
50	Application of Division to illustrations accompanying articles and other works
112	Copying of unpublished sound recordings and cinematograph films in libraries or archives
113	Copying of sound recordings and cinematograph films for preservation and other purposes
Exceptions for Museums and Galleries	
Proposed	Copying by museums and galleries for exhibition and display
	Copying by museums and galleries for non-profit promotional materials
	Copying by museums and galleries for preservation and record-keeping
	Copying on behalf of museums and galleries for permitted purposes

Section in Act	Title of Exception
	Access on dedicated terminals within premises of museum or gallery
Disabled Users	
54	Multiple copying under statutory licence by institutions assisting handicapped readers
54A	Multiple copying under statutory licence by institutions assisting intellectually handicapped readers
115C	Copying, etc., under statutory licence by institutions for reading disabilities
Old newsreels	
108	Provisions relating to cinematograph films
Software-specific exceptions	
39	Back-up copy of computer program, etc.
39A	Decompilation
39B	Observing, studying and testing of computer programs
39C	Other acts permitted to lawful users
Proposed	Copying for purpose of data analysis
Facilitates parallel imports	
40A	Accessories to imported articles
116A	Accessories to imported articles
Interface with designs	
70	Special exception for artistic works which have been industrially applied
74	Special exception in respect of industrial design
Prior act not infringing	
66	Publication of artistic works
116	Reproductions of editions of work
Temporary copies	
38A	Temporary reproduction made in course of communication
107E	Temporary copy made in course of communication
Non-Patent Literature	
Proposed	Copying by and between IPOS, its examiners and other third-party experts engaged by IPOS for patent office functions
	Copying by IPOS to furnish to applicants and other IP Offices upon request, for PCT, or for search and examination and other patent office functions

ANNEX B: Existing and Proposed Exceptions That Allow For Circumvention of Technological Protection Measures ("TPMs")

Part 1: Existing Exceptions That Allow For Circumvention of TPMs

Paragraph in Copyright (Excluded Works) Order 2012	Summary of exception
4(a)	**Software with damaged access dongles** Permits circumvention of TPMs that rely on obsolete and defective dongles.
4(b)	**Preservation of abandoned software** This exception allows libraries and archives to preserve old software in an operational state.
4(c)	**Use of assistive technologies for e-books** Permits disabling of TPMs, applied to digital copies of literary works that interfere with read-aloud functions or assistive technologies.
4(d)	**Educational uses of audio-visual works** Use of short clips of motion pictures for criticism or comment by tertiary educational institutions.
4(e)	**Derivative uses of audio-visual works** Use of short clips of motion pictures for criticism, comment, or news reporting, or the making of a documentary.
4(f)	**Circumvention in limited circumstances to investigate and fix security flaws** Permits circumvention of TPMs which protect sound recordings or motion pictures on a lawfully purchased CD, where the TPM creates or exploits security flaws to operate, and the circumvention is purely for good-faith testing, investigation and correction of such flaws.
4(g)	**Replacement or repair of essential systems** Permits TPMs to be circumvented to enable replacement or repair of software used in essential or emergency systems.

Part 2: Proposed New and Amendments to Exceptions That Would Allow For Circumvention of TPMs

Paragraph in Copyright (Excluded Works) Order 2012	Summary of proposal
Proposed	**Preservation by libraries and archives** Proposed change: Create new exception(s) in the EWO to cover circumvention by libraries and archives of all materials that are presently in their collection, or which are to be included in their collection, for the purpose of preservation.
Amendment to 4(b)	**Preservation of abandoned software** Proposed change: Extend exception to cover circumvention by users of software (including games) that has been legally purchased but which is no longer usable solely because it relies on a TPM which the publisher no longer supports.
Amendment to 4(d)	**Educational uses of audio-visual works** Proposed change: Extend exception by including pre-tertiary education, as well as massive open online courses ("**MOOCs**").
Amendment to 4(f)	**Circumvention in limited circumstances to investigate and fix security flaws** Proposed change: Extend exception to cover security research more generally (should not cover hacking or piracy).