

**Public Consultation on Amendments to the Copyright Act**

**MinLaw's Response to Feedback**

<b>S/N</b>	<b>Topic</b>	<b>Feedback</b>	<b>Response</b>
<b>General Feedback</b>			
1.	Restricting access to online content	<p>The proposed measure will significantly restrict the public's access to digital content, as there is a lack of cheap, legitimate digital content services in Singapore.</p> <p>In addition, the proposed measure could curb access to educational material or other freeware online. This could affect teachers' lesson preparations and students' learning.</p>	<p>There is already a range of legitimate digital content services offered in Singapore. These include iTunes, Spotify, Deezer, KK Box and SingTel's AMPed for music; and Fox Movie Play, STAR Chinese Movies Play, Disney Watch, Starhub's TVAnywhere and MediaCorp's Toggle for movies/TV. More details of such services (both free and subscription-based) may be found at <a href="http://finddigitaltv.com">finddigitaltv.com</a>. Nonetheless, the Government will continue to encourage industry to make available more legitimate digital content to Singapore quickly and at reasonable cost.</p> <p>The proposed measure is targeted only at flagrantly infringing sites, and will not affect sites that primarily carry legitimate content. Educational material or other freeware can still be shared through many online platforms.</p>
2.	Scope of the proposed measure	<p>The scope of the proposed measure seems overly broad, potentially covering "file sharing" sites like Dropbox. This could impact companies that use such sites for legitimate business functions.</p>	<p>The proposed measure is only targeted at flagrantly infringing sites. A non-exhaustive list of factors has been prescribed in legislation to aid the Courts in determining whether there is flagrant infringement. These factors include :</p> <ul style="list-style-type: none"><li>(i) whether the primary purpose of the site is to commit or facilitate copyright infringement; and</li><li>(ii) whether the site makes available or</li></ul>

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			<p>contains the means to infringe copyright. Legitimate sites or online services that do not meet these factors should not be affected.</p>
3.	Effectiveness of the proposed measure in addressing online piracy	<p>Site blocking measures can be easily circumvented, and hence getting ISPs to block pirate sites would not be effective. The Government should tackle the underlying cause for online piracy, namely the lack of legitimate digital content online.</p> <p>The content industry and rights holders should review their business practices to better meet the needs and expectations of digital consumers, so that consumers do not need to turn to alternative online sources.</p> <p>Singapore should also adopt more deterrent enforcement measures like the graduated response system.</p>	<p>Studies have shown that site blocking can deter online piracy to some degree. For example, the International Federation of the Phonographic Industry (IFPI)'s Digital Music Report 2013 reported that within a year of five European countries imposing blocks on The Pirate Bay, usage levels of The Pirate Bay site in these countries fell by about 70 percent.</p> <p>No single regulatory measure, no matter how well it is designed, can deny access to all illegal content. Public education efforts are important and must continue. Industry must also offer legitimate digital services that are reasonably priced so that consumers do not need to seek illegal alternatives.</p> <p>MinLaw had considered the alternative anti-piracy measures adopted by other countries, including the graduated response system. This system may not be suitable in Singapore's context as it may be too intrusive. Under the graduated response system, individual internet users who access infringing content repeatedly will receive warnings, after which they may be liable for penalties, e.g. a suspension of their internet service or a fine, if they do not desist from the infringing activity. Rights holders would need to monitor internet traffic for infringing activity; and internet users would also need to ensure that their accounts are not used for infringing activities.</p>

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4.	Regulation of the Internet / censorship	<p>The proposed measure is a form of Government regulation and censorship of the internet. It would restrict Singaporeans from surfing the internet without any restraint.</p> <p>Individuals and companies may use the proposed measure to censor sites that they disagree with.</p>	<p>The proposed measure is meant to provide rights owners with a more effective means to protect their copyright online. Only rights owners, their exclusive licensees, or their authorised representatives (see S/N 11), will be allowed to apply to the High Court for an order to disable access to flagrantly infringing sites (or “pirate” sites). The Government will not play any role in identifying or determining pirate sites.</p> <p>To ensure that only flagrantly infringing sites are blocked, a non-exhaustive list of factors has been prescribed to guide the Courts in making such a determination.</p>
5.	Means of disabling access to pirate sites	<p>The legislation should require ISPs to take “effective” steps, as opposed to merely “reasonable” steps, to disable access to pirate sites. Specifically, the ISPs should adopt a combination of (a) Domain Name System name blocking, (b) Internet Protocol address blocking, and (c) optional Deep Packet Inspection-based URL blocking on the network management system to implement the blocking order.</p>	<p>We should not overly burden the ISPs in implementing the Court order, especially given the rapid pace of technological evolution on the internet. The Court, with the ISPs’ input, will have to assess the technical feasibility for the ISP to comply with the order, as well as possible adverse effects on ISP’s operations or business, amongst other factors. Therefore, requiring the ISPs to take “reasonable” steps is more appropriate.</p>
6.	Damages and costs for improper applications	<p>Proposed amendments should include a provision for damages in the event an injunction is varied or revoked. The amendments should also allow costs to be awarded to the ISP or online location owner if the Court finds that the application is frivolous. A deposit/bond is also recommended as a safeguard against unjustified applications. This will help discourage rights holders from making unmeritorious applications, and ensure that the</p>	<p>The discretion to award damages and costs, as well as order a deposit/bond under appropriate circumstances is already provided for in the Rules of Court.</p>

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		ISP and online location owner are compensated for any losses incurred by such applications.	
7.	Providing for performances' protection	It is unclear whether there will be an equivalent site-blocking measure to protect performers' rights in their performances. In the UK, for example, site-blocking injunctions against service providers are available to protect both copyright works and performers' property rights.	<p>We agree that unauthorised use of performances may also be found in sites which flagrantly infringe copyright.</p> <p>We also note that under the existing notice and takedown regime, performers are protected against unauthorised use of their performances.</p> <p>The proposed judicial site blocking measure will therefore also extend to protect performers' rights in their performances.</p>
<b>Specific Feedback on Proposed Legislative Amendments</b>			
8.	Definition of "online location" (Section 193A)	The definition of "online location" should be clarified, as it is not clear whether "online location" encompasses individual works located at a specific URL, subdomains and/or entire websites.	The proposed measure targets entire websites that flagrantly infringe copyright. The term "online location" is appropriate as it allows flexibility for the scope of the order that the Court may grant, and ensures the provision continues to remain applicable with technology advances.
9.	Definition of "network service provider" (Section 193DDA(1))	<p>The proposed definition of "network service provider" ("NSP") may be unduly broad, as it includes entities covered under limb (b) of the definition of "NSP" in section 193A(1) such as search engines, social media platforms and cloud service providers.</p> <p>Instead, the definition of NSPs should be confined to providers of data transmission, routing or connection services, i.e. entities covered under limb (a) of the</p>	We agree with the feedback. The narrowed definition of "NSP", i.e. entities covered under limb (a) of the definition of NSP in section 193A(1), has been reflected in the revised legislative amendments. If necessary, rights owners can continue to use existing mechanisms in the Copyright Act to enforce their copyrights against other types of NSPs.

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		definition of “NSP” in section 193A(1), which includes ISPs such as StarHub.	
10.	Application of an order to all ISPs as a class (Section 193DDA(1))	<p>A Court order to disable access to a pirate site should be applicable to all ISPs as a class, to avoid the rights holders from having to name all the ISPs individually when applying for an order.</p> <p>This will ensure the effectiveness of the block, and guard against (i) consumers using the services of an ISP not covered by an order to circumvent the block and (ii) another ISP from subsequently entering the market to offer access to the blocked site. It will also ensure a “level playing field” for all ISPs.</p>	<p>The decision as to which ISP(s) are made party to an application, and subsequently required to comply with an order to disable access to a pirate site, should be a commercial decision made by the rights owners.</p> <p>The Government should not prescribe the scope of the order at the outset, as this may go against due process. Individual ISPs that may be affected by an order should be made a party to an application from the outset, to ensure that it has the opportunity to present its case before the Court (e.g. to make representations before the Court in technical issues in effecting the block) before the order is issued.</p>
11.	Standing for the application of an order to disable access to flagrantly infringing online location (Section 193DDA(1))	<p>Beyond the owner of the copyright and an exclusive licensee, the right to apply for an order should also be expanded to their authorised representatives.</p> <p>This is because rights owners are often represented by collective management organizations, trade associations or anti-piracy associations for enforcement actions.</p>	<p>Authorised representatives of the rights owner or exclusive licensee will be able to apply for an order, but in the name of the rights owner or exclusive licensee. This is in line with the existing position under our Copyright regime.</p>
12.	Requirement for network service provider to have “knowledge that its services have been used/are being used to access flagrantly infringing online location”	<p>It is unclear what the requirement for ISPs to have “knowledge that its services have been used or are being used to access flagrantly infringing online location” entails, particularly since the ISPs are only conduits to these online locations.</p> <p>Also, the proposed s193DDB(3) provides that the ISP is</p>	<p>We agree with feedback that the requirement of “knowledge” may not be required. We will remove this requirement under proposed s193DDA(1) and s193DDB(3).</p> <p>However, the requirement for rights owners to serve a written notice on the ISP will be retained to ensure due</p>

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	(Section 193DDB(1)(b) / Section 193DDB(3))	<p>deemed to have the requisite knowledge if it has received a s193DDB(1)(a) written notice. Therefore, the knowledge element is redundant as the written notice effectively imputes the requisite knowledge.</p> <p>In addition, it is unclear how the knowledge requirement under the proposed s193DDA(1) and s193DDB(3) interfaces with the existing safe harbour provisions under s193C and D of the Copyright Act. For example, it is unclear whether the knowledge that is imputed to an ISP upon receipt of a s193DDB notice would qualify as “actual knowledge” of infringing material on an ISP’s network, for the purposes of s193D. The implication may be that if the ISP fails to act upon receipt of a s193DDB notice, it would not be able to rely on the existing “safe harbour” provision under s193D.</p>	<p>process.</p> <p>We have clarified in the legislative amendments that a written notice under the proposed measure will not be tantamount to “actual knowledge” under the existing notice and take down regime.</p>
13.	<p>Determination of whether an online location has been or is being used to flagrantly infringe the copyright in any material (Section 193DDA(2))</p>	<p>The requirement of “flagrant” infringement sets too high a threshold, and may present evidential difficulties which may put a large number of pirate websites beyond the reach of the proposed measure.</p> <p>It is also unnecessary for the Court to consider “all” the factors currently prescribed for determining “flagrant” infringement. This is because not all the factors may be applicable in every case. For instance, the fact that an online location has not been blocked elsewhere should not constrain the Court’s decision to block a site in Singapore.</p>	<p>The proposed avenue is meant to target only flagrantly infringing sites. MinLaw is of the view that the proposed guidelines for determining a flagrantly infringing site are appropriate.</p> <p>While the Court must consider all the factors, it does not necessarily mean that all the factors must be satisfied for an order to be granted. The Court will have the flexibility to weigh the factors differently depending on the case at hand, and other relevant matters and evidence can also be taken into account.</p>
14.	The number of visitors to an online location	The number of visitors to the online location should be removed as a factor because it would be technically	The number of visitors is a useful factor for the Court to consider as part of a list of others, because the volume

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	(Section 193DDA(2)(f))	<p>difficult for rights owners to accurately determine the number of visitors to an online location.</p> <p>Further, this factor on its own is not directly indicative of whether a website is carrying any infringing material; a website could receive a large number of visitors due to other reasons.</p>	<p>of traffic the site attracts is a useful proxy indicator of how much infringing material is available on the website; a site offering limited material would unlikely see many visitors. The volume of traffic the site receives is also an indicator of the level of economic damage the site may have caused the rights owner.</p> <p>The number of visitors was considered by the UK Court in the case of <i>Dramatico Entertainment</i>.</p> <p>However, we have amended the proposed legislative provision to be less prescriptive, so that, if required, rights holders can provide other forms of proxy indicators of the volume of traffic to the site other than the actual number of visitors.</p>
15.	Position of the online location owner (Section 193DDB(1))	<p>There was feedback that MinLaw should prescribe for the site owner to be made a party to the action. This will ensure that the site owner will have the opportunity to present his case before the Court as part of due process.</p> <p>On the other hand, there was opposing feedback to even do away with the requirement to serve a written notice to the site owner before applying for an order, since the site owners can be difficult to contact and there are already avenues for redress.</p>	<p>For due process, we will maintain the need for rights holders to send a written notice to the site owners before applying for an order. We have also prescribed for rights holders to notify the site owner of an application for an order. However, the Court will have the discretion to waive these requirements if the rights owners are unable to fulfil this requirement despite reasonable efforts to do so.</p> <p>A site owner can still apply to the Court to defend himself during the actual proceedings of the rights owner's application for an order, and/or to appeal after the order has been made, even if he were not originally a party to the order.</p> <p>Given that the owners of flagrantly infringing sites can</p>

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			<p>be hard to contact, mandating that the site owner be made a party upfront would put undue burden on rights holders and unnecessarily prolong the Court process. This is because doing so would require a more stringent threshold of notification. For example, the rights owner may have to apply to the Court to serve the application by alternative means such as advertising in foreign newspapers, if the site owner cannot be personally served.</p>