

May 17, 2024

Submitted via e-mail to MLAW_consultation@mlaw.gov.sg

Intellectual Property Policy Division, Ministry of Law
100 High Street, #08-02,
The Treasury Singapore 179434

Re: 2024 Public Consultation on Prescribed Exceptions in Part 6, Division 1 of the Copyright Regulations 2021

The International Intellectual Property Alliance (IIPA), formed in 1984, is a private sector coalition of trade associations representing U.S. copyright-based industries working to improve copyright protection and enforcement abroad and to open foreign markets closed by piracy and other market access barriers. Members of the IIPA include Association of American Publishers (www.publishers.org), Entertainment Software Association (www.theesa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association (www.motionpictures.org), and Recording Industry Association of America (www.riaa.com).¹ IIPA has closely followed copyright law developments in Singapore and was an active observer in the negotiations that resulted in the U.S.-Singapore Free Trade Agreement (FTA).

IIPA appreciates the opportunity to provide comments to the Ministry of Law (MinLaw) and the Intellectual Property Office of Singapore (IPOS) regarding the Public Consultation on Prescribed Exceptions in Part 6, Division 1 of the Copyright Regulations 2021. IIPA's comments pertain to the following new proposed exception to the prohibition on circumventing access control measures: "Permitted use of copyright works and protected performances for computational data analysis" identified in Annex B of the Public Consultation document dated 22 April 2024. Annex B also references Part 5, Division 8 of Singapore's Copyright Act, which provides an exception to copyright protection that permits copying or communicating for "computational data analysis" (computational data analysis exception).

IIPA cautions MinLaw and IPOS to ensure that Singapore's laws and remedies that protect against circumvention of technological protection measures (TPMs) remain consistent with Singapore's obligations under the FTA. In particular, it is critical that a violation of the protections against circumvention of TPMs remains "independent of any infringement that might occur under [Singapore's] law on copyright and related rights," as required by FTA Article 16.4.7(d). Furthermore, Singapore must confine exceptions to protections against acts of circumvention of access controls to those listed under FTA Article 16.4.7(f). Under part (iii) of that Article, a temporary exception to protections is permitted only if an actual or likely adverse impact on noninfringing uses of a particular class of works is "credibly demonstrated in a legislative or administrative proceeding."

There is no evidence on the record of any adverse impact of protections against circumvention of access controls on noninfringing uses regarding permitted use of copyright works and protected performances for computational data analysis. Without evidence that credibly demonstrates an actual or likely adverse impact on noninfringing uses, MinLaw and IPOS cannot grant the proposed exception to enable circumvention for permitted uses of copyrighted works for computational data analysis.

¹ Collectively, IIPA's five member associations represent over 3,200 U.S. companies producing and distributing copyrightable content. The materials produced and/or distributed by IIPA-member companies include: video games for consoles, handheld devices, personal computers, and online; motion pictures and television programming distributed in all formats (including cinema, television, online, mobile, DVD, etc.); music recorded in all formats (from digital files to CDs and vinyl) for streaming and other online services, as well as broadcasting, public performance, and synchronization in audiovisual materials; and fiction and non-fiction books, educational, instructional and assessment materials, and professional and scholarly journals, and databases.

Furthermore, any consideration of an adverse impact on noninfringing uses due to protections against circumvention of access controls must be based on an appropriately narrow scope of the computational data analysis exception. While Singapore's exception, detailed in Part 5, Division 8 of the Copyright Act, requires the user to have lawful access to the work in question, it does not expressly distinguish between use for commercial or non-commercial purposes, it does not expressly permit a contractual override, and it is not clear what activities or which beneficiaries are encompassed by "computational data analysis" limitation. It is imperative that the application of the computational data analysis exception is done in a manner consistent with Singapore's international obligations,² and that the Government of Singapore issue guidance to confirm that the exception does not allow the use of copyright-protected content without authorization to develop and train artificial intelligence (AI) models, including by commercial operators for commercial purposes, that could generate outputs that unreasonably harm right holders' interests. An unauthorized use that falls outside of this scope would infringe exclusive rights and, therefore, cannot be considered a noninfringing use. As a further consequence, an exception that permits circumvention of TPMs for any use that meets the conditions detailed in Part 5, Division 8 of Singapore's Copyright Act would deprive rights holders of the only protection available to them to mitigate unauthorized uses that could result from that exception. Accordingly, MinLaw and IPOS should disregard any evidence of an actual or likely adverse impact of protections against circumvention of access controls on such uses. Any such evidence would not be relevant to credibly demonstrating an actual or likely adverse impact on *noninfringing* uses as required by the FTA.

Finally, IIPA notes that Article 16.4.7(f) of the FTA requires that any exception to protections cannot "impair the adequacy of legal protection or the effectiveness of legal remedies . . . against the circumvention of effective technological measures." If the proposed temporary exception ultimately enables circumvention for uses that are outside the appropriately narrow scope of the computational data analysis exception, then there is a risk that such an exception to protections against anti-circumvention would impair the legal protection or effectiveness of legal remedies against circumvention of TPMs in Singapore. This would constitute a violation of the FTA.

Thank you for your consideration of IIPA's comments. Please contact me if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Rosenbaum", written in a cursive style.

Kevin Rosenbaum, Executive Director
International Intellectual Property Alliance

² See, e.g., Article 16.4.10 of the U.S.-Singapore Free Trade Agreement (FTA) and Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (both provisions provide the three-step test governing limitations and exceptions to exclusive rights).