

SUMMARY OF KEY CHANGES TO PRESCRIBED EXCEPTIONS IN PART 6, DIVISION 1 OF THE COPYRIGHT REGULATIONS 2021

Prepared by the Ministry of Law (“MinLaw”) and the Intellectual Property Office of Singapore (“IPOS”)
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PART I: INTRODUCTION

1. The Copyright Act 2021 (“CA”) prohibits users from circumventing technological measures that control access to copyright works or protected performances (“**access control measures**”) or from dealing in products or services that allow others to do so.¹ However, there are situations where access control measures may adversely impair legitimate, non-infringing acts. In such situations, there are legislated exceptions allowing users to circumvent access control measures for non-infringing uses. These include the prescribed exceptions mentioned in section 435 of the CA (“**prescribed exceptions**”). These prescribed exceptions are regularly reviewed to ensure that they remain relevant in light of technological and market developments. They are prescribed for a limited duration of no more than 4 years.
2. The existing prescribed exceptions in Part 6, Division 1 of the Copyright Regulations 2021 will expire on 31 Dec 2024. MinLaw and IPOS held a public consultation from 22 April 2024 to 2 June 2024 to seek feedback on the prescribed exceptions that will take effect from 1 January 2025 onwards. The public consultation paper is attached as Annex A.
3. The key legislative amendments arising from the feedback we received are explained in this document.

PART II: KEY LEGISLATIVE CHANGES ARISING FROM FEEDBACK RECEIVED

4. In the public consultation, we sought feedback on two aspects:
 - i. whether the existing prescribed exceptions in Part 6, Division 1 of the Copyright Regulations 2021 should be retained and if so, whether with any modifications; and
 - ii. whether new prescribed exceptions are needed to address situations where the prohibition on circumventing ACMs has impaired or adversely affected, or is likely to impair or adversely affect, any dealings that would be non-infringing by virtue of any permitted use in the CA.
5. MinLaw and IPOS received a total of 19 responses in this round of review, with representation from rights owners and users, including their professional and industry associations, as well as Government agencies. In considering whether to retain or create new prescribed exceptions, we reviewed and assessed all the feedback provided, even if it has not been specifically mentioned in this summary.

Changes to Existing Prescribed Exceptions

6. Among the existing exceptions in Part 6, Division 1 of the Copyright Regulations 2021, only Regulation 95 will be renewed (with modifications). The rest of the existing

¹ See sections 425 – 427 of the CA.

exceptions will not be renewed, as indicated below; no evidence was provided to support renewing those exceptions.

7. In addition, several rights owners commented that the existing exceptions were overly broad and suggested how they may be further limited in scope (if they were to be renewed). These suggestions will not be implemented at this stage insofar as they relate to exceptions that will not be renewed in the first place. We do not foreclose the possibility of reintroducing these exceptions in subsequent reviews of the prescribed exceptions, should we receive credible evidence supporting the need for them. In those circumstances, we will revisit the feedback from rights owners in deciding on the appropriate scope of a particular exception.
8. The key changes to the existing exceptions are as follows:

| Regulation ² | Change |
|-------------------------|---|
| 93 | To be deleted. |
| 94 | To be deleted. |
| 95 | To retain the exception but confine its scope to circumvention for the purpose of a dealing in circumstances that constitute a permitted use under any provision in Division 4 of Part 5 of the Copyright Act 2021. This takes into account feedback from rights owners in the media/publishing industry that the exception may be liable to abuse based on its current scope, while acknowledging users' feedback that any prohibition against circumventing ACMs should be consistent with Singapore's obligations under the WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled (" Marrakesh Treaty ") and not prevent beneficiaries from availing themselves of the permitted uses for persons with print disabilities. ³ |
| 96 | To be deleted. |
| 97 | To be deleted. |
| 98 | To be deleted. |
| 99 | To be deleted. |
| 100 | To be deleted. |

Changes to Introduce New Prescribed Exceptions

9. MinLaw and IPOS received feedback on whether the prohibition on circumventing ACMs has impaired or adversely affected, or is likely to impair or adversely affect, any dealings that would be non-infringing by virtue of the following permitted uses that were introduced in the Copyright Act 2021:⁴

| Ref to CA | Description of Permitted Use |
|--------------------|---|
| Part 5, Division 8 | Permitted use of copyright works and protected performances for computational data analysis (the " CDA Permitted Use "). |

² References are to the Copyright Regulations 2021.

³ Under Article 7 of the Marrakesh Treaty, contracting parties are obliged to take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in the Marrakesh Treaty.

⁴ These permitted uses were listed in Annex B of the public consultation paper.

| | |
|-------------|--|
| Section 232 | Permitted use of copyright material in public collection for preservation and replacement. |
| Section 233 | Permitted use of material in public collection for administrative purposes. |

10. In respect of the CDA Permitted Use, MinLaw and IPOS will not create a new prescribed exception to allow circumvention of ACMs for CDA purposes:

- i. The CDA Permitted Use remains instrumental to supporting data-driven innovation in Singapore. It facilitates non-consumptive uses of copyright works and protected performances for CDA purposes, such as text and data mining and machine learning for artificial intelligence (“AI”) model development. This permitted use is subject to safeguards that protect the interests and concerns of creators and rights owners.
- ii. While we were urged by technology companies to create a prescribed exception to advance AI technologies, we affirm the sentiments in the responses from rights owners that ACMs are necessary to support the lawful access safeguard in the CDA Permitted Use. Rights owners provided feedback that because content accessed by circumventing an ACM would not be lawfully accessed, creating a prescribed exception to allow circumvention would essentially weaken the lawful access safeguard. Without the prescribed exception, rights owners can continue to rely on ACMs to control access to content used for CDA purposes and to be remunerated for such uses through charging for lawful access to their content.
- iii. We acknowledge that ACMs are a useful tool for rights owners in structuring certain digital business models and licensing arrangements. A leading publisher headquartered in Singapore gave evidence that while the CDA Permitted Use has been in force, they have successfully cultivated business partnerships with technology companies by licensing copyright works behind secure access measures for purposes such as AI model training. Both rights owners and technology companies also shared that licensing arrangements could still be useful where they add value beyond what text and data mining exceptions (such as the CDA Permitted Use) allow. For instance, such licensing arrangements have been said to provide structured or curated training data, easier access through APIs, or automated citation referencing with improved speed and accuracy. We support and encourage the continued development of these business models and licensing arrangements.
- iv. Finally, ACMs strengthen the effectiveness of reasonable measures by rights owners to maintain the security and stability of their computer system or network. We have given rights owners the assurance that they may take such measures since 2019, when MinLaw and IPOS’s policy on the CDA Permitted Use was first announced.⁵ The importance of ACMs in supporting this safeguard has also been recognised in academic commentary⁶ and was underscored in the consultation feedback, which highlighted that ACMs help rights owners limit the impact of webscraping activities on their servers and avoid degradation of service levels, while still allowing copying within the confines of the CDA Permitted Use.

⁵ See the Singapore Copyright Review Report (17 Jan 2019) at para 2.8.5: “*The exception will also not prevent rights-holders from taking reasonable measures to maintain the security and stability of their computer system or network.*”

⁶ See for example, Ng-Loy Wee Loon, “Copyright Exceptions for Text and Data Mining: A Case of Specificity (Certainty) and Generality (Flexibility)” in *Kreation Innovation Märkte – Creation Innovation Markets: Festschrift Reto M. Hilty* (F. Thouvenin et al.) (Springer Nature 2024) at p 271 and FN 47 and 48.

11. In respect of the permitted uses in sections 232 and 233 of the CA, we will introduce one prescribed exception corresponding to each permitted use. This takes into account the evidence given on behalf of cultural and heritage institutions in Singapore, including conservators, of the impact of ACMs on their work in carrying out vital preservation and other administrative functions in relation to public collection materials.
12. There were no suggestions for new prescribed exceptions to address any other dealings that would be non-infringing by virtue of other permitted uses in the CA.
13. Accordingly, 2 new prescribed exceptions will be introduced:

| Ref to CA | New Exception |
|-----------|--|
| 232 | <p>New prescribed exception to allow circumvention of an access control measure that has been applied to a protected copy of any material listed in section 232(1) of the Act. Circumvention will be allowed for the purpose of making a copy of the relevant material in circumstances that constitute a permitted use under that section.</p> <p>The exception will not apply where the circumstances relate to making a copy under section 232(2)(c)(iv) of the Act. This carve out reflects rights owners' feedback that the scope of the exception should be clearly defined and not exceed what is necessary.</p> |
| 233 | <p>New prescribed exception to allow circumvention of an access control measure that has been applied to a protected copy of any material listed in section 233(1) of the Act. Circumvention will be allowed for the purpose of making a copy of or communicating the relevant material in circumstances that constitute a permitted use under that section.</p> <p>The exception will not apply where the circumstances relate to making a copy or communication for the purpose in section 233(2)(c)(vi) of the Act. This carve out reflects rights owners' feedback that the scope of the exception should be clearly defined and not exceed what is necessary.</p> |

PART III: IMPLEMENTATION & EFFECTIVE DATE

14. The above exceptions that will be renewed (with modifications) or introduced pursuant to this round of review will be prescribed in a new subsidiary legislation, the Copyright (Access Control Measures – Prescribed Exceptions) Regulations 2024. This subsidiary legislation will be in force for the period between 1 January 2025 and 31 December 2028 (both dates inclusive).
15. The existing prescribed exceptions in Part 6, Division 1 of the Copyright Regulations 2021 will become spent upon the expiry of the entire Division on 31 December 2024 and will be deleted in due course.

PART IV: CONCLUSION

16. MinLaw and IPOS thank all the respondents for their comments and participation in this public consultation. The comments we received are important for our review to ensure that we maintain a balanced regime which ensures robust copyright protection for rights owners while allowing the public to make reasonable use of copyright works and protected performances in legitimate, non-infringing ways that benefit society.