

COPYRIGHT (AMENDMENT) BILL

SECOND READING

PARLIAMENT, 7 JULY 2014

SENIOR MINISTER OF STATE FOR LAW MS INDRANEE RAJAH SC

Mr Deputy Speaker,

1. I beg to move, ‘That the Bill be now read a second time’.

I. Introduction

2. Sir, the proposed amendments to the Copyright Act (“the Act”) are to achieve two objectives:

(a) First, to afford persons with reading disabilities greater opportunities to access copyrighted works in line with the Marrakesh Treaty.

(b) Second, to combat online piracy by allowing rights owners to more effectively seek court orders to disable access to pirate websites.

II. Marrakesh Treaty

3. Let me first address the provisions relating to the Marrakesh Treaty.

4. The Marrakesh Treaty, concluded under the auspices of the World Intellectual Property Organization (or WIPO), seeks to facilitate access to copyrighted works for persons with reading disabilities.
5. Member States of WIPO adopted the Treaty in June last year.
6. Singapore is committed to ensuring that our intellectual property (“IP”) regime serves the needs of the visually impaired community. We will be signing and ratifying the Marrakesh Treaty by the end of this year. These amendments will put us in a position to meet the obligations of the Marrakesh Treaty.
7. Let me now highlight four main amendments that the Bill makes in relation to the Treaty.
 - A. ***Persons and Institutions Who May Create Accessible Format Copies***
8. First, the Bill allows persons with reading disabilities, as well as any person or institution acting on their behalf, to produce copies of the copyright-protected material in formats which persons with reading disabilities can access.
9. At present, converting copyrighted material into other formats, including formats suitable for persons with reading disabilities, requires the permission of rights holders. Only two institutions that assist persons with reading disabilities, namely the Singapore Association of the

Visually Handicapped and the Lighthouse School need not obtain such permission.

10. Clause 2 amends the Act to allow a broader category of persons and institutions to create accessible format copies without requiring permission from the rights holder.
11. This could include:
 - (a) Persons with reading disabilities; and
 - (b) Education institutions and institutions assisting them, such as SG Enable and the Society for the Physically Disabled.

B. Range of Accessible Format Copies Which May Be Created

12. Second, the Bill allows copyrighted material to be converted into *any* format, so that these formats are accessible to persons with reading disabilities.
13. Presently, the Act only allows copyrighted material to be converted to a limited range of prescribed formats.
14. These formats are restricted to sound recordings, Braille, large-print and photographic versions of the said material.
15. Clause 2 broadens this range to encompass *all* formats that could assist persons with reading disabilities.

16. So take for instance, DAISY, or the Digital Accessible Information System. DAISY is an audio substitute for print material. It allows reading-disabled persons to navigate pages of audio books more easily. It is an increasingly popular format which the Act does not cater for. However, it would be covered under the proposed amendments.

C. Works and Subject Matter Other Than Works

17. Third, in addition to literary and dramatic works, the Bill amends the Act to further allow artistic works, sound recordings and sound broadcasts to be converted into formats which are friendly to persons with reading disabilities.

18. This will facilitate the conversion of audio books to reading disabled friendly formats like DAISY.

D. Distribution, Imports and Exports

19. Fourth, the Bill allows institutions assisting persons with reading disabilities, as well as educational institutions, to not only reproduce, but also distribute, import and produce for export such copies.

20. At present, the Act only covers the making of copies. Copies which are friendly to persons with reading disabilities may however not be distributed or imported generally, although persons with reading disabilities may import such copies for their personal use.

21. The ability to import is especially important for increasing access to works accessible to persons with reading disabilities
22. Singapore is not a major creator of such works. Allowing such works to be imported would therefore give the community much needed access to works from overseas institutions, such as the Royal Blind in the UK, and the National Federation of the Blind in the US.
23. To facilitate the distribution of such copies internationally, the Bill further allows institutions in Singapore, such as the Singapore Association of the Visually Handicapped and the Lighthouse School, to make copies for the purposes of exporting them.

III. Online Piracy

24. I turn next to the second aspect of the Bill, which seeks to empower rights owners to more effectively disable access to sites that flagrantly infringe copyright (or pirate websites).
25. Online piracy is a global issue and it affects us in Singapore as well.
26. An independent 2012 survey by Vobile Pte Ltd found that Singapore ranked 4th out of 18 countries in Asia, and 12th out of 38 countries globally, in terms of the number of downloads of infringing content per internet user.

27. A 2013 survey conducted by Sycamore Research and Insight Asia also revealed that approximately three-quarters of our youth aged 19 to 24 consume copyright infringing material.
28. Among the 900 respondents whom Sycamore Research polled late last year, the top reason for engaging in online piracy was that pirated content was available easily and for free.
29. The prevalence of online piracy in Singapore turns customers away from legitimate content and adversely affects Singapore's creative sector. It can also undermine our reputation as a society that respects the protection of intellectual property.
30. Digital music sales now make up a large percentage (about one-third) of music producers' total revenue. However, industry stakeholders tell us that the decline in physical music sales in Singapore has not been compensated by a commensurate rise in digital sales.
31. The International Federation of the Phonographic Industry ("IFPI") has reported that the total music revenue in Singapore, consisting of both physical and digital sales, declined from \$29.8 million in 2009 to \$16.4 million last year.
32. The decline in total music revenue could therefore affect the development of new musical talent in Singapore and stifle the growth of

the creative industry. It could also keep providers of legitimate online content away from Singapore.

33. We therefore need to take stronger measures against online piracy.
34. Jurisdictions such as the UK, Norway, Denmark and Belgium have introduced legislation to permit the blocking of pirate websites.
35. Denmark has been practising this for more than five years.
36. And let me illustrate with the UK as an example.
37. In the UK, the UK courts have to date ordered major network service providers to block access to more than 40 websites on grounds of copyright infringement.
38. The list includes The Pirate Bay, a website notorious for its blatant infringement of copyright material. It has been blocked in many countries including the UK, Belgium and Denmark.
39. Just last month, Swedish authorities arrested Peter Sunde, a co-founder of The Pirate Bay who had been on the run for two years. He has been sentenced to eight months imprisonment by the Swedish courts for violating copyright laws in 2009.

40. The battle against online copyright piracy is, as you can see, global. This Bill seeks to enable copyright owners in Singapore to better protect their rights in the online space.

41. Before I take the House through the relevant provisions of the Bill, let me give an overview of the present system and the challenges rights owners currently face when trying to protect their rights, which this Bill seeks to address.

A. *Existing Framework*

Notice and Take Down Regime

42. First, rights holders can request network service providers to disable access to or remove copyright infringing material from its network.

43. This is done by issuing a “take-down” notice to the network service provider.

44. However, it is not a statutory requirement to comply with this take-down notice. Hence it is not mandatory for the network service providers to comply.

45. In many cases, network service providers may contend that the take-down notice regime does not apply to them. For example, they may not have hosted the infringing material on their networks, but functioned merely as conduits for the transmission of copyright infringing material.

Legal Action for Copyright Infringement

46. Under the current regime, rights holders can bring a legal action against network service providers for copyright infringement, but in order to succeed in removing the copyright infringing material, where the claim is disputed by the network service provider, it is necessary to establish the liability on the part of the network service provider for copyright infringement. This creates considerable uncertainty for rights holders, and both parties can incur considerable legal costs, as well as time in such suits.
47. In addition, the Copyright Act does not expressly provide for the conditions under which access to copyright infringing websites may be disabled and this adds to the uncertainty.

B. Overview of the New Framework

48. In 2012, the Government appointed a Media Convergence Review Panel (“MCRP”) to study issues impacting consumers, industry and society in the converged media environment, and to make recommendations on how to address these challenges.
49. On the issue of online piracy, the MCRP recommended a multi-pronged approach comprising:
- (a) public education;

- (b) promotion of legitimate content services; and
- (c) adoption of appropriate regulatory measures

50. Among the various regulatory measures that could be adopted, the MCRP deemed site blocking to be the most feasible measure to combat digital piracy.

51. The Government has accepted the MCRP's recommendations concerning online piracy.

52. The Intellectual Property Office of Singapore ("IPOS") drives continuing public education efforts. It has been reaching out to the public to raise awareness about IP creation and protection, through the Honour Intellectual Property ("HIP") Alliance programme and other platforms.

53. Second, rights holders are also working to increase the availability of legitimate digital content in Singapore, so that consumers are able to access such content conveniently and at reasonable prices.

54. The Bill focuses on the third aspect – regulatory measures – and introduces a new regulatory measure to complement the other efforts.

55. It amends the Act to institute a judicial site blocking avenue.

56. This will allow rights holders to apply directly to the Court for an order directing network service providers to block access to flagrantly infringing websites, without having to first establish liability on the part of the network service provider for copyright infringement. Instead, it is aimed at pirated content. The new framework is thus a “no-fault” regime vis-à-vis the network service providers.
57. The new measure is targeted at entire websites. Rights holders who wish to disable access to, or remove, specific parts of a website e.g. specific infringing content or specific webpages can continue to rely on existing mechanisms in the Act, such as the notice and take-down system described earlier.
58. This framework was derived after extensive consultations with industry stakeholders.
59. While we sought to allow rights holders to more effectively protect themselves against pirate websites, we were also cognizant that the proposed framework should not unduly impinge upon the rights and interests of other stakeholders, including network service providers and website owners hosting legitimate content.
60. The proposed judicial measure balances the rights of the different stakeholders involved.

- (a) First, rights holders will be able to obtain blocking orders relatively quickly and with greater certainty.
- (b) Second, the interests of network service providers and online location owners will be safeguarded in three ways:
 - One, by prescribing statutory thresholds which ensures that only flagrantly infringing websites are caught
 - Two, by instituting robust procedural safeguards. This includes notice and service requirements, as well as appeals and reinstatement avenues.
 - Three, by the Court acting as an ultimate gate-keeper.

61. While these measures are not exhaustive, adoption will signal our commitment against online piracy and firmly convey that Singapore does not condone copyright infringement.

62. Stakeholders whom we consulted have generally expressed their strong support for the proposed site blocking framework, as has the Media Literacy Council.

63. I will now take the House through the main features of this new framework.

C. Details of the New Framework

64. The new framework allows rights holders to obtain blocking orders against what the Bill terms as a “flagrantly infringing online location”.
65. The Bill keeps the definition of “flagrantly infringing online location” technically neutral. This is to accommodate rapid technological advances over time.
66. The Bill also prescribes a non-exhaustive list of factors to assist the Courts in determining whether an online location is flagrantly infringing.
67. On the other hand,
- (a) sites that offer primarily legitimate digital content
 - (b) legitimate business services such as cloud storage services
 - (c) search engines such as Google
 - (d) social media sites such as Facebook
- that do not satisfy the factors will not be affected by the proposed schematic.
68. The proposed measure will therefore not hinder access to and the exchange of legitimate content. Artistes can continue to distribute and share their content via legitimate websites.

D. Procedure

69. The procedure governing the application and grant of blocking orders has been carefully calibrated so as to balance the rights of the rights holders, online location owners and network service providers.

Notice to network service providers and website owners and right to be heard

70. First, the Act requires rights holders to notify network service providers of their intention to apply for a blocking order.

71. This allows the network service providers the opportunity to resolve the matter out of Court.

72. The application for a blocking order must be served on the network service provider.

73. This ensures that the network service provider has the opportunity to present its case before the Court as to why an order should not be made. This could cover a variety of matters, including:

- (a) the technical feasibility of effecting the blocking order
- (b) the burden that the order may place on the network service provider; and
- (c) any adverse effect an order may have on the network service provider's business or operations

74. Second, website owners must also be notified of the application so that they too have the opportunity to present their case before the Court.
75. In this regard, however, we are cognizant of the challenges posed by anonymity in cyber space, especially where the notice requirement to owners of online locations are concerned.
76. As such, the Bill allows the Court to dispense with the relevant notices to the website owner where the Court is satisfied that reasonable efforts have been made to
- (a) ascertain the identity or address of the website owner; and
 - (b) send the notices to the website owner.
77. The Bill also grants website owners a right to be heard during the blocking order application, as well as the same right of appeal as a party to the application.

Variation and Revocation

78. Third, the Bill provides for an avenue by which a party to the blocking order, as well as the website owner, can apply to Court to vary or revoke the order. For instance

- (a) Website owners may apply to revoke the order if the site's content has been modified and the website has ceased to be a "flagrantly infringing online location".
- (b) Rights holders may apply to vary the order if the web address of the website has been changed, such that the blocking is circumvented.

IV. Conclusion

79. Mr Deputy Speaker, in conclusion, this Bill

- (a) allows us to fulfil our obligations under the Marrakesh Treaty;
and
- (b) reaffirms our unwavering commitment to respecting intellectual property.

80. Sir, I beg to move.