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Q246

Exceptions and limitations to copyright protection for libraries, archives and education and research institutions

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I. Current law and practice

1) Does your law provide for exceptions or limitations to copyright protection for libraries and archives?

yes

If so, please provide details of such exceptions or limitations, including in relation to the following activities::

a) reproduction and/or distribution for the purpose of preservation or replacement;

yes

Please comment:

s. 48(1) of the Singapore Copyright Act allows for a copy to be made of a work, if it is for the purpose of:

- Preserving the original version against loss or deterioration
- Purpose of research
- Replacing a damaged or deteriorated work which is held in the collection in a published form
- Replacing a lost or stolen work which had been held in the collection in a published form

s. 48(4) states that making a copy of an unpublished work under this section does not constitute publication of the work.

b) reproduction and/or distribution for the purpose of interlibrary lending;

yes

Please comment:

s. 46 of the Singapore Copyright Act allows for the making and supplying of copies between libraries and archives, with regard to articles from periodical publications, or the whole or part of a published literary, dramatic or musical work, as long as it is not a substitute for a subscription to such periodical publication or work or a purchase of such work.

c) reproduction and/or distribution for the purpose of providing copies (either in a physical or a digital form) to users of libraries or archives; or

yes

Please comment:

s. 45 of the Singapore Copyright Act allows for the making and supplying of copies from libraries and archives to users, with regard to articles from periodical publications or the whole or part of a published literary, dramatic or musical work. This can be done upon request of the user, if declared that he requires this for research or study only. Such a copy can be supplied in physical form, or in electronic form.

s. 47(2) of the Singapore Copyright Act allows for the same making and supplying of copies, with regard to unpublished works, where done from libraries and archives to users for the purpose of research or study.

s. 112 of the Singapore Copyright Act states that the making of a copy or communication of a sound recording or cinematograph film which has not been published, but is otherwise accessible to the public, shall not be an infringement.

d) any other activities, and if so, what activities?

yes

Please comment:

Making available electronic forms of works or articles within the premises

s. 45(7A) of the Singapore Copyright Act states that where published works, or articles in periodical publications, are acquired in electronic form as part of the library or archive collection, the copyright in such is not infringed by the officer-in-charge making it available online within the premises of the library or archives in such a manner that users cannot, by using any equipment supplied by the library or archives, make an electronic copy or communicate the work or articles.

Installing machines to facilitate reproduction of works in a reasonable quantity

s. 34 of the Singapore Copyright Act states that libraries and archives can install machines to facilitate reproduction of works, in a reasonable quantity.

Copying of unpublished works in libraries or archives

s. 112 of the Singapore Copyright Act states that the making of a copy or communication of a sound recording or cinematograph film which has not been published, but is otherwise accessible to the public, shall not be an infringement where done for the purpose of research or study or with a view to publication.

- 2) Do any of these exceptions or limitations apply to libraries, archives or other organizations (e.g. museums) generally, or only to certain organizations (e.g. public and/or commercial libraries and archives)? If so, which organizations?

These apply to libraries generally, but do not apply to all archives as s. 7(1) of the Singapore Copyright Act defines 'archives' as referring specifically to the National Archives of Singapore.

- 3) Are there any conditions as to the type or scope of any permitted activities (e.g. number of copies that may be created, whether only a portion of a work may be used, whether certain forms of reproduction (e.g. digital reproduction) are excluded)? If so, please explain the conditions.

"Reasonable Portion"

s. 7(2) of the Singapore Copyright Act defines a "reasonable portion" of a literary, dramatic or musical work in a published edition of that work not less than 10 pages long:

- where the pages copied do not exceed, in the aggregate, 10% of the number of pages in that edition, or
- where the work is divided into chapters, not exceeding, in the aggregate, 10% of the number of pages in that edition, but contains only the whole or part of a single chapter of the work.

s. 7(2A) of the Singapore Copyright Act defines a "reasonable portion" of a literary, dramatic or musical work in a published edition of that work, stored on any medium by electronic means and not divided into pages:

- where the part copied does not exceed, in the aggregate, 10% of the total number of bytes in that edition or 10% of the total number of words or 10% of the contents (where it is not practicable to use the total number of words as a measure).
- the same applies if the work is divided into chapters, but with the added criterion that in the aggregate, the copy must contain only the whole or part of a single chapter of the work.

Preservation or replacement

s. 48(2) of the Singapore Copyright Act states that copyright in a work is not infringed where a single copy of the work is made by the library or archives, even if for a purpose other than preservation or replacement. s. 201 states that a notation must be made on the copy, at or about the time the copy was made, stating that the copy was made on behalf of that institution and the date on which it was made.

Interlibrary lending

s. 46(4) and s. 46(6) of the Singapore Copyright Act state that copyright is not infringed by making a copy for interlibrary lending, if the charge for doing so does not exceed the cost of copying plus a reasonable contribution to the general expenses of the library. s. 201 states that a notation must be made on the copy, at or about the time the copy was made, stating that the copy was made on behalf of that institution and the date on which it was made.

The request must be accompanied by a declaration where:

- if a previous copy had been supplied under this section, s. 46(7)(a) states that the request for another copy must include a declaration stating that the previous copy had been lost, destroyed or damaged.
- if the work deals with more than a reasonable portion of literary, dramatic or musical works, s. 46(7)(b) of the Singapore Copyright Act states that the declaration must state that the copy was made and supplied as part of an inter-library arrangement which does not have the effect or purpose of enabling participating libraries to receive copies by way of systematic reproduction and supplies, in such aggregate quantities as substitutes for a subscription to or purchase of such works.

Providing copies to users

s. 45(1) of the Singapore Copyright Act requires a user making such a request to also provide a declaration that he requires the copy for research or study only and has not previously been supplied with a copy, or if he had, then that the previous copy had been lost, destroyed or damaged. This does not apply to a copy or parts of two or more articles in the same periodical, unless they relate to the same subject-matter (s. 45(4)), or to a request for the copy of the whole or a part which contains more than a reasonable portion, unless the work is part of the library or archives collection, and an authorised officer has reasonably investigated and made a declaration that a copy cannot be obtained within a reasonable time at an ordinary commercial price (s. 45(5)). Also, s. 201 states that a notation must be made on the copy, at or about the time the copy was made, stating that the copy was made on behalf of that institution and the date on which it was made.

Any other activities

Installing machines to facilitate reproduction of works in a reasonable quantity

s. 34 of the Singapore Copyright Act permits the library to install machines for facilitating reproduction of works, and if they affix a notice readily visible nearby, that warns the user of what exceeds a 'reasonable quantity', then the library or archive will not be held liable for infringement solely by reason of the fact that the copy was made on that machine.

- 4) Are there any conditions as to the type of copyrighted work that may be used (e.g. lawfully created copies, copies existing in the library's or archive's collection, published works)? If so, please explain the conditions.

Preservation or replacement

s. 48(3) of the Singapore Copyright Act states that the exception of copying for purposes of preservation or replacement, does not apply to a published work in the collection unless an authorised officer of the library has made reasonable investigation and declared that a copy (not being a secondhand copy) cannot be obtained within a reasonable time at an ordinary commercial price. This also applies to illustrations accompanying or explaining these articles or works (s. 50).

s. 113 of the Singapore Copyright Act also has similar provisions that allow the copying of sound recordings and cinematograph films for preservation and other purposes.

Interlibrary lending

s. 46 of the Singapore Copyright Act allows for the making and supplying of copies between libraries and archives, where the copy is of an article, or a part of an article, contained in a periodical publication, or of the whole or a part of a published literary, dramatic or musical work other than an article contained in a periodical publication. These also include illustrations accompanying or explaining these articles or works (s. 50).

Providing copies to users

s. 45 of the Singapore Copyright Act allows for the making and supplying of copies from libraries or archives to a user, where the copy is of an article, or a part of an article, contained in a periodical publication or of the whole or a part of a published literary, dramatic or musical work other than an article contained in a periodical publication. These also include illustrations accompanying or explaining these articles or works (s. 50).

s. 45(9) of the Singapore Copyright Act gives conditions regarding the provision of electronic copies:

- a notice must be given to the person making the request, that the copy has been made under s. 45 and that the article or work might be subject to copyright protection under the Copyright Act; and
- as soon as practicable after the electronic copy is communicated to the person, the electronic copy made under the section and held by the library or archives is destroyed

s. 47(2) of the Singapore Copyright Act allows copying for the purposes of research and study, of unpublished theses or other similar literary work kept in a library of a university or other similar institution, or in archives.

Any other activities

Making available electronic forms of works or articles within the premises

s. 45(7A) of the Singapore Copyright Act, which allows libraries to make available electronic form works within the premises, applies to articles contained in a periodical publication or a published work (other than an article contained in a periodical publication) is acquired, in electronic form. These also include illustrations accompanying or explaining these articles or works (s. 50).

5) Does your law provide for exceptions or limitations to copyright protection for education and research institutions?

yes

If so, please provide details of such exceptions or limitations, including in relation to the following activities::

a) performance and/or display for educational purposes;

yes

Please comment:

s. 23 of the Singapore Copyright Act allows for performance of a musical, literary or dramatic work, or of displaying a cinematograph film, broadcast, cable programme or recording of performances in like manner.

s. 246 and s. 247 of the Singapore Copyright Act allow a direct or indirect recording of a performance to be made for educational purposes, where made for use in connection with a particular course of instruction provided by the institution or for inclusion in the collection of a library of the institution.

b) reproduction and/or distribution for educational purposes (e.g. preparation of course packs, compilations or anthologies, exams);

yes

Please comment:

s. 47(2) of the Singapore Copyright Act allows copying for the purposes of research and study, of unpublished theses or other similar literary work kept in a library of a university or other similar institution, or in archives.

s. 50A of the Singapore Copyright Act allows for copying by non-reprographic means for the purpose of a course of education.

s. 51(1) of the Singapore Copyright Act allows for copying and s. 51(1A) allows for communication, with regards to an edition of a work, carried out on the premises of an educational institution for the purposes of a course of education provided by the institution.

s. 52 of the Singapore Copyright Act states that copyright is not infringed by multiple copying or communication under statutory licence by educational institutions.

s. 52A and s. 115B of the Singapore Copyright Act state that the copyright in a work is not infringed by anything done for the purposes of an examination, whether by way of setting the questions, communicating the questions to the candidates or answering the questions.

s. 115A of the Singapore Copyright Act allows for copying in the course of instruction in the making of a film or sound-track.

c) making translations;

no

Please comment:

No specific statutory provisions which give exceptions for translations.

d) making available in digital networks for educational purposes (e.g. uploading course packs onto on-line

platforms, compilations or anthologies, providing distance education);

yes

Please comment:

s. 52(14)-(15) include the provision on a digital network for education purposes as being within the reference to 'making copies' and 'communication'.

e) reproduction and/or distribution for research purposes; or

yes

Please comment:

See the sections of 'Preservation or replacement', 'Providing copies to users', and 'Copying of unpublished works in libraries or archives' under section 1 above, which deals with works and subject-matter other than works held in libraries or archives, but which can be copied for research purposes.

f) any other activities, and if so, what activities?

yes

if so, what activities?:

Short extract to be placed in collection

s. 40(1) of the Singapore Copyright Act allows for the inclusion of a short extract to be placed in a collection intended for use by educational institutions.

Broadcasts for educational purposes

s. 115 of the Singapore Copyright Act states that it is not an infringement of copyright to make a record of a sound broadcast or cinematograph film, if made by an educational institution for use in a course of instruction at that institution.

6) Do any of these exceptions or limitations apply to educational and research institutions generally (e.g. non-profit institutions), or only to certain institutions? If so, which institutions?

The definition of "educational institution" does not include an institution that is conducted for profit. It includes, among others, institutions that provide full-time education, correspondence courses or external studies, occupational skills training for medical or teaching.

Research and study purposes are included in the provisions on 'fair dealing' for works (s. 35(1A) of the Singapore Copyright Act) and subject-matter other than works (s. 109(2)).

7) Are there any conditions as to the type or scope of the activities and the persons who may engage in such activities (e.g. number of copies that may be created, whether only a portion of a work may be used, whether both a teacher's and student's performance is covered, or only one or the other)? If so, please explain the conditions.

Performance/display for educational purposes

s. 23(1) of the Singapore Copyright Act states that the performance of a musical work must be by the students or staff of an educational institution, in the premises of the institution or elsewhere in the presence of an audience, and is so performed in the course of the activities of the institution. S. 23(5) states that 'staff' includes any adjunct staff of the educational institution, and any person engaged by the educational institution to conduct any course of instruction, activity or programme of or offered by the educational institution.

s. 23(2) of the Singapore Copyright Act states that the performance of a literary or dramatic work must be by the students or staff of an educational institution in the premises of the institution or elsewhere in the presence of an audience and is so performed in the course of the activities of the institution. The audience must also be limited to persons who are taking part in the instruction or are otherwise directly connected with the place where the instruction is given, where a 'direct connection' is defined under s. 23(3) to be regarding a relationship of a parent, guardian, brother or sister of a student who receives instruction at that place. S. 23(4) states that this exception also applies in relation to cinematograph films, broadcasts, cable programmes and recordings of performances in like manner as they apply in relation to literary and dramatic works. S. 23(5) states that 'staff' includes any adjunct staff of the educational institution, and any person engaged by the educational institution to conduct any course of instruction, activity or programme of or offered by the educational institution.

Reproduction/distribution for educational purposes (includes examinations)

s. 50A of the Singapore Copyright Act states that this copying must be done by a person conducting or undergoing the course of education, and that this must not be done by means of a reprographic process.

s. 51(2) of the Singapore Copyright Act states that one or more copies of a part of the work in an edition of the work can be made or communicated by any person, but not to the whole of a work. S. 51(3) also states that this does not apply to copying or communicating more than 5 pages of the work in an edition unless there are more than 500 pages in the edition and that the total number of pages so copied or communicated does not exceed 5% of the total number of pages in the edition. S. 51(4) states that the edition of the work is stored on any medium by electronic means and not divided into pages, then the part copied or communicated cannot exceed, in the aggregate, 5% of the total number of bytes in the edition and 5% of the total number of words in that edition or, where it is not practicable to use the total number of words as a measure, 5% of the contents of the edition. Ss. 51(5) and (5A) respectively state that where a person makes or causes to be made a copy of a part of a work and ss. (1) and (1A) apply respectively, that subsection shall not apply to the making or communication, by or on behalf of that person, of a copy of any other part of that work within 14 days after the day on which the previous copy or communication was made. S. 51(6) also states that a reference to the making of a copy of a part of a work on the premises of an educational institution for the purposes of a course of education provided by the institution includes a reference to the making of a copy of that part of the work in an electronic form on a network operated or controlled by the educational institution concerned to enable persons undertaking a course of education provided by the educational institution to access the work. S. 116 of the Singapore Copyright Act expands the scope of this to allow for a reproduction of the whole or a part of that edition, if that reproduction is made in the course of the making of a copy of the whole or a part of the work, being a copy exempt under s. 51.

s. 52(1) of the Singapore Copyright Act, which deals with articles contained in a periodical publication, states that copyright is not infringed by the making of copies or communication of the whole or a part of that article, by or on behalf of the body administering an educational institution for the educational purposes of that or another educational institution. S. 52(4) and (7A) state that this does not apply to

copies or communications of or parts of 2 or more articles contained in the same periodical publication, unless they relate to the same subject matter. S. 52(6) and (7C) state also that a record of the copying or communicating, setting out prescribed particulars, must be made as soon as practicable after the making of these copies or communications. S. 52(9)-(10) and (11A)-(11B) respectively allow these to be made for distribution or communicated to persons undertaking a correspondence course or external study course provided by the educational institution for the educational purposes of which those copies are made, and if so, that the record made in relation to them may state that they are copies to which s. 52 applies.

s. 52(2) of the Singapore Copyright Act, which deals with works other than an article in a periodical publication, states that copyright is not infringed by the making of copies or communication of the whole or a part of that work, by or on behalf of the body administering an educational institution for the educational purposes of that or another educational institution. S. 52(5) and (7B) state that this shall not apply to copies of or communication of, or of more than a reasonable portion of, a work that has been separately published, unless the person who makes the copies or causes them to be made is satisfied after reasonable investigation that copies (which are not secondhand copies) cannot be obtained within a reasonable time at an ordinary commercial price. S. 52(7) and (7D) state also that a record of the copying or communicating, setting out prescribed particulars, must be made as soon as practicable after the making of these copies or communications

There are similar provisions in s. 54 and s. 54A of the Singapore Copyright Act, regarding multiple copying under statutory licence by institutions assisting handicapped readers and intellectually handicapped readers respectively. These are fulfilled if made for the purpose of research and study, after reasonable satisfaction that no new copy can be obtained within reasonable time at an ordinary commercial price.

S. 116 of the Singapore Copyright Act expands the scope of these three sections to allow for a reproduction of the whole or a part of that edition, if that reproduction is made in the course of the making of a copy of the whole or a part of the work, being a copy exempt under s. 52, 54 or 54A. Also that s. 201 of the Singapore Copyright Act deals with notation of copies, and states that in order to rely on these sections, a notation must have been made on the copy (at or about the time the copy was made) stating that the copy was made on behalf of that institution and the date on which it was made. If the copy was made under s. 54A, the notation must also state that the copy is a prescribed reproduction made in reliance on s. 54A.

s. 52A and s. 115B of the Singapore Copyright Act cover all possible uses, as long as done for the purposes of an examination.

s. 53 of the Singapore Copyright Act provides for the inclusion of accompanying artistic work(s) provided for the purpose of explaining or illustrating the article or other work, with regard to these exceptions for educational purposes.

s. 115A of the Singapore Copyright Act states that copyright in a sound recording, cinematograph film, television broadcast, sound broadcast or cable programme is not infringed by its being copied in the

making of a cinematograph film or sound-track associated with the visual images forming part of a cinematograph film, if done in the course of instruction or preparation for instruction in the making of a cinematograph film or sound-track associated with the visual images forming part of a cinematograph film, if the copying is done by a person giving or receiving such instructions.

Translations

No specific statutory provisions which give exceptions for translations.

Available in digital networks for educational purposes

s. 52(14) and (15) of the Singapore Copyright Act state that a reference in this section to 'making copies' or 'communication' includes the making of a copy or communication in an electronic form on a network operated or controlled by that or another educational institution to enable persons undertaking a course of education provided by that or another educational institution to access the article or work, or that part of the article or work.

Reproduction/distribution for research purposes

See the sections of 'Preservation or replacement', 'Providing copies to users', and 'Copying of unpublished works in libraries or archives' under section 1 above, which deals with works and subject-matter other than works held in libraries or archives, but which can be copied for research purposes.

Any other activities

Short extract to be placed in collection

s. 40 of the Singapore Copyright Act states that the collection must be described in an appropriate place in the book, on the label of each record embodying the recording or of its container, or in the film, as being intended for use by educational institutions, and that a sufficient acknowledgement of the work or adaptation must be made. However, the exception does not apply if there are already 2 or more extracts from the work in that collection or similar collections intended for use by educational institutions and published by the same publisher within 5 years from the publication of the first-mentioned collection (Copyright Act, s. 40(2)). S. 116 also expands the scope of this to allow for a reproduction of the whole or a part of that edition, if that reproduction is made in the course of a dealing exempt under s. 40.

Broadcasts for educational purposes

The action under s. 115 of the Singapore Copyright Act is not an infringement if the record or cinematograph film is made by, or on behalf of, the person or authority in charge of an educational institution, and the record or cinematograph film is not used except in the course of instruction of that institution.

- 8) Are there any conditions as to the type of copyrighted work that may be used (e.g. only lawfully created copies, only certain kinds of copyrighted works)? If so, please explain the conditions.

Performance/display for educational purposes

s. 23(1), (2) and (4) of the Singapore Copyright Act reference the performance of a musical, literary or dramatic work, or cinematograph films, broadcasts, cable programmes and recordings of performances in like manner. However each of these types of work has different conditions regarding the type or scope of permitted activities, as elaborated above.

Reproduction/distribution for educational purposes (includes examinations)

s. 51(1) and s. 51(2) of the Singapore Copyright Act refer specifically to copyright in a literary or dramatic work.

s. 52(1) of the Singapore Copyright Act refers to an article contained in a periodical publication.

s. 52(2) of the Singapore Copyright Act refers to a work other than an article in a periodical publication.

s. 52A and s. 115B of the Singapore Copyright Act cover all possible types of copyright works and subject-matter other than works, as long as done for the purposes of an examination.

Translations

No specific statutory provisions which give exceptions for translations.

Available in digital networks for educational purposes

s. 52 deals with articles contained in a periodical publication, and also with works other than an article in a periodical publication.

Reproduction/distribution for research purposes

See the sections of 'Preservation or replacement', 'Providing copies to users', and 'Copying of unpublished works in libraries or archives' under section 1 above, which deals with works and subject-matter other than works held in libraries or archives, but which can be copied for research purposes.

Any other activities

Short extract to be placed in collection

s. 40 of the Singapore Copyright Act deals with published literary, dramatic, musical or artistic works, or an adaptation of a published literary, dramatic or musical work. The work or adaptation must not have been published for the purpose of being used by educational institutions. The collection can be of literary, dramatic, musical or artistic works contained in a book, sound recording or cinematograph film and intended for use by educational institutions. S. 80 also expands this section to include joint works.

For the questions below, please provide an answer for each exception or limitation mentioned above.

9)	Is there any statutory provision that specifically provides for such exception or limitation? Is it alternatively or additionally recognized in case law? If neither, does your jurisdiction have a more general or broad exception or limitation that is interpreted as covering such specific exception or limitation?
Yes, they are enacted in the Copyright Act (Chapter 63) of Singapore, as provided above.	

10)	Does your law adopt the Three-Step Test (or equivalent wording) in relation to such exception or limitation?
As specific legislative provisions in statute, the preceding explanation of current law in Singapore falls within the "certain special cases" of the Three-Step Test. Therefore the provisions do not follow the wording of the entire test, but instead carve out exceptions within the first step of 'certain special cases'.	

11)	Is use under the exception or limitation permitted automatically (without any further action), or must certain criteria be fulfilled/procedure(s) followed (e.g. seeking a compulsory licence)? If it is the latter, please explain the criteria/procedure(s).
See the above explanations within each exception/limitation.	

12)	Is remuneration payable for use under such exception or limitation? If so, how is the amount of remuneration determined or calculated? Who is liable for making such payment, and to whom must such payment be made?
<p>For s. 52, multiple copying or communication under statutory licence by educational institutions, s. 52(11) and (11C) provide that for copies or communications not distributed under a correspondence or external course (ss. 52(9)-(10)), if the owner of the copyright in the work makes a request in writing during the prescribed period after the making of the copies, for payment, then the institution shall pay such an amount by way of equitable remuneration as agreed upon, or in default of agreement, such amount as determined by a Copyright Tribunal upon the application of either the owner or the institution.</p> <p>Similar provisions in s. 54 and s. 54A also provide for payment of equitable remuneration to the owner of the copyright, if he so requests for it.</p>	

13)	Is there any special treatment for orphan works for use within such exception or limitation? If so please explain.
There is statutory provision for the duration of copyright in anonymous or pseudonymous work (s. 29 and 78) but no explicit treatment of orphan works in the context of libraries/archives or educational/research institutions.	

14)	Does the law of your jurisdiction allow the exception or limitation to be overridden by contract?
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Generally, contract cannot override statutory rights which are expressly provided for in legislation.

15) Other than what is provided in the law of your jurisdiction, are there any efforts by private organizations (such as a private licensing organizations) to address use by libraries, archives and educational and research institutions?

yes

If so, please explain those efforts.:

There are several private collective management organizations in Singapore, such as The Copyright Licensing and Administration Society of Singapore Ltd ("CLASS") and the Motion Picture Licensing Company (Singapore) Pte Ltd ("MPLC").

CLASS is a copyright collecting society which collects fees from licensed users for acts of photocopying from books and periodicals and e-copying. After deducting some amount for operating costs and any other provisions, CLASS distributes the balance to its members and foreign reproduction rights organisations (RROs) with which CLASS has reciprocal or bilateral agreements, their shares of royalties received. It also provides adequate data to enable these sister RROs to pay individual authors and publishers. CLASS can and will also institute legal proceedings as necessary for the enforcement of the rights entrusted to it.^[1] Specifically in relation to educational and research institutions, CLASS collects licence fees based on variables such as student enrolment, course type and usage of copyright materials. These institutions can then make copies as necessary, as long as they keep accurate and updated records of the copies made. The fees collected are collated into a pool to be distributed back to rights owners.^[2]

The goal of the MPLC was to develop a process to help the public leverage the work of the creative community without infringing on copyrights. Therefore it represents producers and distributors of copyright-protected motion pictures, and . The MPLC has rights to grant an umbrella licence to, among others, schools and out-of-school programmes, for the public exhibition of these motion pictures.^[3]

Footnotes

1. [^ http://www.class-singapore.com/about-class.aspx](http://www.class-singapore.com/about-class.aspx)
2. [^ http://www.class-singapore.com/Licencing.aspx](http://www.class-singapore.com/Licencing.aspx)
3. [^ http://www.mplc.sg/page/about-the-mplc](http://www.mplc.sg/page/about-the-mplc)

II. Policy considerations and proposals for improvements of the current law

16) Should there be any exceptions or limitations to copyright protection for libraries and archives?

yes

If yes, in relation to what activities?:

One preliminary point to note is that Singapore recognizes that the purpose of copyright law is to strike that balance within each society, regarding the protection given to the creator's works, so as to incentivize the future creation of intellectual property. This also has a dual benefit to society, as advances in technology and creative expression benefit society economically, culturally and socially. While Singapore does not have protection for moral rights in its copyright system, public awareness programmes by the government have appealed to the public's sense of morals and also safeguarding against freeriding and unfair competition. This balance is a fine one, because tilting the balance too far towards a monopoly does not give society enjoyment and progress through new works, but tilting the

balance in the other direction would not provide sufficient incentive for the creation of these works in the first place.¹¹

In light of the understanding that works are for the benefit of society, it is only right that there be exceptions for archives to be able to preserve or replace works in their collections, as part of historical record. The same should apply for libraries, because these provide a way for the general public to gain academic and cultural benefit through new works released. In the same way, lending of copies between libraries, and provision of copies to users, are also beneficial exceptions to copyright protection. Advancements in technology, such as electronic forms of works in libraries, would greatly benefit from exceptions to copyright protection, such that users could access these works and benefit from them as well. All these points listed increase the benefit to society without substantially diminishing the incentive to have copyright protection. Libraries would still need to purchase the 'first copy' legitimately, and documentation of copy requests help to provide accountability in the process.

Footnotes

1. ¹¹ This paragraph was adapted from Ng-Loy Wee Loon, *Law of Intellectual Property in Singapore*, Sweet & Maxwell (2009), Chapter 2: Justifications for Protecting IP.

17) Should there be any exceptions or limitations to copyright protection for education and research institutions?

yes

If yes, in relation to what activities? :

In light of the preliminary point raised above, exceptions and limitations to copyright protection for education and research institutions should be present, so as to allow access to meaningful contributions that can be built upon for the betterment of society. Education and research are two main areas in which, both academically and experimentally, existing research can be built upon to achieve greater progress for society.

Therefore, for research purposes, the granting of access to works should be an important exception for those who seek to build upon such works. As technology advances faster around the world, the speed at which societies can keep up is dependent on their researchers' access to new developments and the ability to build upon these to derive fresh insights. The same applies for access granted for educational purposes, including performances and broadcasts, as new works play an important role in the cultural and social exposure of the next generation. Limitations on what constitutes a 'reasonable portion' of copying play a very important role here, as this strikes the balance between a fair use of the work as well as the rights that the creator has in it.

18) Is the Three-Step Test a useful test for determining any exceptions or limitations to copyright protection?

yes

Why?:

The Three-Step Test is a useful test as it finds the balance that each society considers essential to adopt, namely how much protection should be conferred on the legitimate exploitation of works and unreasonable prejudice to the legitimate interests of the author. However, as societies increasingly place reliance on explicit statutory provisions to determine the boundaries of such exceptions or

limitations, the Three-Step Test begins to find less usefulness.

19) Should the exception or limitation be capable of being overridden by contract? Why? Why not?

The exception or limitation should not be capable of being overridden by contract, in order to ensure that no unequal bargaining power affects what has been expressly provided for in legislation.

20) Should remuneration be payable for any of the activities described in 16) and 17) above? Why? Why not?

For compulsory licencing, remuneration should be payable. The same should go for educational institutions, because they also additionally derive benefit to their reputation and course scope, by having access to these materials. However, libraries and archives should not have to pay remuneration as they perform a public service.

21) How can your current law as it applies to exceptions and limitations to copyright protection for libraries, archives and educational and research institutions be improved?

The current exceptions and limitations in the current law, while comprehensive, were also drafted with older technology such as reprographic methods in mind. As technology continues to progress, the current law must be continually reviewed to be kept relevant and up-to-date.

Perhaps further improvements to take into account technological advances would be helpful. For example, many books are being published as electronic copies, and it would be beneficial not only for inter-library lending, but also to be able to provide these copies efficiently between libraries, in order to cut down on costs of physically transporting books between libraries where requested.

While these advances hold much promise for society's benefit, they also must be weighed not only against the interests of the creator, but also against the corresponding advances in 'negative' technology that seeks to circumvent these. For efficient safeguards to be taken against copyright infringement by users, through the use of technology, improvements must be brought forward cautiously so that public confidence can be preserved in the balance struck by copyright law.

III. Proposals for harmonisation

22) Is harmonisation in this area desirable?

yes

Please comment:

Harmonization is desirable; however, many practical factors and implications may render complete harmonization impossible. The most important qualifier is that each country must strike a balance between the rights of the individual and the rights of the public, and the country's society overall must be happy with where this balance lies.

The main draw for having harmonization of such laws is because of the increasing global connectedness of the world. Research and advancements in one society do not seek only the betterment of that society, but also a global progress together. In such light, it would not promote the aims of international development if there remained significant differences between countries as regards the amount of

access and use given to existing works that are still under copyright protection. The need for such harmonization is also supported by the growing presence of international databases such as JSTOR, which provide students from many countries with access to published papers. Having a consistent standard across how these papers can be treated would allow the overall standard to increase, instead of being pegged at the lowest minimum standard and adapted accordingly. The same applies to institutions which offer online courses overseas, such as Coursera. Better regulation and facilitation of resource access would enable these courses to be more beneficial to the users, as well as provide appropriate protection for copyright holders. Harmonization would also enable these institutions to deliver education resources at a consistent standard, and thereby reach a greater number of countries, by being able to provide courses in a manner that is in compliance with local laws.

If yes, please respond to the following questions without regard to your national or regional laws. Even if no, please address the following questions to the extent you consider your national or regional laws could be improved.

23) If your answer to question 16) or 17) is no, should this be explicitly set out in any international treaty/convention?

24) If yes to question 16):

a) to what libraries, archives and other organizations should these exceptions or limitations apply;

These exceptions and limitations should apply to organizations that have the purpose of facilitating the access of information to the public, such as libraries and archives. It may be possible to have more limited exceptions for public databases that wish to come under such statutory provisions, if their content is something that can be built upon by society and the access to which would provide corresponding benefit to society. Organizations that provide cultural benefits to society, such as associations for the preservation of trades or artifacts of historical or cultural significance, could also benefit from such exceptions if they are not for profit and have the education of the public as their primary focus.

b) to what activities should these exceptions or limitations apply;

These exceptions and limitations should apply to the preservation or replacement of works in the collections of libraries and archives, or similar organizations that are not for profit and seek to facilitate access by the public to such information, such as listed in the subsection above. In the same way, lending of copies between libraries, and provision of copies to users, are also beneficial exceptions to copyright protection. Advancements in technology, such as electronic forms of works in libraries, would greatly benefit from exceptions to copyright protection, such that users could access these works and benefit from them as well.

c) under what conditions should the activities be undertaken or the copyrighted work used?

These organizations would still need to purchase the 'first copy' legitimately, and documentation of copy requests help to provide accountability in the process. Where international provision of information through works is done online, providers should use a 'login' system in order to track web access and restrict the presence of web-crawler bots, which have the sole purpose of downloading everything in their path. There would definitely be a need to balance public interest in receiving the information, with protection of the information. For certain types, such as articles from periodicals, it may be sufficient to provide the user with a licence to access, and provide also a notice that the work may be under copyright protection.

25) If yes to question 17):

a) to what educational and research institutions should these exceptions or limitations apply;

Apart from the standard definition of 'educational institutions' being for academic learning, there are also international databases such as JSTOR, which provide students from many countries with access to published papers, or institutions which offer online courses overseas, such as Coursera, which are but two examples of educational and research institutions which could benefit from these exceptions or limitations.

b) to what activities should these exceptions or limitations apply;

These exceptions and limitations should apply to the provision of information, whether online or in physical format, where for the purpose of education (learning) or for research (building on the existing works).

c) under what conditions should the activities be undertaken or the copyrighted work be used?

Registration of authorized users is important, as it allows both the provider and the copyright holder to track the level of access to the work. The work should be used for legitimate educational or research purposes, and not made accessible for any other purposes. At the same time, care must be taken to balance between the rights of users to access and reproduce the works, and also between the rights of the copyright holders, in particular, those who hold copyright in textbooks and coursebooks. Sufficient protection for the copyright holders should still be provided that there are sufficient profit incentives for textbook-publication.

Yet it is noted that in an expanding digital age, profit is not the only issue, as seen by how, for example, music groups release single songs into the public domain for free, in the hope of generating publicity for album sales. Therefore as an extra-legal measure, it can also be proposed to publishers and even authors, that certain excerpts or introductory chapters be made available for free, and those who wish to use the resources further can opt for a subscription fee or to purchase the resource itself. This is something akin to what Google has pioneered with the Google Library preview system.

For the questions below, please provide an answer for each exception or limitation mentioned above (as applicable).

26) Should use under the exception or limitation be permitted automatically (without any further action), or should certain criteria or procedure(s) be required? If so, what criteria/procedure(s)?

As mentioned above, each country would need to strike the balance where it feels is appropriate for its stage of technological advancement and benefits or needs from copyright protection. In general, it would be useful, at the minimum, to require the institutions to notify the copyright holder that the work would be released to the public under certain exceptions or limitations, and to facilitate amicable discussions accordingly.

Specifically, a 'login' system is necessary for online access systems, in order to restrict access to legitimate users.

27) How should any remuneration for use that falls under such exception or limitation be determined or calculated? Who should be liable for making such payment, and to whom should such payment be made?

There are two possible ways that the issue of remuneration can be resolved: it can be agreed through private contract between the copyright holder and the organization/institution, if statute or case law in that country does not easily facilitate such exceptions. The alternative is that if done under a specific statutory provision, remuneration should be decided by an independent body, such as a Copyright Tribunal set up to decide each case on the merits of its facts.

Generally because these organizations (such as libraries and archives) are not operated for profit, the burden would usually fall on existing taxpayer funding (for public organizations) or the cost of private operation (for private organizations). These organizations may choose to defray that cost by passing a reasonable portion of it to the user who benefits, bearing in mind that this should not be a means for the organization itself to earn profit. The payment should be made to the copyright holder.

28) What special treatment, if any, should there be for use of orphan works within such exception or limitation?

'Orphan works', where the work was published under an anonymous or pseudonymous name, pose a difficulty only insofar as it is not established to whom the payment of remuneration should be made, and to whom permission should be sought to use such a work. Apart from statutory provisions that would 'deem' a work in the public domain after the passing of a certain period of time, it is hard to provide special treatment for orphan works without eroding any rights that a legitimate copyright holder would have lost if he came forward later after the exceptions have been applied. For that reason, orphan works should not have any additional special treatment within such exception or limitation, save that after the expiry of the deemed copyright protection period, that they would enter the public domain.

29) In what circumstances should the exception or limitation be capable of being overridden by contract?

Such exceptions or limitations should not be capable of being overridden by contract.

Legitimate exceptions to copyright protection, such as for educational or research purposes or use in libraries and archives, are a matter of public policy. Ultimately where these exceptions or limitations are expressly provided for in legislation, they should not be capable of being overridden by private contract as this would lead to an inequality of bargaining power where the largest players in the marketplace could use financial or other pressures to thwart statutory intent.

30) How should any efforts by private organisations to address use by libraries, archives and educational and research institutions, be reconciled with any exception or limitation provided by law?

Legitimate private organizations to assist use by these institutions should be supported by the government and/or these institutions. This can be done by first requiring registration of such organizations with the government, under statutory regulation, and therefore under the status of a copyright access or further development organization, it would be able to work within the legislative intent of statute to provide greater assistance to these institutions. For example, collective management organizations can facilitate requests for remuneration by copyright holders, when these

exceptions or limitations are invoked by the institutions.

On the other hand, private organizations that seek to restrict the scope of such exception or limitation should be reminded that while the right of private contract still exists, it cannot be wielded in such a way as to override legislative intent and public policy in providing benefit to society as a whole. In such cases, the exceptions or limitations provided by law should dominate.

Summary

The Singapore Copyright Act has clearly set out comprehensive exceptions and limitations for libraries and archives, and for education and research institutions. The Singapore Group recognizes the benefits of these exceptions and limitations, in preservation of a historical record, provision of cultural benefit to the public and facilitation of academic progress. Further, harmonization is desirable especially given the international scope and overlap between different educational institutions and libraries/archives today. Global standards should be derived from a thorough study of the relevant policy objectives underlying these exceptions.

Please comment on any additional issues concerning exceptions and limitations to copyright protection for libraries, archives and educational and research institutions you consider relevant to this Working Question.