

2020 Public Consultation on the Copyright (Excluded Works) Order

Prepared by the Ministry of Law (“**MinLaw**”) and the Intellectual Property Office of Singapore (“**IPOS**”)

7 Sep 2020

Part I: Introduction

1. MinLaw and IPOS are seeking views on the situations in which users should be permitted to circumvent technological protection measures (“TPMs”) for legitimate uses of copyrighted works. The public consultation period is from **7 Sep 2020 to 2 Oct 2020**.
2. TPMs are technologies, devices, etc. which are akin to digital locks intended to restrict the access or use of copyrighted works. The Copyright Act (“CA”) prohibits users from circumventing TPMs (i.e. breaking the lock) or from selling products and services to allow others to do so. This is because TPMs often prevent copyright infringement, for example, by preventing users from making unauthorised copies of a movie, or making a permanent copy of music that is streamed from a service.
3. However, there may be situations in practice where TPMs restrict legitimate and non-infringing acts. For instance, a TPM which prevents users from copying text may also prevent the use of assistive technologies by users with print disabilities, even though this would otherwise be permitted under the CA. Thus, there is a list of exceptions in the CA for certain situations where circumventions of TPMs are allowed. Some of the exceptions are of a temporary nature as they apply only to works, other subject-matters or performances (or classes thereof) specified in the Copyright (Excluded Works) Order (“EWO”). The EWO is periodically reviewed to take into account the fast pace of technological change.
4. The current EWO 2017 will expire on 31 Dec 2020, MinLaw and IPOS would like to seek feedback on the exceptions to include in the next EWO, including whether the current exceptions in the EWO 2017 are still relevant and should be retained for the next EWO.

Part II: Proposals for Existing Exceptions

Proposal 1: Software reliant on obsolete systems

5. In order to limit piracy, many software publishers require their software to authenticate itself in some way in order to function. Without authentication, illegitimate copies of software are unable to function. However, in some cases, software publishers become unable to maintain the authentication system used by their software. This may be because the software is no longer supported, or because the publisher has gone out of business. The result is that users are unable to use the software they had legitimately obtained, and are unable to turn to the publisher for support.

6. At present, the CA permits the copying or adaptation of software if necessary to use the software.¹ The EWO 2017 also contains three exceptions permitting the circumvention of TPMs to allow the ordinary use of software:²

- a. Where a computer program relies on an obsolete dongle that is damaged or defective.
- b. Where a computer program or video game is in an obsolete format and can only be accessed using the original medium or hardware it was designed to be used or operated with.
- c. Where a computer program or video game can only be accessed via an authentication process that is now obsolete.

7. We seek feedback on whether it would be desirable to retain these exceptions in the EWO, or to expand or limit these exceptions.

Proposal 2: Read-aloud and assistive functionality for digital e-books

8. Digital text (and e-books in particular) may be helpful for those with certain disabilities, as assistive technology may enable them to enjoy these texts despite their disabilities. For instance, persons with reading disabilities may rely on read-aloud or text-to-speech functionality to enjoy an e-book. However, digital texts may also be protected by TPMs to limit piracy. In some cases, these TPMs may inadvertently prevent assistive technology from working properly.

9. At present, the CA permits the copying or adaptation of software if needed to use that software, as well as the copying of a published work if needed to make it accessible.³ The EWO 2017 also contains an exception permitting circumvention of any TPMs that would prevent the operation of read-aloud functionality, or the use of any specialised assistive device or computer software.⁴

¹ Copyright Act section 39C.

² Copyright (Excluded Works) Order 2017, order 3(a) and 3(b).

³ Copyright Act sections 39C and 54(11).

⁴ Copyright (Excluded Works) Order 2017, order 3(c).

10. We seek feedback on whether it would be desirable to retain this exception in the EWO, or to expand or limit this exception.

Proposal 3: Use of short clips from films or shows for educational purposes

11. Audiovisual works, such as movies, television shows, or other videos, are often targets of piracy. To prevent this, TPMs are often used when distributing audiovisual works (e.g. in DVDs/BDs and streaming services) to prevent unauthorised access or copying. However, these same protections may make it difficult for instructors of film and media studies courses, since it would prevent them from extracting relevant parts of a movie or film for use in the course.

12. At present, the CA permits the copying of audiovisual works for use in the course of instruction in the making of a film or soundtrack.⁵ The EWO 2017 therefore contains an exception permitting circumvention of any TPMs where needed to produce compilations of portions of the audiovisual work for use in film or media studies courses, whether by tertiary or pre-tertiary institutions, or by MOOCs.⁶

13. We seek feedback on whether it would be desirable to retain this exception in the EWO, or expand or limit this exception.

Proposal 4: Use of short clips from films or shows for criticism or commentary

14. As mentioned earlier, TPMs are often applied to audiovisual works to limit piracy. Aside from film and media studies courses, other filmmakers may also be affected, since it can be useful to use excerpts from a movie or a television show for the purposes of criticism or commentary, or for reporting the news, in a documentary.

15. At present, the CA permits fair dealings with audiovisual works for the purpose of criticism or review.⁷ More generally, the fair dealing exception is available for certain uses of audiovisual works.⁸ The EWO 2017 therefore contains an exception permitting circumvention of any TPMs where needed to obtain a short portion of the audiovisual work for either criticism or review, or for reporting the news, in the making of a documentary.⁹

16. We seek feedback on whether it would be desirable to retain this exception in the EWO, or expand or limit this exception.

Proposal 5: Investigating and fixing cybersecurity flaws

17. Cybersecurity is crucial to protect digital infrastructure and digital assets (such as personal data). However, tools and technologies that enhance cybersecurity may also fall within the definition of TPMs, since they may be used to protect information contained in copyright works or other subject-matters and the tool or technology may prevent unauthorised access, copying, or modification of such works or subject-

⁵ Copyright Act section 115A.

⁶ Copyright (Excluded Works) Order 2017, orders 3(d) and 3(e).

⁷ Copyright Act section 110.

⁸ Copyright Act section 109(3).

⁹ Copyright (Excluded Works) Order 2017, order 3(f).

matters. This creates a potential problem, as it is often useful or even necessary to test the strength of cybersecurity protections by attacking them and attempting to circumvent them. Absent an exception in the EWO, investigating and fixing cybersecurity flaws may be prohibited by section 261C of the CA.

18. At present, the CA permits the observing, studying, and testing of computer programs, as well as the copying or adaptation of software where necessary to fix errors.¹⁰ The EWO 2017 also contains an exception permitting the circumvention of TPMs where, without contravening any other written law, the circumvention is carried out in good faith by a cybersecurity professional (or someone acting on the instruction of a cybersecurity professional) for the purpose of cybersecurity research.¹¹

19. We seek feedback on whether it would be desirable to retain this exception in the EWO, or expand or limit this exception.

Proposal 6: Replacement or repair of essential or emergency system software

20. Computers and software are increasingly used in critical systems and emergency infrastructure. As with software in general, computer programs used in critical or emergency systems may be protected by TPMs. This may be done, for instance, to protect the program from being tampered with.

21. At present, the CA permits copying and adapting necessary for the correction of errors in computer programs.¹² The EWO 2017 also contains an exception permitting the circumvention of TPMs where necessary to enable the replacement or repair of computer programs used in an essential or emergency system.¹³

22. We seek feedback on whether it would be desirable to retain this exception in the EWO, or expand or limit this exception.

¹⁰ Copyright Act sections 39B and 39C(2).

¹¹ Copyright (Excluded Works) Order 2017, order 3(g).

¹² Copyright Act section 39C(2).

¹³ Copyright (Excluded Works) Order 2017, order 3(h).

Part III: SUBMISSION OF COMMENTS

23. MinLaw and IPOS are seeking views and comments on the above proposals, as well as on any relevant issues or other possible exceptions for the EWO that have not been highlighted. Your views are important and will help us ensure that the protections and exceptions in the CA, and in the EWO, fairly balance the interests and needs of all stakeholders.

24. We ask that all submissions should be clearly and concisely written. Background or supporting information is both useful and welcomed. Please include your name, contact number, and email address in your submission, so that we may contact you for any clarifications or follow-up questions.

25. Comments may be submitted via FormSG, or via email or in hard copy, with the subject or header “Public Consultation on the Copyright (Excluded Works) Order 2020”, to either or both of the following:

By post:

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

By email:

MLAW_Consultation@mlaw.gov.sg

26. We reserve the right to make public all or part of any written submission, and to disclose the identity of the source. Commenting parties may request for confidentiality for any part of the submission believed to be proprietary, confidential, or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If we grant confidential treatment, we will consider, but will not publicly disclose, the information. If we reject the request for confidential treatment, the information will be returned to the party that submitted it and not considered as part of this public consultation. As far as possible, parties should limit any request for confidential treatment of information submitted. We will not accept any submission that requests confidential treatment of all, or of a substantial part, of the submission.

27. Please submit your views or comments by **2 Oct 2020**. Thank you.