



**BEFORE THE
INTELLECTUAL PROPERTY POLICY OFFICE
MINISTRY OF LAW OF SINGAPORE**

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

17 May 2024

The Copyright Alliance and the European Publishers Council appreciate the opportunity to submit comments to the Intellectual Property Office of Singapore (IPOS) and the Ministry of Law of Singapore (MinLaw) in response to the 2024 Public Consultation on Prescribed Exceptions in Part 6, Division 1 of the Copyright Regulations 2021 (Consultation), specifically concerning the proposal in Annex B to permit the circumvention of technological protection measures for the use of copyright-protected works and protected performances for computational data analysis.¹

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 2 million individual creators and over 15,000

¹ 2024 Public Consultation on Prescribed Exceptions in Part 6, Division 1 of the Copyright Regulations 2021, 6, https://www.mlaw.gov.sg/files/2024_Public_Consultation_on_Prescribed_Exceptions_in_Part_6_Division_1_of_the_Copyright_Regulations_2021.pdf.

organizations in the United States, across the spectrum of copyright disciplines.² We are dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators who rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of copyrighted works for the public to enjoy.

The European Publishers Council (EPC) is a high-level group of Chairmen and CEOs of leading media corporations actively involved in multimedia markets spanning newspaper, magazine, book, journal, internet and online database publishers, digital marketplaces, radio and TV broadcasting.³ The members of the EPC fully embrace the opportunities AI will bring to our sector. The responsible and ethical development and deployment of AI systems and applications is essential and must be developed in accordance with the laws that protect publishers' intellectual property rights, their investments, and trusted brands. The EPC is, therefore, pleased to join and confirm support for this submission made by the Copyright Alliance.

We understand that IPOS and MinLaw are considering exceptions to Sections 425-427 of the Copyright Act 2021, which would permit, in limited circumstances, the circumvention of technological protection measures which control access to copyright-protected works and protected performances. While limited exceptions to technological protection measures are allowed under the U.S.-Singapore Free Trade Agreement (FTA), the FTA makes clear that any exceptions arising out of such proceedings must “not impair the adequacy of legal protection or the effectiveness of legal remedies that the Party [country] provides against the circumvention of effective technological measures.”⁴

² A full list of Copyright Alliance organizational members is available at: <https://copyrightalliance.org/about/who-we-represent/>.

³ More information about the European Publishers Council is available at: <https://www.epceurope.eu/>.

⁴ United States-Singapore Free Trade Agreement, U.S.-Sing., art. 16.4(7)(e) & (f) (May 6, 2003) https://ustr.gov/sites/default/files/uploads/agreements/fta/singapore/asset_upload_file708_4036.pdf.

We are submitting comments in this Consultation because we believe that adoption of the proposed new exception to permit circumvention of technological protection measures for the use of copyrighted works and protected performances for computational data analysis⁵ would be inconsistent with these obligations under the FTA. To adopt such a provision would undermine the fundamental abilities and rights of creators and copyright owners to license and protect their works, regardless of their type or size—individual creators, small businesses, medium sized enterprises, and large enterprises. Adopting this proposal would also frustrate the policy goals behind technological protection measures, which are designed to protect copyright and guard against unlawful and unauthorized access, piracy, and illicit activities.

The United States and Singapore have been strong and dedicated partners on a variety of trade-related issues, as evidenced by the recent celebration of the twentieth anniversary of the FTA,⁶ which includes important provisions relating to intellectual property (IP). Under the FTA, the two countries agreed to certain principles to uphold the protection and enjoyment of IP rights and the benefits flowing therefrom, including those based in copyright law. It is vital that both countries continue to develop laws and regulations that are consistent with the provisions in the FTA and other international obligations, such as the Berne Convention for the Protection of Literary and Artistic Works (“Berne Convention”), in order to promote and protect innovation and the creative sectors and their underlying supporting copyright law frameworks. However, this proposal runs contrary to those commitments and undermines the abilities of rightsholders to enjoy, protect, and enforce their copyrights. Copyright is an engine of economic growth and creativity, not a barrier, spurring healthy innovation and progress in the arts and sciences. All new laws and policies should respect copyright law. Creative industries and copyright owners

⁵ 2024 Public Consultation on Prescribe Exceptions in Part 6, Division 1 of the Copyright Regulations 2021, 6 (Min. of Law & the Intellectual Property Office of Singapore Apr. 22, 2024), https://www.mlaw.gov.sg/files/2024_Public_Consultation_on_Prescribed_Exceptions_in_Part_6_Division_1_of_the_Copyright_Regulations_2021.pdf.

⁶ Ambassador Katherine Tai’s Remarks Commemorating the 20th Anniversary of the U.S. Singapore Free Trade Agreement, Office of the U.S. Trade Representative (Apr. 29), <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2024/april/ambassador-katherine-tais-remarks-commemorating-20th-anniversary-us-singapore-free-trade-agreement>.

should not be required to subsidize technological advancements under the misguided belief that doing so is necessary to incentivize other sectors.

The Proposed Exception Violates the U.S.-Singapore FTA

As outlined in the Consultation, this proposal was introduced in order to account for amendments introduced in Singapore’s Copyright Act of 2021, including a new exception which permits the use of copyrighted works for “computational data analysis.” Under the Act, such use is considered a non-infringing use, provided certain conditions are satisfied, including that the user has lawful access to the material.⁷ The proposed exception in this Consultation would permit a user to circumvent technological protection measures controlling access to copyrighted works and protected performances for such uses.

The proposed exception, if adopted, would upset the fundamental legal framework which protects rightsholders’ ability to protect their works against infringement and to control the use of their creative works. In negotiating the FTA, our governments recognized that technological protection measures are designed precisely to facilitate these controls and protections. As such, the FTA requires that these anti-circumvention exceptions and limitations are targeted and narrow. The proposed exception—in combination with a broad umbrella exception for “computational data analysis,” ranging from activities like numerical analysis to the mass reproduction and ingestion of artwork, books, and other creative works to train commercial generative Artificial Intelligence (AI) models—would effectively render these rights meaningless in many situations for far too many rightsholders and contravene international norms and practices. Consequently, the proposed exception fails to meet the FTA’s requirement that anti-circumvention exceptions must “. . . not impair the adequacy of legal protection or the

⁷ To be clear, we have concerns with the “computational data analysis” exception itself, as we believe the “computational data analysis” exception is likely incompatible with the three-step test under the Berne Convention. The proposed exception would further exacerbate these preexisting concerns and harms, which we further address in these comments. Berne Convention for the Protection of Literary and Artistic Works, art. 9(2), Sept. 9, 1886, 1161 U.N.T.S. 3.

effectiveness of legal remedies that the Party [country] provides against the circumvention of effective technological measures.”⁸

Especially considering the proliferation of generative AI technologies, this proposal would exacerbate the harms done to creators and copyright owners by the unauthorized mass scraping, ingestion, and use of creative works by AI developers. In the United States alone, these harms have resulted in almost thirty copyright infringement lawsuits brought by a wide range of creators and copyright owners including songwriters, book authors, publishers, software developers, news and media publishers, visual artists, and others. The proposal here only benefits AI developers, obligating creators and rightsholders to effectively subsidize AI developers without compensation, severely devaluing copyrighted works of all creators and rightsholders.

The Proposed Exception Exacerbates Concerns Over Berne Convention Obligations and Compliance

We believe that the current proposal further strips away rightsholders’ ability to protect and enforce their works and would likely exacerbate the tenuous position that the “computational data analysis” exception is permissible under the Berne Convention’s three-step test, which both Singapore and the United States adhere to under the Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) as part of the World Trade Organization. Enshrined in Article 9(2) of the Berne Convention, the three-step test provides that member countries may permit the reproduction of copyrighted works in (1) “certain special cases,” (2) “provided that such reproduction does not conflict with a normal exploitation of the work,” and (3) “does not unreasonably prejudice the legitimate interests of the author.”⁹

⁸ 2024 Public Consultation on Prescribe Exceptions in Part 6, Division 1 of the Copyright Regulations 2021, 6 (Min. of Law & the Intellectual Property Office of Singapore Apr. 22, 2024), https://www.mlaw.gov.sg/files/2024_Public_Consultation_on_Prescribed_Exceptions_in_Part_6_Division_1_of_the_Copyright_Regulations_2021.pdf.

⁹ Berne Convention for the Protection of Literary and Artistic Works, art. 9(2), Sept. 9, 1886, 1161 U.N.T.S. 3.

We believe that with regards to the first factor, because the “computational data analysis” exception is broad in its scope, it is not a “special case,” and thus likely fails to meet the criteria under the first step of the test. The proposed exception expands the scope and reach of the already-questionable exception by permitting users to also circumvent technological protection measures in order to avail themselves of the “computational data analysis” exception. In our view, this makes it even less likely that the existing exception could be categorized as a “special case.”

The “computational data analysis” exception also fails the second and third steps of the test. Under the second step, it directly undermines the normal exploitation of copyrighted works for such uses, and under the third step, unreasonably prejudices the legitimate interests of the rightsholder to use, license, and authorize others to use their works for such purposes. Rightsholders and creators have robust and expanding licensing markets for computational data analysis, and the creative community continues to develop new ways to license copyrighted works for AI use cases. By undercutting rightsholders’ ability to control access and distribution of their works for such “computational data analysis,” the proposed exception would negatively impact rightsholders’ abilities to exploit and protect their works.

In short, the proposed exception—when considered in conjunction with the “computational data analysis” exception—would stunt growth in the AI licensing market and directly prejudice rightsholders’ fundamental right to license and receive compensation for their creative works. Undermining this fundamental pillar of copyright law in favor of new technologies is precisely the kind of scenario the three-step test protects against and that Berne Convention signatories have agreed to avoid.

Conclusion

The harms that would be introduced by the adoption of the proposal to permit circumvention of technological protection measures for “computational data analysis” would be pervasive and widespread. Most significantly, it would undermine Singapore’s commitments under the U.S.-Singapore FTA and the Berne Convention which require that exceptions be narrow and targeted

in scope. Evidence-based policy making will ensure that the integrity of strong copyright laws is preserved and that strong policies are sustainable over time. Without a careful and balanced approach, copyright law could end up hindering, instead of fueling, creators and rightsholders' ability to create, provide, and disseminate new works to the public.

We remain hopeful that Singapore will continue its strong partnership with the United States to uphold strong standards on copyright which fuel creativity, innovation, and progress in our countries. The IPOS and MinLaw's proposal raises fundamental questions and concerns regarding the Singapore's commitment to those standards and principles, as well as its leadership on copyright globally. For the reasons cited above, we urge the IPOS and MinLaw to withdraw the proposal.

Respectfully Submitted,



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