

# Copyright Litigation

The first edition of this publication aimed to provide practical guidance to anyone involved in multi-jurisdictional copyright litigation. This second edition has been updated to include more topical issues such as liability of internet service providers and protection of computer software.

Laws and procedures regarding copyright are so different worldwide, that endless opportunities for forum shopping exist both when bringing a claim for infringement or when countering a third party's claim. This book is intended as an easy reference guide to the differing regimes in some of the world's most important jurisdictions.

After the great success of our two previous books, *Patent Litigation* and *Trade Mark Litigation*, we were proud to be able to include a record number of top level contributors.



SECOND  
EDITION  
2015

Copyright Litigation

General Editors:  
Thierry Calame, Lenz & Staehelin &  
Massimo Sterpi, Studio Legale Jacobacci & Associati

THE EUROPEAN LAWYER  
REFERENCE

# Copyright Litigation

Jurisdictional comparisons

Second edition 2015

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Published in 2014 by  
Thomson Reuters (Professional) UK Limited  
trading as Sweet & Maxwell  
100 Avenue Road, London NW3 3PF  
Friars House, 160 Blackfriars Road, London SE1 8EZ  
(Registered in England & Wales, Company No 1679046.  
Registered Office and address for service:  
2nd floor, Aldgate House, 33 Aldgate High Street, London EC3N 1DL)

Printed and bound in the UK by Polestar UK Print Limited, Wheaton

A CIP catalogue record for this book is available from the British Library.  
ISBN: 9780414035249

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# Foreword

**Thierry Calame, Lenz & Staehelin  
& Massimo Sterpi, Studio Legale Jacobacci & Associati**

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## **COPYRIGHT IS THE NEW STEEL**

In recent years, copyright has taken a central role in the global economy.

Creativity, once the elitist domain of artists, has become the bread and butter of daily life. Anyone posting a comment or a snapshot online can be an author for copyright purposes. In addition, virtually every digital start-up is based on copyrightable contents, such as graphic design, texts, images or music.

In the job market, what counts is no longer the physical energy of the worker, but rather his creativity. At the same time, trying to enlarge copyright protection for new forms of creations – such as programme formats, culinary recipes or fragrances – is a growing trend.

In such a scenario, copyright takes a fundamental role in protecting one's creativity, and often becomes the basis for one's success.

At the same time, another form of copyright protection becomes increasingly relevant, namely that afforded to databases. When data mining represents an essential prerequisite in decision-making processes, ownership of data becomes the new source of power.

However, circulation and distribution of content also raises serious and yet unresolved issues. Can an Internet Service Provider, who not only takes advantage of the circulation of content but is often actively involved in shaping such circulation, avail itself of exemptions of liability for underlying copyright infringements? Where should the limits be drawn between hosting, granting access to and transporting (infringing) content on the one hand and active participation in the content distribution on the other?

Finally, projects of massive appropriation and distribution of content (such as the scanning of entire libraries) increase the conflict between the public interest to access knowledge and the rights of the authors, originally created to enable authors to live off their creations.

A rising source of power, copyright is the steel of the current world economy.

Rome/Zurich, 29 October 2014

Thierry Calame      Massimo Sterpi

# Singapore

**One Legal LLC** Regina Quek

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## **1. SOURCES OF LAW**

### **1.1 What are the principal sources of law and regulation relating to copyright and copyright litigation?**

#### **Local legislation**

The principal source of legislation relating to copyright is the Copyright Act.

The main regulations or subsidiary legislation enacted under the Copyright Act include the following: Copyright (International Organisations) Regulations; Copyright (International Protection) Regulations; Copyright (Records Royalty System) Regulations; Copyright Regulations; Copyright (Border Enforcement Measures) Regulations; Copyright Tribunals (Procedure) Regulations; Copyright (Network Service Provider) Regulations; and Copyright (Excluded Works) Order 2012.

Relevant legislation for copyright litigation includes the State Courts Act, Supreme Court of Judicature Act, Rules of Court and Criminal Procedure Code.

#### **International treaties**

Singapore is a member of a number of international treaties which deal with copyright, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) (the TRIPs Agreement); the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention); the WIPO Copyright Treaty (the WCT); and the WIPO Performances and Phonograms Treaty (the WPPT).

The Copyright (International Protection) Regulations provide for the protection of works originating from countries which are members of the WTO (ie protected under the TRIPs Agreement) and/or the Berne Convention (Convention Countries).

#### **Common law/case law**

Singapore courts recognise prior national case law as a source of law.

Further, section 3 of the Application of English Law Act provides that the common law of England so far as it was part of the law of Singapore before 12 November 1993, shall continue to be part of the law of Singapore, subject to applicability to local circumstances.

In practice, while not bound, Singapore courts would also consider case law emanating from the UK, Australia and possibly the USA if there is similar legislation being construed.

**1.2 What is the order of priority of the relevant sources, ie which takes precedence in the event of a conflict?**

The order of priority is primary legislation, then subsidiary legislation, and then case law.

**2. COURT AND ADMINISTRATIVE SYSTEM**

**2.1 In which courts are copyrights enforced? Are they specialised copyrights courts? If not, what level of expertise can a copyright holder expect from the courts?**

Copyrights may be enforced in the State Courts or the High Court, depending on the type of proceedings and value of the claim.

Singapore has no specialised copyright courts. However, the courts are generally considered to be versed in all areas of the law. Certain judges may, as a matter of personal experience and training, be more familiar with copyright law. The courts may, at their sole discretion, assign copyright-related cases to such judges.

**2.2 Is there any administrative body (eg a copyright office)? If so, does it have any jurisdiction in copyright litigation?**

The Copyright Tribunal established under the Copyright Act has functions which include: determining 'equitable remuneration' payable for a sound recording or cinematographic film of the work or of an adaptation of it, for copies made of an article in a periodical by a body administering an educational institution or administering an institution assisting handicapped readers; enquiring into royalties payable for musical works; resolving disputes arising from the terms of a licence scheme (as defined under the Copyright Act) and/or arising from the apportionment of royalty between parties owning various copyrights in relation to a work; and fixing terms of use by the government of copyrighted material.

The Copyright Tribunal has no jurisdiction in copyright litigation proceedings.

**2.3 To what extent are courts willing to consider, or are bound by, the opinions of other national or foreign courts that have handed down decisions in similar cases?**

In similar cases, under the doctrine of *stare decisis*, national courts are bound to follow the *ratio decidendi*, and pay significant regard to the *obiter dictum*, of previous decisions of higher national courts. Courts generally do not depart from previous rulings by courts of the same level unless there are good reasons.

Singapore courts are usually willing to consider opinions of courts in other Commonwealth countries. In particular, as the Copyright Act was adapted from UK and Australian legislation, Singapore courts place certain weight on the opinions of UK and Australian courts, especially if they relate to statutory interpretation and/or application of identical or similar statutory provisions. Singapore courts have also been known to consider US decisions in situations where similar legislation is being construed.

## **2.4 Who can represent parties before the courts handling copyright litigation?**

Generally, only qualified persons who have been admitted as an Advocate and Solicitor of the Supreme Court of Singapore have the right to represent parties before the courts.

However, in a case of sufficient difficulty and complexity, the courts may admit to practice as an advocate and solicitor, a Queen's Counsel not ordinarily resident in Singapore or Malaysia who comes or intends to come to Singapore for the purpose of appearing in the case and has special qualifications or experience for the purpose of the case. There must further be special reasons to explain the need for such ad hoc admission.

## **2.5 What is the language of the proceedings? Is there a choice of language?**

The language of proceedings is English, but interpreters/translators may be employed to interpret and/or translate testimony and/or documents from a foreign language into English and vice versa.

# **3. SUBSTANTIVE LAW**

## **3.1 What types of works are copyrightable under your law? Does your national law provide for a closed list of copyrightable works or for an open list?**

The Copyright Act provides for a closed list of copyrightable works, as follows:

- works: literary, dramatic, musical and artistic works;
- subject matter other than works: sound recordings, cinematographic films, television and sound broadcasts, cable programmes and published editions of works; and
- live performances.

## **3.2 Is software considered copyrightable under your law?**

Yes, software is copyrightable under Singapore law. A computer program is considered a literary work under our Copyright Act.

## **3.3 Does the author of a work have to be a national of your country for the work to qualify as copyrightable or does a work qualify for copyright protection irrespective of the nationality of the author?**

An unpublished work may qualify for copyright protection if its author was a citizen or resident of Singapore or any Convention Country (a Qualified Person) at the time the work was made. In addition, an original artistic work that is or forms part of a building may qualify for copyright protection by virtue of it being situated in Singapore or any Convention Country.

A published work may qualify or continue to qualify for copyright protection if: its author was a Qualified Person at the time of its first publication; or it was first published in Singapore or any Convention Country.

Subject matter other than works will generally qualify for copyright protection if: its maker was a Qualified Person at the time it was made; or it

was made or first published in Singapore or any Convention Country.

Live performances are copyrightable if the performance was given in Singapore or any Convention Country by one or more Qualified Persons.

### **3.4 What types of rights are covered by copyright? To what extent are moral rights covered by copyright?**

Copyright for literary, dramatic or musical works covers the exclusive right to: reproduce the work in a material form; publish the work if the work is unpublished; perform the work in public; communicate the work to the public; make an adaptation of the work; and do in relation to an adaptation of the work, any of the above acts.

For computer programs (which is a literary work), copyright also includes the exclusive right to enter into a commercial rental arrangement whose essential object is the rental of the computer program.

For artistic works, copyright covers the exclusive right to: reproduce the work in a material form; if the work is unpublished, publish the work in Singapore or any country in relation to which the Copyright Act applies; and communicate the work to the public.

For sound recordings, copyright covers the exclusive right to: copy it; enter into a commercial arrangement in respect of it; if it is unpublished, publish it; and avail it to the public by means of, or as part of, a digital audio transmission.

For cinematographic films, copyright covers the exclusive right to: copy it; cause it to be seen in public; and communicate it to the public.

For television broadcasts, copyright covers the exclusive right to: re-broadcast or otherwise communicate it to the public and/or cause it to be seen or heard in public; and to make a film of the broadcast and/or a sound recording of the broadcast or copies thereof.

For sound broadcasts, copyright covers the exclusive right to: re-broadcast or otherwise communicate it to the public; and to make a sound recording of the broadcast or copies thereof.

For cable programmes, copyright covers the exclusive right to: make a film of it or a copy thereof; make a sound recording of it or a copy thereof; to cause it to be seen or heard in public, by a paying audience; and communicate it to the public.

For published editions of works, copyright covers the exclusive right to reproduce the edition.

Copyright for live performances covers the exclusive right to: make a recording or copy of a recording of it; communicate it to the public; cause it to be seen and/or heard live in public; if the recording of it is unpublished, publish the recording; and avail a recording of it to the public in a way that allows any person to access it from a place and at a time chosen by the person.

Moral rights are protected under the Copyright Act, which imposes a duty against: (i) false attribution of authorship of a work or reproduction of artistic work, or identity of a performer; and (ii) false representation of an altered work or recording of performance as unaltered.

### **3.5 What defences are available to an alleged infringer? To what extent can ‘fair use’ or ‘fair dealing’ be used as a defence? If these doctrines do not exist, are there any comparable limitations?**

The fair dealing provisions are drafted in an open-ended manner, affording a defence for fair dealing of a literary, dramatic, musical or artistic work for any purpose, including purposes of research and study, criticism or review, and reporting on current events. To determine if such dealing constitutes fair dealing, regard will be had to: (i) the purpose and character of the dealing including whether such dealing is of a commercial nature or for non-profit educational purposes; (ii) the nature of the work; (iii) the amount and substantiality of the part copied in relation to the whole work; (iv) the effect of the dealing upon the potential market for (or value of) the work; and (v) the possibility of obtaining the work within a reasonable time and expense.

Where the work comprises an article in a periodical publication, then the copying of the article (or part thereof) for the purposes for research or study would be considered fair dealing (provided no other article dealing with a different subject matter in that periodical is also copied). For other cases, copying of not more than a reasonable portion (generally, a chapter, or 10 per cent of the number of pages) for the purposes of research or study would also be considered fair dealing.

Fair dealing of a literary, dramatic, musical or artistic work for the purpose of criticism or review does not constitute infringement where sufficient acknowledgment of the work is made.

Fair dealing of the same does not constitute infringement if it is for the purpose of reporting current events: (i) in a newspaper, magazine or similar periodical where a sufficient acknowledgment of the work is made; or (ii) by broadcasting, or a cable programme service, or in a film.

Other acts that do not constitute infringement (apart from fair dealing) include:

- acts done for the purposes of judicial proceedings or a report thereof, or for seeking or giving professional legal advice;
- the making of a temporary or transient reproduction of a work incidental to the technical process of making or receiving a (non-infringing) communication;
- the reproduction of a computer program for back-up purposes by or on behalf of the original owner;
- decompiling of a computer program to obtain information necessary to create an independent computer program which can be operated with the decompiled computer program or with another computer program;
- observing, studying or testing the functioning of a computer program in order to determine the ideas and principles which underlie any element of the computer program;
- copying or adapting a computer program by a lawful user if such copying or adapting is necessary for his lawful use;
- the inclusion of a short extract of a work in a collection intended for use by educational institutions, where sufficient acknowledgement is given;
- the importation of an accessory to an article (where the article is not an

- infringing copy);
- the reading or recitation in public of an extract of reasonable length from a published literary or dramatic work where sufficient acknowledgement is given;
  - the performance of a literary, dramatic or musical work of a religious nature at a religious assembly;
  - the making of a sound recording or cinematographic film of a work solely to broadcast or simulcast a literary, dramatic or musical work where the broadcast would not infringe;
  - the copying by an authorised officer of a library acting in accordance with the provisos under sections 45 to 48 of the Copyright Act;
  - the publication of an unpublished literary, dramatic or musical work, or artistic work being a photograph or engraving kept in a public library, which was made more than 75 years ago, whose author has died more than 50 years ago and where prior notice was given of the intended publication and the alleged infringer did not know the identity of the copyright owner immediately before the said publication;
  - the copying of works for educational purposes by a person conducting or undergoing the course of education and not carried out by means of a reprographic process;
  - the making of paintings, drawings, engravings or photographs of sculptures and other works of artistic craftsmanship, and buildings.

For live performances, the Copyright Act further specifies certain non-infringing recordings, for example: a recording made solely for the private use of the person who made it; a recording made solely for use in scientific research, or setting, communicating or answering questions in an examination; and a recording made by a person who reasonably believes, due to a misrepresentation made to them, that the performer has authorised the making of the recording.

### **3.6 Are compulsory licences available? If so, under which circumstances?**

Yes, the Copyright Act prescribes certain ‘statutory licences’ (or compulsory licences) whereby copyright material is permitted to be used by certain parties, who must in turn pay equitable remuneration to the copyright owner (to be agreed upon or to be determined by the Copyright Tribunal in the absence of agreement). These statutory licences include:

- the making of copies or the communication of the whole or part of an article contained in a periodical, by or on behalf of the body administering an educational institution for the educational purposes of that institution (provided that only one article is copied);
- the making of copies or the communication of the whole or a part of a copyright work by or on behalf of the body administering an educational institution for the educational purposes of that institution, provided that only a reasonable portion of the work has been copied;
- the making, by or on behalf of a body administering an institution assisting handicapped readers, of a record embodying a sound recording

of a literary or dramatic work or of a part of the work, or of a Braille version, a large print version or a photographic version of the work or a part of the work, for use by a handicapped reader for the purpose of research or study;

- the making, by or on behalf of a body administering an institution assisting intellectually handicapped readers, of a copy of the whole or part of the work for use in the provision of assistance to intellectually handicapped readers.

### **3.7 Is there a requirement of copyright registration? Is copyright registration required to enforce a copyright, ie to obtain damages or other relief? Is a copyright deposit required? Is a copyright notice required? What are the consequences, if any, for failure to make a copyright deposit or to display a copyright notice?**

There is no requirement of registration as copyright arises upon creation of the work or other subject matter in material form. Copyright registration is not required to enforce a copyright. No copyright deposit is required.

The display of a copyright notice is not crucial to the enjoyment of copyright protection. However, an alleged infringer may rely on its absence to argue a lack of knowledge of the existence of copyright, which a court may take into account in assessing damages.

### **3.8 How long does copyright protection last?**

- Original works (other than photographs): 70 years from the end of the year of the author's death.
- If a literary, dramatic or musical work is unpublished as of the author's death: 70 years from the end of the year of first publication.
- For photographs: 70 years from the end of the year of first publication.
- For literary, dramatic, musical and artistic works other than a photograph, where the author's identity is unknown: 70 years after the end of the year of first publication.
- Sound recordings and cinematographic films: 70 years from the end of the year of first publication.
- Broadcasts and cable programmes: 50 years from the end of the year in which the broadcast or cable programme was made.
- Published editions of works: 25 years from the end of the year of first publication.
- Live performances: 70 years from the end of the year of the performance.

### **3.9 How is copyright infringement assessed? Is actual copying to be proved or is substantial similarity sufficient to establish infringement?**

Actual copying need not be proved, as long as a substantial part of the work was copied.

Whether a part is 'substantial' depends on the quality rather than the quantity of the reproduction and is a question of fact in each case (*Flamelite (S) Pte Ltd v Lam Heng Chung* [2001] SGCA 75).

If the plaintiff proves sufficient similarity between the works in terms

of the features allegedly copied, and establishes that the defendant had an opportunity to copy – ie, proof of access – the burden passes to the defendant to prove that the similarities were not the result of copying (*Virtual Map (Singapore) Pte Ltd v Singapore Land Authority* [2008] SGHC 42).

### **3.10 Are there any particularities for assessing copyright infringement for specific types of works (eg software)?**

Yes, the Copyright Act provides that certain acts will not constitute infringement of copyright for specific types of works, which include computer programs; accessories; artistic works situated in public places; buildings and models of buildings; architectural drawings or plans; sound recordings; and cinematographic films.

For example, the Copyright Act provides for certain acts with respect to computer programs that will not constitute copyright infringement, such as:

- the making of a reproduction or adaptation of a computer program on behalf of the owner of the original program for the sole purpose as a back-up copy;
- the decompilation of a computer program which is necessary for and is used for the sole purpose of obtaining information necessary to create an independent computer program which can be operated with any computer program (including the decompiled computer program);
- the loading, displaying, running, transmitting or storage of a computer program in order to study or test the functioning of the computer program, so as to determine the ideas and principles which underlie any element of the computer program; and
- the copying or adaptation of a computer program, where the same is necessary for the user's lawful use of the computer program.

### **3.11 Can a copyright be enforced against a trade mark, a domain name, a trade name, a pseudonym or other distinctive signs?**

Copyright in artistic work may be recognised in certain trade marks and signs such as logos and labels, and therefore enforced against them. However, there would not be any copyright in a domain name, trade name or pseudonym.

### **3.12 On what grounds can a copyright be declared invalid?**

As copyright arises immediately upon its reduction into material form, and there is no system of registration for copyright, the invalidation of copyright per se is not a relevant concept in Singapore.

However, the validity/subsistence of copyright may be put in issue in infringement proceedings. Copyright will not subsist in a work if: the work was not reduced to material form; the expression of the work is not original (ie must be independently created by the author and possessing sufficient amount of skill, labour and judgment involved in the creative process); for unpublished works, the author was not a Qualified Person at the time of creation; or, for published works, the author was not a Qualified Person at the time of first publication, or the work was not first published in Singapore or any Convention Country. Recently, it was held that only a living person can qualify as an author for copyright protection to subsist (and not incorporated bodies).

### **3.13 To what extent can enforcement of a copyright expose the copyright holder to liability for an antitrust violation?**

Provisions exist in the Competition Act that would penalise certain types of agreements or conduct with respect to intellectual property (including copyright) which may have appreciable anti-competitive effects, namely: agreements (eg licensing agreements) which have as their object or effect the prevention, restriction or distortion of competition within Singapore, such as agreements that facilitate or amount to price-fixing, market-sharing or output limitation (section 34); and conduct that amounts to the abuse of a dominant position, such as extending the copyright holder's market power beyond the scope granted by their intellectual property rights, or protecting, enhancing or maintaining their dominant position other than through merit (section 47).

However, enforcement under these provisions has to date not occurred in Singapore.

### **3.14 Are there any grounds on which an otherwise valid copyright can be deemed unenforceable, owing to misconduct by the copyright holder, or for some other reason? Is there a time limit for bringing an infringement action?**

The Copyright Act does not provide for the unenforceability of an otherwise valid copyright by reason of misconduct on the part of the copyright holder.

However, the courts may intervene on the basis of equity or public policy in suitable circumstances, for example where a copyright owner, knowing that another person is about to commit, or is in the course of committing, an infringing act, stands by in a such manner that induces the latter, who might otherwise have abstained from the infringing act, to believe that the copyright owner assents to its being committed and therefore continues with the act (*Virtual Map (Singapore) Pte Ltd v Singapore Land Authority*). The courts may also take such misconduct into account in the assessment of damages and/or costs to be awarded.

In addition, section 142 of the Copyright Act provides that no action may be brought for an infringement of copyright after the expiration of six years from the time the infringement took place.

### **3.15 Can a copyright holder bring a lawsuit claiming both copyright infringement and unfair competition for the same set of facts?**

There is no general tort of unfair competition in Singapore (apart from the traditional categories such as copyright infringement, passing off, trade mark infringement). But certainly a copyright holder can claim both copyright infringement and another cause of action, for example – passing off – for the same set of facts, and this has been previously done.

## **4. PARTIES TO LITIGATION**

### **4.1 Who can sue for copyright infringement (copyright holder, exclusive licensee, non-exclusive licensee, distributor)? Does a licensee need to be registered to be eligible to sue?**

Under the Copyright Act, both the copyright owner and an exclusive licensee

may bring an action for copyright infringement. There is no requirement that an exclusive licensee must be registered in order to be eligible to sue. However, the relevant licence agreement must be in force at the time of the infringement.

A non-exclusive licensee has no right to sue (*Alliance Entertainment Singapore Pte Ltd v Sim Kay Teck* [2007] SGHC 43). Neither do distributors or agents (*Odex Pte Ltd v Pacific Internet Ltd* [2008] SGHC 35).

#### **4.2 Can copyright collecting societies sue for copyright infringement to enforce their members' rights? If so, can copyright holders sue in parallel with the collecting societies or do collecting societies have an exclusive right to sue for certain types of infringement?**

It is possible for copyright owners to assign their rights to a copyright collecting society to sue for copyright infringement to enforce their member's rights. The general rule is that only the copyright owner or exclusive licensee has the right to sue. If certain copyrights have been assigned to the copyright collecting society then the society may sue for copyright infringement in respect of the rights that have been assigned.

#### **4.3 Under what conditions, if any, can an alleged infringer bring a lawsuit to obtain a declaratory judgment on non-infringement?**

If a person has received threats of an action or proceeding in respect of copyright infringement, they may bring a lawsuit to obtain, inter alia, a declaration that the threats are unjustifiable.

On declaratory judgments, the court in *Wing Joo Loong v Qinghai Xinyuan* [2009] 2 SLR 814 held that, while the court has the power to grant declarations so long as it does not exceed its general jurisdiction or contravene any express statutory provision, this power should be exercised with great caution to prevent abuse (eg people unnecessarily claiming declarations of their rights, etc) and that accordingly it would be slow to grant a declaration relating to the criminal consequences of conduct unless there are exceptional circumstances which must be proved by the party seeking the declaration.

#### **4.4 Who can be sued for copyright infringement? Can the company directors be sued personally? Under what conditions, if any, can someone be sued for inducing or contributing to copyright infringement by someone else?**

Any person (including a natural person, company, or association or body of persons) may be sued.

The company's director, manager, secretary, or other officer may be sued personally for the commission of certain offences under the Copyright Act, if the offence was committed with their consent or connivance.

A person who, without licence from the copyright owner, authorises another to do any act infringing the copyright, may be sued for copyright infringement.

To 'authorise' another is to grant or purportedly grant another the right

to do the act complained of (*CBS Songs Ltd v Amstrad Consumer Electronics Pte Ltd* [1988] 1 AC 1013, referred to in *Lotus Development Corporation v Ong Seow Pheng* [1997] SGCA 23). Where the authoriser has control over the means by which the infringement was committed, it will be sufficient if they: made the means available to the infringer; knew or had reason to suspect that the infringer would use the means for the purposes of infringement; and took no reasonable steps to limit the use of the means supplied to legitimate purposes (*Moorhouse v University of New South Wales* [1976] RPC 151; referred to in *Lotus Development Corporation v Ong Seow Pheng* [1997] SGCA 23).

On the other hand, where the primary infringer knows or must surely know that the ‘authoriser’ has no authority (apparent or otherwise) to grant it the right to do the infringing act, the alleged ‘authoriser’ cannot be found liable for authorising infringement (*RecordTV Pte Ltd v Mediacorp TV Singapore Pte Ltd* [2009] SGHC 287).

#### **4.5 How is the liability of Internet Service Providers (ISPs) treated? Under which conditions may they be considered jointly liable with the copyright infringer?**

The Copyright Act provides for safe harbour provisions for network service providers (section 193B; 193C). The court will not grant monetary relief or make any order against a network service provider (save for requiring the network service provider to take reasonable steps to disable access to an online location outside Singapore or to terminate a specific account) for infringement that results from the transmission or routing or provision of connections for an electronic copy of the material or any transient storage by the network service provider, provided that the network service provider did not initiate or direct the transmission and such transmission/routing was carried out through an automatic technical process and that no substantive modification to the content of the electronic copy was made by the network service provider.

The network service provider will also not be liable for monetary relief (save for the exceptions stated above) for making a cached copy through an automated process in response to an action by a user of the network in order to facilitate efficient access.

The exemption from liability (save for the exceptions stated above) extends to the storage (at the direction of the user of the network) of an electronic copy on the primary network or the linking of a user to an online location on the network, provided that the network service provider complies with certain conditions.

#### **4.6 Is it possible to add or subtract parties during litigation?**

A party may be added to an action during litigation where: (i) they ought to have been joined as a party or their presence is necessary for the effective and complete determination of all issues adjudicated upon; or (ii) a question or issue exists between them and any party in the proceedings which relates to a relief claimed, which the court finds just and convenient to determine between them and that party, as well as the other parties to the matter.

An order may be made that a party shall cease to be a party to an action where they have been improperly or unnecessarily made a party, or they have ceased to be a proper or necessary party.

## 5. ENFORCEMENT OPTIONS

### 5.1 What options are open to a copyright holder when seeking to enforce its rights in your country?

A copyright holder may seek the following reliefs in a civil action for copyright infringement:

- an injunction;
- damages (not available if the defendant was not aware, and had no reasonable grounds for suspecting, that the offending act was an infringement of copyright);
- an account of profits;
- statutory damages;
- delivery up of infringing copies;
- forfeiture of infringing copies to the copyright holder; and
- destruction of infringing copies.

### 5.2 Are criminal proceedings available? If so, what are the sanctions?

Yes, criminal proceedings are available in respect of infringing acts defined as offences under the Copyright Act.

These offences include:

Offence	Sanction
<ul style="list-style-type: none"> <li>• Making for sale or hire;</li> <li>• Selling, hiring, or exposing for sale or hire by way of trade; or</li> <li>• Exhibiting in public by way of trade; any article known, or ought reasonably to be known to be, an infringing copy.</li> </ul>	Fine not exceeding S\$10,000 per infringing article, up to a maximum of S\$100,000; and/or imprisonment for a term not exceeding five years.
Possessing or importing into Singapore any article known, or ought reasonably to be known to be, an infringing copy, for the purposes of: <ul style="list-style-type: none"> <li>• Sale, hire, or offer or exposure for sale or hire by way of trade;</li> <li>• Distribution for trade purpose or any other purpose which will prejudicially affect the copyright owner; or</li> <li>• Exhibition in public by way of trade.</li> </ul>	As above

Distributing for trade purposes or any other purposes which will prejudicially affect the copyright owner, any article known, or ought reasonably to be known to be, an infringing copy.	Fine not exceeding S\$50,000; and/or imprisonment for a term not exceeding three years.
Causing, for private profit: <ul style="list-style-type: none"> <li>• A literary, dramatic or musical work to be performed in public, or a cinematographic film to be seen and/or heard in public, other than by the reception of a television broadcast or cable programme, where it is known or ought to be known that copyright subsists in the work or film and that such performance infringes that copyright; or</li> <li>• A performance to be seen and/or heard live in public, or a recording of an unauthorised performance to be heard in public, without the performer's authority.</li> </ul>	Fine not exceeding S\$20,000; and/or imprisonment for a term not exceeding two years.
Fine not exceeding S\$20,000; and/or imprisonment for a term not exceeding two years.	First offence: fine not exceeding S\$20,000; and/or imprisonment for a term not exceeding six months. Second/subsequent offence: fine not exceeding S\$50,000; and/or imprisonment for a term not exceeding three years.
Making or possessing an article specifically designed or adapted for making infringing copies.	Fine not exceeding S\$20,000 per article; and/or imprisonment for a term not exceeding two years
Advertising in Singapore for the supply in Singapore of infringing copies of computer programs.	Fine not exceeding S\$20,000; and/or imprisonment for a term not exceeding two years.

In addition, the court may order any infringing copy or article in the possession of the alleged offender or before the court, which has been used for making infringing copies, to be destroyed and delivered up to the copyright owner.

### 5.3 Are border measures available?

Yes. Division 6 of Part V of the Copyright Act provides for border enforcement measures with respect to copyright protected works.

**5.4 Are proceedings for fast removal of infringing content from the internet available?**

Under section 193C and 193D – if the network service provider is furnished with a notice in the prescribed form relating to the cached copy of the material or the storage of an electronic copy of the material made by the copyright owner, the network service provider must expeditiously take reasonable steps to remove or disable access to the cached copy of the material or the electronic copy of the material on the primary network in order to avail itself of the ‘safe harbour’ provisions that would indemnify them against certain copyright infringement liabilities.

**5.5 Are ‘graduated response’-type sanctions (such as bandwidth reduction or temporary suspension of internet access) available against infringers online? If so, which authorities (administrative bodies or courts) are competent? How long does the procedure typically last?**

The provisions do not specifically provide for graduated response type sanctions. However, provisions are available for the court to require network service providers to disable access to online locations outside Singapore, or to terminate a specified account, or to remove an infringing electronic copy from the primary network or disable access thereto.

The court is competent to make orders as it deems fit (including providing lesser sanctions).

The procedure will not be different from other civil actions relating to copyright infringement (see below).

**5.6 Is it compulsory to send a cease and desist letter to an alleged infringer before commencing copyright infringement proceedings? What are the consequences, if any, for making unjustified threats of copyright infringement?**

No, it is not compulsory to send a cease and desist letter. If unjustified threats of action or proceedings in respect of copyright infringement are made, an alleged infringer may sue for groundless threats of proceedings under section 200 of the Copyright Act and may: obtain a declaration to the effect that the threats are unjustified; obtain an injunction against the continuance of the threats; and recover any damages sustained by reason of the threats.

**5.7 To what extent are courts willing to grant cross-border or extra-territorial injunctions?**

Courts are generally reluctant to grant cross-border or extra-territorial injunctions. For example, it has been held that a worldwide *mareva* injunction will only be granted in very exceptional circumstances (*SSAB Oxelosund AB v Xendral Trading Pte Ltd* [1992] SGHC 80).

**5.8 To what extent do courts recognise the blocking effect of ‘torpedo’ actions abroad?**

The use of a ‘torpedo’ action (filing an action for declaration of non-infringement) in a foreign court so as to impose an obligation on that other

court (in which a mirroring infringement action is or may be commenced) to stay its proceedings has not been used in Singapore. It is probably unlikely that the Singapore courts would recognise the blocking effect of ‘torpedo’ actions in Singapore. In a previous case, the outcome of patents and their amendments was decided independently from other countries, due to the principle of territoriality.

### **5.9 To what extent are alternative dispute resolution (ADR) methods (such as arbitration or mediation) available to resolve copyright disputes? How widespread are ADR methods and in which sectors?**

ADR methods are generally voluntary or by consent or contract. They are strongly promoted and encouraged by the government of Singapore. In recent years, ADR methods have significantly increased in importance as a means of dispute resolution in a wide range of disputes.

However, ADR methods are currently not commonly used in copyright-related matters. One reason may be that the injunctive reliefs, which are very important in copyright-related matters, are more appropriately ordered by the court instead of being awarded by an arbitrator.

## **6. PROCEDURE IN CIVIL COURTS**

### **6.1 What is the format of copyright infringement proceedings?**

Copyright infringement proceedings are started by a prospective plaintiff with the filing of a writ of summons. The endorsed writ will have to be served on the named defendant in accordance with prescribed rules within its validity period. The plaintiff will have to file its statement of claim, which sets out its claim against the defendant. The defendant will then have to file its defence, and any counterclaim against the plaintiff.

Thereafter, the process for discovery and exchange of affidavit evidence will take place. When that is completed, parties and the courts may then set a trial date, when the matter will be substantively presented by the parties and examined in court.

### **6.2 Are disputed issues decided by a judge or a jury?**

Disputed issues are decided by a judge.

### **6.3 To what extent are documents, affidavits, witnesses and/or (court-appointed or private) experts used? Is it possible to cross-examine witnesses?**

Generally, all evidence to be used in proceedings is adduced by way of affidavit, and relevant documents have to be introduced in such an affidavit. However, any fact required to be proved at trial by witness evidence must still be proved by the examination of the witness in open court, unless the court orders or the parties agree otherwise.

Experts may be appointed by the court or called by parties to report on any question of fact or opinion, where specialised skill or knowledge is required.

**6.4 To what extent is survey evidence used (eg to prove substantial similarity)? What is its relevance in proceedings (eg party allegation, evidence)? Who decides which consumers are questioned in the survey (eg the court, court expert)? What level of cost should one expect to incur to carry out a survey? Are these costs recoverable from the losing party?**

Survey evidence has been admitted to support certain allegations regarding public perception (*CDL Hotels International Ltd v Pontiac Marina Pte Ltd* [1998] SGCA 23). However, the courts may not accord great significance to survey evidence (*Seager Enterprise v Demarco Pte Ltd*. [2001] SGDC 124).

The party relying on the survey decides how to conduct it (including which consumers are questioned). However, in order for the survey evidence to have validity, the party should ensure that:

- the survey is conducted at the relevant time (*Societe des Produit Nescafe SA v Master Beverage Industries Pte Ltd* [2009] SGIPOS 5);
- a cross-section of the relevant consumers is represented;
- sufficient consumers are surveyed so as to produce a result that is of some statistical significance;
- no leading questions are posed;
- the exact answers provided by the consumers are recorded (*Nippon Paint (Singapore) Co Pte Ltd v ICI Paint (Singapore) Pte Ltd* [2000] SGHC 218);
- the survey is conducted fairly; and
- there is full disclosure of the methodology and results of the survey (*Imperial Group Plc v Philip Morris Limited* [1984] RPC 293).

Ultimately, though, the judge is the final arbiter of fact.

The costs incurred in the conduct of a survey will depend on various factors including its complexity and the degree of accuracy required. A basic survey conducted by a professional firm may cost upwards of S\$40,000. Generally, the winning party will be able to recover from the losing party part of the survey costs incurred (as part of its total costs incurred in the proceedings).

**6.5 Is evidence obtained for criminal proceedings admissible in civil proceedings, and vice versa?**

Where both sets of proceedings were taken to enforce the same rights, evidence obtained for criminal proceedings may also be adduced in civil proceedings, and vice versa (*Microsoft Corp v SM Summit Holdings Ltd* [1999] SGCA 72).

**6.6 To what extent is pre-trial discovery permitted? If it is permitted, how is discovery conducted? If it is not permitted, what other, if any, mechanisms are available for obtaining evidence from an adverse party or from third parties?**

Pre-trial discovery is permitted only in very limited circumstances ie only when the potential plaintiff does not have sufficient facts to commence proceedings.

The person applying for discovery will do so by originating summons supported by affidavit which must fulfil certain requirements. The court

may then make an order on its terms for the discovery of documents before the commencement of proceedings or by a person who is not a party to the proceedings. The documents available for discovery are limited to certain criteria.

Other methods of obtaining evidence from an adverse party or from third parties include pre-action interrogatories.

### **6.7 What level of proof is required for establishing infringement or invalidity?**

Generally, the standard of proof in civil proceedings is on the balance of probabilities, while the level of proof in criminal proceedings is beyond reasonable doubt (*The 'Kiku Pacific'* [1999] SGCA 96).

In infringement proceedings, the initial burden is on the plaintiff to prove copying to the requisite standard of proof. However, once it is shown that the two works are sufficiently similar and there is proof of access, the court will be invited to draw an inference as to copying, which the defendant will be required to rebut by giving an alternative explanation for the similarities (*Creative Technology Ltd v Aztech Systems Pte Ltd* [1996] SGCA 71).

Copyright is presumed to subsist in the work or other subject matter to which an action relates, unless the defendant in good faith puts it in issue. If the defendant does so, an affidavit by the plaintiff wherein it asserts facts to show that copyright subsists and that it is the owner of the copyright shall *prima facie* be proof of the matters stated in it, unless the court requires oral evidence to be given.

### **6.8 How long do copyright infringement proceedings typically last? Is it possible to expedite this process?**

Copyright infringement proceedings typically last between 10 to 18 months. It is possible to expedite the process by applying for default judgment (if the facts allow) or summary judgment. In such an event, the proceedings may ordinarily be concluded within one month or two to four months respectively.

### **6.9 What options, if any, are available to a defendant seeking to delay the proceedings? Under what conditions, if any, can proceedings be stayed? How can a plaintiff counter delaying tactics of defendant?**

A defendant may seek to delay the proceedings in a number of ways:

- (i) avoiding service of process;
- (ii) challenging jurisdiction of the court if either party is not in Singapore;
- (iii) applying for a stay of action based on *forum non conveniens*;
- (iv) applying for a stay of action based on the fact that there are concurrent proceedings in another jurisdiction;
- (v) filing interlocutory applications whenever possible;
- (vi) filing appeals against decisions whenever possible; and
- (vii) failing to comply with deadlines in the proceedings.

A plaintiff may attempt to counter (i) by applying for substituted service. For (ii) to (vi), a plaintiff will have to successfully resist the applications and

appeals on their merits. For (vii), a plaintiff may apply for an order requiring the defendant to comply with further deadlines failing which the defendant's defence will be struck out and judgment entered for the plaintiff.

## **7. FINAL REMEDIES**

### **7.1 What remedies are available against a copyright infringer (final injunction, delivery up or destruction of infringing goods, publication of the decision, recall-order, monetary remedies, etc)?**

A copyright holder may seek the following civil remedies against a copyright infringer:

- an injunction;
- damages (not available if the defendant was not aware, and had no reasonable grounds for suspecting, that the offending act was an infringement of copyright);
- an account of profits;
- statutory damages;
- delivery up of infringing copies;
- forfeiture of infringing copies to the copyright holder; and
- destruction of infringing copies.

A copyright holder may also seek a declaratory judgment from the court that the defendant has infringed the copyright holder's copyright.

In addition to the above, the courts may render a written decision, which will be published as a public record. However, publication of the court's decision is not a remedy per se that a copyright holder may request.

### **7.2 To the extent it is possible to obtain a final injunction against future infringement, is it effective against the infringer's suppliers or customers?**

Yes. Any third party (including the infringer's suppliers or customers) with notice of an injunction who aids, abets, or permits a breach of an injunction order will be in contempt of court and be liable to imprisonment or a fine (*Pertamina Energy Trading Ltd v Karaha Bodas Co LLC* [2007] SGCA 10).

### **7.3 What monetary remedies are available against a copyright infringer (reasonable royalty, lost profits, account of profits, or some other basis)? Are punitive damages available? If so, under what conditions? Are liability and quantum of monetary remedies assessed at the same time by the court or is the quantum assessed at a separate, later stage from liability?**

Damages, an account of profits, or statutory damages are available against a copyright infringer.

If the court is satisfied that it is proper to do so, it may also award additional damages, having regard to: the flagrancy of the infringement; any benefit shown to have accrued to the infringer by reason of the infringement; the nature and purpose of the infringement; whether the infringer acted in bad faith; any loss that the plaintiff has suffered or is likely to suffer by reason of the infringement; the conduct of the parties before and during the

proceedings; the need to deter similar infringements in future; and all other relevant matters.

## 8. PRELIMINARY RELIEF

### 8.1 Is preliminary relief available? If so, what preliminary measures are available (eg preliminary injunction) and under what conditions? Is urgency a condition for the court to grant preliminary relief? If so, how is it determined?

Yes, preliminary measures are available in the form of interim injunctions, interim detention or preservation of property, and interim payments.

Generally, the grant of preliminary injunctions involves the satisfaction of the following basic conditions:

- existence of serious question to be tried – the plaintiff's claim is not frivolous or vexatious;
- adequacy of damages – if the plaintiff subsequently succeeds in establishing a right to a permanent injunction, it would not be adequately compensated by an award of damages for the loss sustained in the meantime if a preliminary injunction is not awarded; and
- balance of convenience – if the defendant subsequently succeeds in establishing their right to do that which was sought to be enjoined, they would be adequately compensated by damages for the loss they would sustain in the meantime if they were so enjoined. (*American Cyanamid Company v Ethicon Ltd* [1975] AC 396; *Reed Exhibition Pte Ltd v Khoo Yak Chuan Thomas* [1995] SGCA 76).

For *mareva* injunctions, the following conditions must be met. The plaintiff must have a valid interest/cause of action over which the court has jurisdiction; a good arguable case; made full and frank disclosure to the courts; and given an undertaking to abide by an order to pay damages. The defendant must have assets within (or outside, for worldwide *mareva* injunctions) the jurisdiction; and there must be a real risk that the assets will be dissipated so as to render the judgment nugatory (*Karaha Bodas Co LLC v Pertamina Energy Trading Ltd* [2005] SGHC 57).

For search orders, three basic conditions have to be satisfied: the plaintiff has an extremely strong *prima facie* case; very serious damage would be caused to the plaintiff if the search order is not granted; and there is clear evidence that the defendant has in its possession incriminating documents or things, and there is a real possibility that it may conceal or destroy such materials (*Anton Piller KG v Manufacturing Processes Ltd* [1976] 1 Ch 55; *Computerland Corp v Yew Seng Computers Pte Ltd* [1991] SGCA 28).

An interim payment may be ordered if the court is satisfied that: the defendant has admitted liability to the plaintiff's damages, or the plaintiff has obtained judgment or an order regarding a sum (yet to be assessed) due from the defendant to the plaintiff; and if the action proceeded to trial, the plaintiff would obtain judgment against the defendant for a substantial sum of damages, or other sum of money apart from damages or costs.

For the granting of preliminary relief in the form of an interim injunction, urgency is not a condition. However, urgency is a condition for the court to

grant an *ex-parte* injunction (as opposed to an interim injunction).

**8.2 Is *ex parte* relief available, where defendant is given no notice at all? If so, under what conditions?**

An application for an injunction may be made *ex parte* in cases of urgency and usually only in the most extraordinary circumstances and then only for such period of time as is necessary to enable notice to be served on those sought to be enjoined. However, such notice need not be given if doing so would or might defeat the purpose of the *ex parte* application, such as an Anton Pillar order.

For *ex parte* applications, the applicant must make full and frank disclosure. Failure to do so may result in the discharge of the order obtained.

**8.3 Is it possible to file a protective writ, ie a letter setting out possible defences by a potential defendant, at the court at which an *ex parte* application may be filed against that defendant? If so, is the protective writ communicated to the plaintiff and what effect does it have on the preliminary injunction proceedings? For how long does the court take the protective writ into consideration? Can the protective writ be renewed?**

Under Singapore law, a 'protective writ' refers to a writ filed to preserve an action against an impending time bar or limitation period (*The 'Antares V' [2002] SGHC 198; The 'Hyundai Fortune' [2004] SGCA 41*). Such a protective writ may be used in copyright proceedings as well.

The practice of depositing a 'protective writ' setting out possible defences by a potential defendant at the court at which a preliminary injunction application may be filed against that defendant, is not available in Singapore.

**8.4 Is the plaintiff entitled to ask for an order that the defendant's premises are searched and a description of the infringing goods (and the accounting data relating thereto) is made in order to establish proof of infringement? If not, what other mechanisms, if any, are available for seizing and preserving evidence for trial?**

Yes, a plaintiff may apply for a court order to permit them to enter the defendant's premises to search, inspect, photograph or photocopy, and deliver into their solicitor's safekeeping relevant documents and articles.

**8.5 Can the defendant put the validity of a copyright at issue in preliminary injunction proceedings?**

Yes, the defendant may raise this and, if substantiated, may be grounds for denial of the preliminary injunction. However, the court is unlikely to deal with substantial issues at this stage.

**8.6 What is the format of preliminary injunction proceedings?**

An application for preliminary injunction is filed by way of summons supported by an affidavit.

It may not be made before the issue of the originating process unless the case is one of urgency and if so then the originating process must be issued by a certain time after the granting of the injunction.

**8.7 If a preliminary injunction is granted and the main infringement action is finally lost, can the defendant claim damages for the unjustified preliminary injunction? If so, how are the damages calculated? Must the plaintiff provide some form of bond/guarantee to compensate the defendant in the event that the preliminary injunction is later held to have been wrongly imposed?**

Yes, the defendant can claim damages if it is able to prove positively the damage suffered as a consequence of the unjustified preliminary injunction.

The plaintiff is usually not required to provide any bond/guarantee, but will be required to provide an undertaking to abide by any possible order for damages if the defendant sustains any damage by reason of the injunction (*Tribune Investment Trust Inc v Soosan Trading* [2000] SGCA 33).

**8.8 To what extent are documents, affidavits, witnesses, survey evidence, and/or (court-appointed or private) experts used in preliminary injunction proceedings?**

Generally, the primary form of evidence used in preliminary injunction proceedings is affidavits. Witnesses are seldom examined in person, and are not cross-examined. Relevant documents also have to be submitted via affidavit. Survey evidence and/or experts may be used.

**8.9 What level of proof is required for establishing infringement or invalidity in preliminary injunction proceedings?**

Generally, the standard of proof in civil proceedings is on the balance of probabilities, while the level of proof in criminal proceedings is beyond reasonable doubt (*The 'Kiku Pacific'* [1999] SGCA 96). This standard of proof does not change in preliminary injunction proceedings. However, it will be based only on a consideration of whether there is a serious question to be tried, and will not involve any detailed assessment of conflicting evidence or the merits of the case.

**8.10 How long do preliminary injunction proceedings typically last?**

Preliminary injunction proceedings usually last between one to three months.

The preliminary injunction, if granted, may continue until such other order is made by the court.

**8.11 Where a preliminary injunction is granted, is it necessary to start main proceedings to confirm the preliminary injunction? In the affirmative, what is the deadline?**

Yes, a plaintiff is, in fact, in principle required to file a writ of summons for a main action before filing an application for a preliminary injunction. While the application for preliminary injunction may be made before the issue of the writ in urgent cases, the writ must be issued within two days of the granting of the injunction (or such other period as the court may order), failing which the court may discharge the injunction on the defendant's application.

## 9. APPEAL PROCEDURE

### 9.1 What avenues of appeal are available for a defeated party in main proceedings or preliminary injunction proceedings? Under what conditions?

Type of proceedings	Avenue of appeal
Before a Registrar in chambers of the State Courts	District Judge in chambers of the State Courts.
Before a District Judge in chambers of the State Courts.	Judge of the High Court in chambers.
Begun in the State Courts.	High Court
Before a Registrar of the High Court.	Judge of the High Court in chambers.
Begun in, or appealed to the High Court.	Court of Appeal

An appeal must be made by filling a notice of appeal in the prescribed form within 14 days after the judgment, order or decision appealed against was given or made; or for appeals to the Court of Appeal, within one month from the date on which the order in chambers appealed against was pronounced or the appellant first had notice of it, the refusal of an application appealed against was made, or the judgment or order (not in chambers) appealed against was pronounced. In certain cases, the notice of appeal must be accompanied by security for the respondent's costs of appeal.

Appeals for some matters may be brought to the Court of Appeal only with leave, while certain matters are not appealable to the Court of Appeal. Any judgment or order of a district court exercising civil jurisdiction to which the parties have already consented in writing may not be appealed against.

### 9.2 If an appeal is filed, is relief usually stayed pending the outcome of the appeal?

Unless otherwise directed by the court, relief is usually not stayed pending the outcome of the appeal.

### 9.3 How long do appeal proceedings typically last?

For a preliminary injunction or other interlocutory application, each appeal (other than an appeal to the Court of Appeal) usually lasts between one to three months. An appeal to the Court of Appeal may last between three to nine months.

For the main proceedings, each appeal (other than an appeal to the Court of Appeal) usually lasts between three to six months. An appeal to the Court of Appeal may last between six months to a year, depending on the Court of Appeal's schedule. Where the appeal is one of urgency, an application may be made to expedite the appeal.

## 10. LITIGATION COSTS

### 10.1 What level of cost should one expect to incur to take a case through to a first instance decision, preliminary injunction proceedings and/or appeal proceedings?

The level of cost that will be incurred depends on a variety of factors,

including the value of the claim and the complexity of the case.

Rough estimates are set out as follows:

**First instance decision:**

- State Courts: S\$50,000-S\$100,000
- High Court: S\$100,000-S\$250,000.

**Preliminary injunction proceedings:**

- State Courts: S\$10,000-S\$30,000
- High Court: S\$20,000-S\$50,000.

**Appeal proceedings:**

- appeal in the State Courts: S\$2,000-S\$10,000
- appeal to the High Court: S\$8,000-S\$30,000
- appeal to the Court of Appeal: S\$20,000-S\$60,000.

**10.2 Can attorneys' fees and costs be recovered by the winning party?**

The award of attorneys' fees and costs is at the discretion of the courts.

Generally, the winning party may recover part of the attorneys' fees and costs incurred, unless there are special circumstances such as serious improper conduct on the part of the winning party during the course of litigation.

**11. FORTHCOMING LEGISLATION**

**11.1 What are the important developing and emerging trends in your country's copyright law?**

The developing and emerging trends in Singapore's copyright law relate to both common law developments, and legislative developments.

**Common law**

In the Court of Appeal decision of *Asia Pacific Publishing Pte Ltd v Pioneers & Leaders (Publishers) Pte Ltd* [2011] 4 SLR 381, the Court of Appeal clarified that an incorporated body could not be an author of a work, which has to be a living person.

In *obiter* – the court mentioned that the law on copyright '*ought also to evolve to take into account the ease and convenience that computers bring to the process of compiling in the 21st century*', and that older decisions that had focussed on the gathering of information as the touchstone rather than the productive effort involved in expression may require reconsideration. The emphasis is therefore the thought effort involved in the creation of the particular form of expression which is embraced by copyright and where the expression of data involves little ingenuity or skill beyond mechanical labour or routine programming, the Court of Appeal expressed doubts as to whether copyright protection is called for.

**Legislation**

A bill to amend the Copyright Act has just been passed where an avenue has been provided for copyright owners, exclusive licensees and performers to apply for court orders (blocking orders) to direct network service providers to

block access to flagrantly infringing online locations (without having to first establish the network service provider's liability for copyright infringement). This is explained in further detail below.

### **11.2 To the extent it relates to copyright enforcement, please outline any major copyright legislation in the pipeline.**

As stated, Parliament has passed a bill to provide an avenue for copyright owners, exclusive licensees and performers to apply for court orders to block access to flagrantly infringing online locations (a location which flagrantly infringers or facilitates infringement of copyright materials). The court will look at the following:

- whether the online location's primary purpose is to commit or facilitate copyright infringement;
- whether the online location makes available, and/or contains directories, indexes or categories of, the means to commit copyright infringement;
- whether the owner of the online location demonstrates a disregard for copyright;
- whether access to the online location has been disabled by orders from the courts of other countries on grounds of or related to copyright infringement;
- whether the online location contains guides or instructions on circumventing measures that disable access to the online location;
- the number of visitors to the online location.

A notice must be sent to the owner of the online location intended to be blocked; and the application served on the network service provider. The online location owner may appear in the High Court during an application for such order and appeal against the order in the Court of Appeal. Similar provisions are provided for performers to apply to the High Court for a blocking order as well.

## **12. USEFUL REFERENCES**

### **12.1 Please identify any useful works of reference relating to copyright law and copyright litigation in your country, including useful websites.**

#### **Texts**

*The Law of Copyright in Singapore*, George Wei (2000, 2nd edition)

*Intellectual Property Law of Singapore*, Susanna HS Leong

*Law of Intellectual Property of Singapore*, Ng-Loy Wee Loon (2009, Rev. edition)

*Jeffrey Pinsler, Singapore Court Practice* (2009, 5th edition)

*Singapore Civil Procedure*, G.P. Selvam (2007)

*Singapore Precedents of Pleadings*, Jeffrey Pinsler, (Reissue) (October 2009)

#### **Guides**

Copyright infopack and infosheets published by IPOS (available at [www.ipos.gov.sg/leftNav/cop/IP+Resources.htm](http://www.ipos.gov.sg/leftNav/cop/IP+Resources.htm))

#### **Websites**

IPOS website (for copyright): [www.ipos.gov.sg/leftNav/cop/](http://www.ipos.gov.sg/leftNav/cop/)

Singapore Academy of Law website (on Singapore laws): [www.singaporelaw.sg/content/LegalTopics.html#Overview](http://www.singaporelaw.sg/content/LegalTopics.html#Overview).

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