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FEEDBACK ON DRAFT COPYRIGHT ACT 2021

BSA | The Software Alliance (**BSA**)[1] appreciates the opportunity to provide comments in response to the Public Consultation on the Proposed Copyright Bill (**Consultation**). BSA is the leading advocate for the global software industry before governments and in the international marketplace. We have extensive experience engaging with governments around the world to promote policies that enhance innovation and facilitate the development of data-driven technologies. To that end, we have been pleased to participate in the Ministry of Law's ongoing Copyright Review since the process first launched in 2016.[2] We write today to express our strong support for the Draft Copyright Act 2021 and the proposed exception for "computational data analysis."[3]

The proposed exception for "computational data analysis" originates from an earlier proposed exception for "text and data mining." As noted in the 2019 Singapore Copyright Review Report ("2019 Report"), "text and data mining and its applications are crucial to fuelling economic growth and supporting Singapore's drive to catalyse innovation in the digital economy."[4] With the recent announcement of the National Artificial Intelligence Strategy, Singapore has staked out the ambitious goal of being a "leader in developing and deploying scalable, impactful AI solutions, in key sectors of high value and relevance to our citizens and businesses."[5] To achieve that goal, Singapore has recognised that it must "strengthen ecosystem enablers that drive AI innovation and adoption across the economy," including efforts to "enable quick and secure access to high-quality, cross-sectoral datasets."[6] Ensuring that Singaporean researchers can compete with their counterparts in other leading AI nations — including the United States and Japan — therefore requires a careful examination of government policies that impact their ability to access data. Recognising that the Copyright Act creates uncertainty about the legal implications of key analytical techniques, such as

[1] BSA's members include: Adobe, Amazon Web Services, Atlassian, Autodesk, AVEVA, Bentley Systems, Box, Cadence, Cisco, CNC/Mastercam, DocuSign, IBM, Informatica, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, ServiceNow, Siemens Industry Software Inc., Sitecore, Slack, Splunk, Synopsys, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday.

[2] https://www.bsa.org/policy-filings/bsa-comments-on-proposed-changes-to-singapores-copyright-regime

[3] Annex_B-CopyrightBill.pdf (mlaw.gov.sg)

[4] Annex_A-Copyright_Report2019.pdf (mlaw.gov.sg)

[5] https://www.smartnation.gov.sg/docs/default-source/default-document-library/national-ai-strategy.pdf?sfvrsn=2c3bd8e9_4

[6] Singapore National Artificial Intelligence Strategy, pg. 9.

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text and data mining and machine learning, that are foundational to the development of AI, the Ministry of Law (**MinLaw**) and the Intellectual Property Office of Singapore (**IPOS**) recommended the adoption of a new exception for "data analysis."[7] We are pleased that MinLaw and IPOS now seek feedback on proposed legislative text codifying such an exception.

Overview of Proposed "Computational Data Analysis" Exception

Division 8 of the proposed Copyright Act 2021 includes a new exception for "computational data analysis," which is defined as:

> (a) using a computer program to identify, extract and analyse information or data from the work; and
>
> (b) using the work as an example of a type of information or data to improve the functioning of a computer program in relation to that type of information or data.[8]

The scope of the exception would include reproductions that are necessary for the purpose of performing a computational data analysis[9] and communications to the public[10] that are necessary for the purposes of: (i) verifying the results of the computational data analysis or (ii) collaborative research and study relating to the purpose of the computational data analysis.[11]

The exception is subject to a number of important safeguards. Most importantly, it applies only to circumstances in which an entity has "lawful access" to the work on which computational analysis will be performed. Moreover, the exception cannot be invoked if the entity performing the computational data analysis knows either that the source material is infringing or that it was "obtained from an online location that is being or has been used to flagrantly commit or facilitate rights infringements."[12]

BSA Feedback on Proposed Computational Data Analysis Exception

The proposed computational data analysis exception is well balanced, recognising the importance of providing legal certainty to facilitate Singapore's AI ambitions while also safeguarding the legitimate interest of rightsowners. In the 2019 Copyright Review Report, MinLaw and IPOS noted that some stakeholders had raised concerns about the potential of "extending the exception to cover commercial text and data mining."[13] In weighing these concerns, MinLaw and IPOS ultimately concluded that the exception should *not* be limited to non-commercial activities for the following reasons:

> Text and data mining is analogous to research work. Both activities involve obtaining data, manipulating and studying it, and coming to conclusions or discovering new ideas. The existing fair dealing exception for research and study is not limited to non-commercial purposes. This new exception should similarly not be so limited. This position taken for research and study recognises the fact that whether an activity is commercial or non-commercial in nature is not always clear. It can start off as being non-commercial in nature but may evolve into activity of a commercial nature. This also holds in the context of text and data mining activities. More importantly, as the purpose of text and data mining is to analyse data and not to consume what copyright seeks to protect (i.e. the creative expression of the copyright materials), it does not appear necessary to restrict uses that may not fall within or interfere with the copyright owner's normal exploitation of the materials in the first place – even if they are commercial in nature.

[7] Singapore Copyright Review Report 2019, pg. 34.

[8] Division 8, Section 232.

[9] Division 8, Section 233(1)(a).

[10] Division 8, Section 233(1)(b).

[11] Division 8, Section 233(c).

[12] Division 8, Section 233(e).

[13] Singapore Copyright Review Report 2019, pg. 32.

> Insofar as text and data mining activities can amount to fair dealing, users are not precluded from relying on such exceptions just because a dealing or use is commercial in nature. Therefore, in creating a specific exception for text and data mining activities, this new exception should similarly cover activities of a commercial nature. Safeguards will be built in to take into consideration rights-holders' interests.[14]

We concur strongly with the foregoing analysis and the conclusion that the exception for "computational data analysis" should extend to commercial activity. Copyright protection is intended to protect an author's interest in expressive output. While copyright protects the specific expression of factual information, it does not extend to the facts themselves, and it was never intended to prevent users from analysing a work to which they have lawful access in order to derive factual, non-copyrightable information. Once lawful access to a work is obtained, it should not matter whether a user analyses the material manually or extracts the underlying factual information via a computational data analytic process. Moreover, the reproductions, which are incidental to the machine learning process, are unrelated to the creative expression that copyright is intended to protect, are not visible to humans, and do not compete with or substitute for any of the original works. In other words, when machine learning is performed on lawfully accessed works, it has no impact on the legitimate interests of any copyright owner.

The proposed exemption is also consistent with the emerging global norms regarding the intersection of copyright and AI. Indeed, there is an increasing global awareness about the need to modernise copyright laws to facilitate the development of AI:

- **Japan:** Japan first recognized such a need in 2009 when it amended its Copyright Act to create an explicit exception for reproductions that are created as part of a "computerized data processing."[15] Although the 2009 amendment is heralded as having transformed Japan into a "machine learning paradise," the Japanese Diet codified a broader exception in 2018 that extends to "exploitation" of any copyrighted work for the purpose of performing "data analysis."[16] In addition to creating a general purpose exception for non-consumptive uses of copyrighted works, the recent amendments also authorise beneficiaries of the information processing exception to make limited public uses of the underlying works, such as the display of snippets. Japan is not alone in providing limitations and exceptions necessary for the development of AI.

- **United States:** In the United States, courts have confirmed that, under the "fair use" doctrine, incidental copies of a work made in the course of informational analysis are non-infringing, even where the analysis is performed for commercial purposes.[17]

- **European Union:** The European Union also recently passed legislation to provide clarity for the development of AI. Articles 3 and 4 of the Directive on Copyright and Related Rights in the Digital Single Market create two broad exceptions that authorize AI researchers to make reproductions that are needed for the purposes of carrying out "any automated analytical technique aimed at analysing text and data in digital form in order to generate information which includes but is not limited to patterns, trends and correlations." Importantly, the Directive clarifies that Articles 3 and 4 are without prejudice to existing exceptions and limitations that may already allow for reproductions that are necessary for machine learning.

- **Canada:** In June 2019, Canada's Parliamentary committee responsible for reviewing the Copyright Act indicated that it too would support the creation of an exception for "informational analysis."[18]

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[14] Id. at pg. 34.

[15] Article 47-5, www.cric.or.jp/english/clj/cl2.html.

[16] Article 30-4, www.cric.or.jp/english/clj/cl2.html.

[17] For a more extensive analysis of US law, please see BSA Comments to the USPTO Regarding the Copyright Implications of AI under US Law, available at https://www.bsa.org/files/policy-filings/01102020aicopyrightcmts.pdf

[18] Report of the Standing Committee on Industry, *Science and Technology, Statutory Review of the Copyright Act* (June 2019),

BSA would like to thank MinLaw and IPOS for the opportunity to review the proposed changes in the Singapore Copyright regime. We look forward to further engagement with your offices as you work on the implementation details of the proposed amendments in the draft Bill.

Sincerely,

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BSA | THE SOFTWARE ALLIANCE

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