



The Law Society of Singapore
39 South Bridge Road S(058673)
t: +65 6538 2500 f: + 65 6533 5700
www.lawsociety.org.sg

Sender's Fax: 6533 5700

Sender's DID: 6530 0206

Sender's Email: represent@lawsoc.org.sg

Our Ref: LS/10/RLR/CON/2014/INP2(2)/MWC/maj/pp

Your Ref:

23 April 2014

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

**BY EMAIL (Jason_CHEN@
Mlaw.gov.sg) & POST**

Dear **Jason**

PUBLIC CONSULTATION ON THE PROPOSED AMENDMENTS TO THE COPYRIGHT ACT

We refer to the above matter.

2 The Intellectual Property Practice Committee (the "Committee") has prepared its views set out in Annex A.

3 The Council of the Law Society has considered the comments and shares the views of the Committee.

4 Grateful if the Society could be updated in due course.

Yours faithfully

Michelle Woodworth
Director (HoD), Representation and Law Reform Department

Encl.

CC: (1) Council 2014
(2) Intellectual Property Practice Committee 2014

Council Members 2014

Lok Vi Ming, SC (President)
Thio Shen Yi, SC (Vice President)
Kelvin Wong (Vice President)
Gregory Vijayendran (Treasurer)

Lim Seng Siew
Kuah Boon Theng
Eng Yaag Ngee Rachel
Tan Gim Hai Adrian
Lam Kuet Keng Steven
Parhar Sunita Sonya
Lisa Sam Hui Min
Anand Nalachandran
Lee Terk Yang
Rajvant Kaur
Chandradas Usha Ranee
See Chern Yang
Yeo Chuan Tat
Tan Beng Hwee Paul
Tan Joon Liang Josephus
Simran Kaur Toor
Tien De Ming Grismond

Secretariat

Chief Executive Officer
Tan Su-Yin

**Communications /
Membership Interests**
Shawn Toh

Compliance
Kenneth Goh

Conduct
Ambika Rajendram
K Gopalan

Continuing Professional Development
Jean Wong

Finance
Jasmine Liew
Clifford Hang

Information Technology
Michael Ho

Pro Bono Services
Lim Tanguy
Nadine Yap
Vimala Chandrarajan Khan
Babara Seet

Publications
Sharmaine Lau

Representation & Law Reform
Michelle Woodworth

ANNEX A

Comments on the Consultation Paper relating to the Proposed Amendments to the Copyright Act (“the Act”) – Enabling Rights Holders to Protect their Rights more effectively against Pirate Websites through Judicial Measures

1. Section 193A(1) of the Act – Definition of “flagrantly infringing online location”

The term “flagrant” is not measurable. There is potential for uncertainty as with the definition of “significant infringement” in Section 136(3A) of the Act. The lack of precision may be a necessity but there is a risk of catching web sites that do not fall within the intent of the provisions. The uncertainty on what constitutes a “flagrantly infringing online location” will still remain even when the non-exhaustive factors listed in Section 193DDA(2) of the Act have been taken into consideration. For example, infringers may escape this measure by posting infringing content on forums or online bulletin boards which contain substantial non-infringing content where there is peer-to-peer file sharing via links.

2. Non-exhaustive factors for determining whether a location is being used to “flagrantly infringe” copyright – Section 193DDA(2) of the Act

We are of the view that the last factor of “the number of visitors to the online location” found at Section 193DDA(2)(f) of the Act appears to be a weak indicator of flagrancy.

3. Parties who can apply for injunctive relief limited only to copyright owners or their exclusive licensees

We are of the view that the categories of parties who can apply to block access to a flagrantly infringing online location are too narrow. For example, in the movie industry, the master licensee is often not bothered to take action in the territory where infringements take place as it gets a fixed licence fee. The one who suffers loss is the sub-licensee (exclusive or otherwise) and it is the sub-licensee that requires the right to injunctive relief the most. The rights owner is often two or three layers removed, whilst the master licensee would often be reluctant to be dragged into lawsuits, since it suffers no loss of licensing revenue due to infringements.

In light of the above, we propose that the categories of parties who can apply for such injunctive relief be widened.

4. Serving Notice on the web site owner – Section 193DDB(1)(b) and 193DDB(2) of the Act

Section 193DDB(1) of the Act states that before a copyright owner can get a blocking order from the court, he must have first served notice on (a) the ISP and (b) the owner of the flagrantly infringing online location. The court may dispense with the requirement to serve notice on the owner of the online location in question if the copyright owner cannot identify or locate the owner or cannot serve the notice, despite reasonable efforts.

In most cases, it will be very difficult for a copyright owner to determine the identity or address of the owner of the infringing online location. A person who uses an online location to flagrantly infringe copyright is very likely to be well shielded from discovery.

It is also not known what are the “reasonable efforts” required to be made by the copyright owner to determine the identity or address of the owner of the web site or location under Section 193DDB(2) of the Act before the court will dispense with the service of the written notice under Section 193DDB(1)(b).

Given the above, we propose that the requirement to serve notice on the owner of the flagrantly infringing online location be removed. Removing this requirement will bring the procedure closer to the current take down provisions [Section 193DA of the Act], which requires the copyright owner to serve notice on the ISP only and not the alleged infringer.

5. Order requiring the ISP to take “reasonable steps” to disable access to the flagrantly infringing online location – Section 193DDA(1) of the Act

It would seem from the wording of this section that the order would require the ISP to take “reasonable steps” to disable access to the flagrantly infringing online location. It appears that the court is leaving it fully to the ISP to choose what methods to adopt to comply with the order. This would leave the ISP open to an allegation by the copyright owner that it has not taken such “reasonable steps” and is therefore in breach of the injunction.

We propose that a provision be included that an ISP would be deemed to have taken all reasonable steps to disable access to the flagrantly infringing online location if the ISP is able to show that these steps are sufficiently effective to prevent access, or at the very least, make it difficult to achieve or seriously discourage internet users who are using the services of the ISP from accessing the infringing content.

We also propose that the court be given the power at its discretion to carry out a review as to whether the ISP has adopted measures which has enabled it to achieve the required prohibition, independent of any challenge by the copyright owner that the measures taken by the ISP are inadequate.

We further propose that any interested party, e.g. internet users, be given the power to apply to the court to challenge the measures implemented by the ISP in disabling access to the flagrantly infringing online location on the basis that these measures adopted are unnecessarily depriving the ISP’s users from lawfully accessing available information. This would be relevant where the flagrantly infringing web sites also contain substantial amounts of non-infringing content.

6. Penalties to cover false statement in notice made under Section 193DDB(1)

We propose that in the interests of equity and to avoid abuse of the provisions, Section 193DD of the Act should be consequentially amended for the penalties stated therein to cover any false statement made in the notice served on the ISP and owner of the flagrantly infringing online location.

7. Mode of Application to Vary Order

Section 193DDC currently does not specify, as Section 193DDB(4) does, the mode of application to vary the order made pursuant to Section 193DDC(2). We would propose that the application to vary the order be made in the same manner, i.e. by filing an originating summons supported by an affidavit.

8. Dealing with the end-users of infringing content

We propose that apart from blocking flagrantly infringing online locations, end users of infringing content should also be brought to task. It is clear that after all these years, public education and promotion of legitimate digital services have not worked. As such, introducing a weak and easily circumvented regulatory measure may not be good enough to make a significant difference. We recommend that the Ministry reconsider the implementation of issuing warning notifications to infringing users which is currently being proposed in the UK and operational (in different forms) in France and the US to complement the provision of injunctive relief in the fight against online piracy.