

THE LAW OF COPYRIGHT IN SINGAPORE (SECOND EDITION) BY GEORGE WEI  
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cover: S\$391.40 (inclusive of GST)]

THIS impressive, all-inclusive work combines 16 substantive chapters (totalling almost 1400 pages in all), together with all primary and secondary copyright legislation in Singapore in two extensive Appendices. As compared to the first edition of this work, which was published over ten years ago following the enactment of Singapore Copyright Act 1987, the Second Edition contains vast sections of additional material and information pertaining, *inter alia*, to all jurisprudential and legislative developments relevant and subsequent to the development of the 1987 Act. This edition is particularly welcomed, in the light of substantial technological developments and the corresponding legislative and other responses, that have come to dominate intellectual property thinking in such pervasive terms.

At the same time the author has undertaken substantial research to ensure that this work, whilst forming a valuable primary resource for both tyros and students of Singapore Copyright Law, is not devoid of comparative content and learned analysis. The comparative approach is recognised and applied by intellectual property scholars as a crucial device and tool for any critique or cumulative work on any subject of intellectual property. Given the legislative history of the 1987 Act, and the analogies that may helpfully be drawn with Australian and English copyright law. This approach is amplified in various sections of the work. A good example is the treatment of liability for authorisation. In an area which leaves much scope for extra-territorial divergence of judicial approach, the work contains systematic and comprehensive accounts of decisions in Australia, the United Kingdom and Singapore (at pp 593-611), stressing the degree of control over subsequent copies as a substantive consideration for the purposes of evaluating the liability of authorisation of copyright infringement, following the Singapore Court of Appeal decision in *Ong Seow Pheng v Lotus Development Corporation* [1997] 3 SLR 137. Just before paragraph 8.177 of the work the author makes the lucid observation that “(w)here the materials or equipment are being supplied specifically for a purpose which can only be infringing, the inference or authorisation is more likely, especially under the broader Australian approach...” This approach renders liable the copyright defendant who “sanctions, approves or countenances” an infringing act. At the same time it is observed that the author did not go further to consider the quoted proposition as being potentially applicable to the founding of liability for authorisation in respect of spoiler devices or devices aimed at circumventing technological systems of copy control, in the absence of substantially non-infringing uses of the said device.

On the subject of anti-circumvention of anti-copy technological protection for copyrighted content, in paragraph 8.190, the author remarks that the implementation

of anti-circumvention legislation in Singapore should be considered, in the wake of specific provisions in the World Intellectual Property Organisation (WIPO) Copyright Treaty and WIPO Performances and Phonogram Treaty 1996. At paragraph 14.106 the author places this issue within a list of matters for which readers should refer to specialist works. The lack of coverage of this topic in the work is a matter of some regret, given that the implementing legislation of various national regimes have raised the following issues of significance namely, (i) whether the prohibition of circumvention devices should extend to devices as well as conduct, (ii) whether access to a work should be regulated to the same extent as copy-control, (iii) whether such prohibition extends to activities of circumvention that do not result in copyright infringement, and (iv) the extent to which copyright exemptions and exceptions are still preserved or require an alteration of scope. The author's views on all these matters are highly sought, and could influentially pave the way for legislative treatment of the subject in Singapore, where other efforts have failed. In the realm of cyberspace copy protection systems will reign supreme in the years to come, together with equally valiant efforts at circumvention. The adage that "the Answer to the Machine is in the Machine" (see Clark "The Answer to the Machine is in the machine" in Hugenholz (ed), *The Future of Copyright in a Digital Environment* (Kluwer, 1996) at pp 139) may yet ring true.

By way of general comment the author has treated a subject of complexity with deftness and coherent organisation. Chapters 2 and 3 explain the traditional distinctions between authorial copyright (works) and neighbouring rights, the latter being otherwise referred to as "subject matter other than works" (sound recordings, cinematograph films, broadcasts, cable programmes and published editions) in the Copyright Act. Chapter 4 addresses issues of duration, and an entire instructive chapter is devoted to Publication (chapter 5). Chapter 6 discusses the acquisition of copyright, connecting factors in Singapore, and the international conventions. From a practitioner's perspective, its most useful sections include the treatment of copyright material before and after the following dates:

- (i) "New" Copyright Material made on or after 10 April 1987 (when the Copyright Act 1987 came into force in Singapore);
- (ii) "Old" Copyright Material made between 1 July 1912 and 10 April 1987 and the Imperial Copyright Act 1911; and
- (iii) "Old" Works made between 1 July 1912 and 10 April 1987 and the position under the 1987 Act.

The author addresses both unpublished and published works under each of the three headings (at pp 356-364). Whilst the tables which featured prominently in the first edition no longer appear in the second, the effectiveness of the author's presentation of the transitional provisions is in no way diminished by the use of effective text.

On the subject of infringement (chapter 6), a general observation which may be made is that the apparent approach of the author is to explain in the clearest terms the scope of each neighbouring right without questioning whether exclusive rights are sufficient or adequate. For example, the owner of sound recording copyright enjoys only the dual rights of reproduction and commercial rental. However, the questions whether these exclusive rights are sufficient or adequate (whether from the view point of the sound recording industry or the end-user) escape comment or mention, the preferred approach being to fall back on the public performance and broadcast rights for the underlying musical work (pp 579-582).

The treatment of defences to copyright infringement in chapter 9 is exhaustive and by far the most thorough and complete discussion in Singapore, traversing the topics of private copying (pp 669 *et seq*) to institutional (educational institutions and libraries) and disability exemptions. On the subject of defences, two particular topics stand out. First, the work provides an instructive account of the fair dealing defence in section 35 of the Copyright Act after a deletion which took place on 16 April 1998, and which now renders the defence of fair dealing for research and private study available to commercial or non-commercial research subject to the said dealing still being “fair” (para 9.40). Under this head the author goes very much into the detail of section 35, alluding to the pre-1987 history and deliberation behind this statutory defence, culminating in the 1998 amendments. On the subject of software reverse engineering, the author recognises that no specific provision was introduced on decompilation, and comments that whether any acts of intermediate copying in the course of the reverse engineering process are permitted in future would depend on their categorisation as fair dealing for research or private study (para 9.40).

Secondly, the author takes a different approach towards the applicability of the *Betts v Willmott*-type ((1871) 6 Ch App 239) implied licence in the context of a computer program. This *Betts*-licence principle is a creature of patent law, and provides that where a buyer is under a licence to use and sell a patented article in the absence of any express notification to the contrary. Attempts have been made to apply a similar *Betts*-type licence to effect a process of intermediate copying so as to discover function for the purposes of creating a competing product. The Court of Appeal refused to extend the *Betts* licence to include this type of activity in *Creative Technologies v Aztech* [1997] 1 SLR 621. The author disagrees with this – arguing that for computer programs, there may not be substantive differences between the copyright and the patent regime, since by nature computer programs straddle between works and inventions (p 795). The author prefers to deploy a traditional test of business efficacy, rather than run the risk of defining an implied licence of excessive scope. In this section of the work, the author makes a substantial contribution to the debate on the scope and application of the *Betts*-type of licence.

Elsewhere, sensible reliance is placed on developments abroad to substantiate the author’s views on a variety of subjects. For example, notable reference is made to the decision of the Australian Federal Court in *Galaxy Electronics Pty Ltd v Sega Enterprises Ltd* (1997) 37 IPR 462, where it was held that computer-generated moving images of computer games fell within the definition of a “cinematograph film”, and notwithstanding the fact that the sequence of images were not fixed in a computer game, the court held that visual images that constituted the moving picture were taken to have been embodied in the computer program. The author has robustly suggested that if a Singapore court should be confronted with this issue, the same approach may be taken under sections 19 and 88 of the Copyright Act (para 3.9). The parallel question is also correctly raised in relation to the embodiment sounds (p 164, footnote 5).

The treatment of specialist topics in the work is particularly impressive. There is, for example, a chapter on “publication” *per se* (chapter 5) and the author clarifies issues which too often form unwary traps for practitioners such as whether the mere screening of a cinematograph film in public constitutes publication under the Copyright Act, or whether publication only takes place if copies are sold, hired, or offered or exposed for sale and hired to the public. On the subject of publication in cyberspace, the author is of the view that there should be legislative clarification of the extent to which the supply of electronic copies or reproductions count towards a being a “publication”, in terms similar to section 175 of the Copyright, Designs and Patents

Act 1988 in the United Kingdom (para 5.20A). The chapter concludes with a discussion of section 26(1)(a)(ii) of the Copyright Act (as amended) which now clarifies (following amendment in 1998) that the right to publish is to publish the work if the work is unpublished – the author incites an interesting discussion, distinguishing between interpreting this provision as a reference to “first publication” or whether it can control subsequent acts of publication (hence becoming more akin to a distribution right) (para 5.24, 5.25).

A separate chapter (chapter 13) is also devoted to the slightly new creature of “performers right” in Singapore, following the TRIPS agreement. Provocatively, at the end of the chapter the author states that moral rights protection for performers should be considered, without elaborating on the efficacy for doing so, nor how the balance between the various affected interests would have to be redressed. A more plausible short term change may be to extend the definition of “recording” under the Act to include the making of a cinematograph film of the performance. Currently performers’ rights only extend to the making of sound recordings.

Moral rights, which feature less prominently in Singapore compared to other copyright jurisdiction retain their place in a separate chapter (chapter 11). The chapter concludes with the author’s provocative thoughts on the new issues that arise for the future development of moral rights in Singapore generally, and in particular legislative compliance with Article 6bis of the Berne Convention, which in the author’s (correct) view, is currently inadequate and remain uncured by the possible intervention of the common law. In Singapore, the right of paternity currently does not extend to a positive right to claim authorship. Questions are raised for the improvement of the protection for both rights of paternity and integrity, and this should leave some food for thought for legislators in the future.

In the substantive discussion on computer programs and computer-related matters, the author has crystallised all the issues sufficiently, so much so that chapter 14 could have been severed from the work to exist quite independently as a separate handbook or monograph on software copyright protection in Singapore. There is a compelling section on hyperlinking (para 14.95), where the author hypothesises the copyright scenario in Singapore if facts similar to the *Shetland Times* case (where an interlocutory interdict was issued by Scottish Courts against the linking activities of a newspaper in the *Shetland Isles*, on the basis of the infringement of cable programme copyright) arose. The author points to the apparent differences between the cable programme definitions under the United Kingdom Act and the Singapore Copyright Act, and also asks the technical question whether web site operators are actually “senders” of material. Internet “push or pull” factors should be taken in account in the application of Singapore cable programme copyright to hyperlinking. In the same chapter, readers will also find an instructive section explaining the recent Layout-Designs of Integrated Circuits Act 1999 most instructive (pp 1300-1317).

Within the realm of computer program copyright, the author has set forth the various kinds of infringement methodology that are currently on offer from several jurisdictions, elaborating upon the idea-expression dichotomy but chooses to leave the question open as to whether Singapore courts will take a line closer to the English position (as seen in cases such as *Ibcos Computers Ltd v Barclays Mercantile Highland Finance Ltd* [1994] FSR 275 and *Cantor Fitzgerald International v Tradition (UK) Ltd* May 1999 (unreported)) or the approaches applied in the United States (for example the famed abstraction-filtration-comparison approach in *Computer Associates International Inc v Altai* (1992) 23 IPR 385). However there is an oblique footnote reference where the author does question whether the other courts will go so far as to follow the *Altai* test and consequently the applica-

tion of limiting doctrines (page 1233 footnote 175).

On the subject of software reverse engineering, the author very helpfully sets out, based on his understanding of the technology of reverse engineering, and the decided cases on the topic, the different possibilities for a copyright defendant's *end product* of a reverse engineering *process* to emerge, varying in degrees of literal or non-literal similarity (p 1257). This should set out a coherent framework for all students of computer law.

*The Law of Copyright in Singapore* concludes with a summary of future directions for the new millennium (chapter 15), followed by an addendum to accommodate changes. An identified future direction of particular significance (along with many others) is the enactment of an additional but sensible definition of "authorship" for the purpose of computer-generated works, akin sections 9(8) and 178 of the Copyright, Designs and Patents Act 1988 in the United Kingdom (see also para 7.15).

In the Addendum the author was faced with the unenviable task of elaborating on the many substantive changes brought forth by the Copyright (Amendment) Act 1999, which came into operation on 15th December 1999, after the submission of the manuscript. The author has also taken the opportunity to discuss most recent case law developments by way of summary.

This book review will never be able to capture the full and complete essence of this magisterial work, which has been prepared with much sweat of the brow coupled with the customary thoroughness and intellectual rigour of the author, over long years. It must form essential reading for every practitioner and student of Copyright, and not just the *cognoscenti*. In his Foreword, Professor Emeritus Gerald Dworkin makes the poignant observation that "[t]he academic excitement of the author in his subject is barely concealed." There is indeed much evidence in the work to corroborate this.