



24th October 2016

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

RE: PUBLIC CONSULTATION ON PROPOSED CHANGES TO SINGAPORE COPYRIGHT REGIME

Dear sir/madam,

BSA | The Software Alliance¹ (“BSA”) appreciates the opportunity to provide comments in response to the Public Consultation on the Proposed Changes to Singapore’s Copyright Regime (“Consultation”). BSA is an active participant in the development of software and technology policy around the world on behalf of the world’s most innovative companies. Our members provide a wide range of software and online services to customers across the globe. These customers rely on BSA members’ products and services to enhance commercial efficiencies and improve modern life. We welcome the review and offer these comments to advance the Consultation’s objective of ensuring that Singapore’s copyright regime provides rights that are “reasonable, clear and efficiently transacted.”

Overall, the package of proposals in the Consultation are well balanced and will help ensure that the Copyright Act keeps pace with technological and marketplace developments. We look forward to remaining engaged as the Ministry of Law (“MinLaw”) and Intellectual Property Office (“IPOS”) further develop the proposals in the Consultation document. Given the critical role data analytics will play in spurring economic, technological and educational innovation, we write today to express our strong support for developing Proposal 9, in particular.

The scope of Proposal 9 is well balanced and recognizes that the innovative promise of text and data mining (“TDM”) extends to both commercial and non-commercial entities. We appreciate that MinLaw and IPOS intend to include important safeguards that will ensure TDM practices do not undermine the legitimate interests of rights holders. First, Proposal 9

¹ BSA | The Software Alliance (www.bsa.org) is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world’s most innovative companies, creating software solutions that spark the economy and improve modern life. With headquarters in Washington, DC, and operations in more than 60 countries, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy.

BSA’s members include: Adobe, Amazon Web Services, ANSYS, Apple, ARM, Autodesk, AVEVA, Bentley Systems, CA Technologies, Cisco, CNC/Mastercam, DataStax, Dell, IBM, Intel, Intuit, Microsoft, Minitab, Oracle, salesforce.com, SAS Institute, Siemens PLM Software, Splunk, Symantec, Trimble Solutions Corporation, The MathWorks, Trend Micro and Workday.

suggests that the TDM exception will apply only to works to which a user has “legitimate access.” Second, Proposal 9 indicates that the TDM exception will not apply if a commercial benefit is derived from the “actual copies of the works instead of the analysis.” Such a limitation ensures that the outputs of TDM will not conflict with nor unreasonably prejudice the legitimate interests of copyright holders.

As the Consultation notes, TDM will play a key role in advancing Singapore’s Smart Nation initiative. TDM is at the heart of a technological transformation that is enabling uses of data that would have been unimaginable just 10 years ago. Software-enabled analytics is helping hospitals provide more affordable healthcare while achieving better patient outcomes; it is helping governments design more efficient transportation systems while reducing toxic emissions; and, it is helping small businesses compete globally while creating jobs locally. Economists estimate that by 2030, data-enabled efficiency gains will add \$15 trillion to global GDP.² Given these far-reaching impacts, 90 percent of today’s business leaders cite data as a key resource and fundamental competitive differentiator, on par with basic resources like land, labour, and capital.³

TDM is a form of software-enabled analytics that allows organizations to unlock the value of information that was once hidden in data sets too large, too diverse, and too volatile for humans to process. While the technology is still nascent and its full potential still unknown, TDM is now used by organizations of all sizes and in every sector of the economy to transform huge volumes of data into actionable intelligence that saves time, money and, in some cases, lives. For instance, TDM has enabled researchers to “mine” 22 years of archival newspapers in combination with 90 other online data sources to develop a software model that can predict outbreaks of infectious diseases nearly a year before they occur based on news stories about weather events.⁴ Similarly, TDM is advancing the state of cybersecurity by enabling software developers to scan millions of online images to identify files that may contain malware or spyware and provide warnings to consumers about potentially harmful websites. And, because oncologists are unable to read the more than 160,000 cancer research papers that are published each year, TDM is helping doctors identify potentially lifesaving treatment options by bringing the latest scientific evidence and research on cancer into the clinician’s office.⁵

Given the transformative nature of these projects, they would almost certainly be considered non-infringing under Singapore’s existing fair use provision. Indeed, the intermediate copying of copyrighted works – or non-copyrightable material – that occurs as part of the TDM process neither conflicts with the normal exploitation of the underlying works nor unreasonably prejudices the legitimate interests of the associated rights holders. The copying is performed only for purposes of identifying non-expressive (un-copyrightable), facts or information and may therefore not even constitute a prima facie infringement.⁶ However, as the Consultation

² *What’s the big deal with data?* (<http://data.bsa.org/>)

³ *Id.*

⁴ <https://gigaom.com/2013/02/01/how-two-scientists-are-using-the-new-york-times-archives-to-predict-the-future/>

⁵ <http://www.nytimes.com/2016/10/17/technology/ibm-is-counting-on-its-bet-on-watson-and-paying-big-money-for-it.html?smprod=nytcore-ipad&smid=nytcore-ipad-share>

⁶ See Professor Jane C. Ginsburg, Columbia University School of Law, at <http://www.mediainstitute.org/IPI/2015/101915.php> (“*With respect to...datamining uses there is a powerful argument that exploiting a work for its non-expressive information (bibliographic or bean-counting*

notes, a lack of case law regarding the precise contours of fair use under Singapore law could have the unfortunate effect of chilling innovative uses of TDM. We therefore commend MinLaw and IPOS for seeking to add clarity to the law through the introduction of a standalone exception for TDM.

BSA would like to once again thank the Ministry of Law and Intellectual Property Office for the opportunity to review the proposed changes in the Singapore Copyright regime. We look forward to working closely with your offices as you further develop the proposals outlined in the Consultation and would be pleased to provide additional feedback in the future. Please do not hesitate to contact Mr. Boon Poh MOK, APAC Policy Director (Tel: +65 6292 2072; email: boonm@bsa.org) should you require further information.

– how many times and in what works a given word or phrase appears) is not even prima-facie infringing, and that the digitization of lawfully possess copies...to create a database that enables non-expressive, but progress-of-knowledge-enhancing outputs must therefore be equally free.”).