



May 19, 2024

**In Re: 2024 PUBLIC CONSULTATION ON PRESCRIBED
EXCEPTIONS IN PART 6, DIVISION 1 OF THE COPYRIGHT
REGULATIONS 2021**

The Software & Information Industry Association (SIIA) appreciates the opportunity to participate in these consultations. SIIA is the principal U.S. trade association for those in the business of information.¹ SIIA represents over 350 member companies, making it the largest association of software and content publishers in the United States. Our members range from start-up firms to some of the largest and most recognizable corporations in the world.

SIIA’s mission is to promote the health of the information lifecycle, ensuring that a productive environment exists for its creation, dissemination, and productive use. Our members have wholeheartedly embraced the promise of artificial intelligence (AI) and predict advances that will revolutionize data management, analysis, and dissemination. They actively use AI on many fronts—in the classroom, in fraud detection, in money laundering investigations, and in locating missing children. They have invested billions in its development, acquisition, and use. At the same time, however, SIIA has repeatedly argued that the use of AI must comply with existing statutory requirements and respect for established intellectual property rights. We also recognize that the benefits of this technology come with risks such as privacy concerns, algorithmic bias, and ethical implications. SIIA supports a risk-based approach to AI regulation, recognizing that in some cases that “AI is different.”

¹ This filing reflects the view of the Software & Information Industry Association (SIIA) and may not reflect the individual views of each SIIA member company.

We not only support but applaud much of the policy work that Singapore has done in artificial intelligence, and its efforts to make those efforts interoperable with those in other countries. For example, like the United States, Singapore has adopted a risk-based approach to AI regulation, which by necessity means a sectoral approach. Singapore has also adopted a multi-stakeholder engagement process in AI regulation, which is more likely to result in desirable policy outcomes. And it has embraced cooperation with several of our members around the creation of AI Verify, an AI governance testing framework and software toolkit that validates the performance of AI systems against a set of internationally recognized principles through standardized tests.

These kinds of policy initiatives are essential to building a sound innovation landscape. So too, however, is ensuring that a viable market exists for the information on which these engines depend. As you are no doubt aware, in the United States and elsewhere, application of the copyright laws to generative AI uses can be a contentious matter and is a subject of vigorous ongoing litigation. Other kinds of computational data analysis have already been held to be fair use under U.S. law. Our members believe that the courts are the institutions best suited to resolve these fact-intensive issues, even as they differ on how the copyright law applies to particular cases.

We note that the ongoing United States litigation does not challenge the enforceability of licensing regimes, or the premise that the owner of a copyrighted work has the right to control access to that work for commercial uses. Many SIIA members license information to third parties for inclusion in a variety of AI models, including scientific, technical, and medical works. And many of our members continue to make massive investments in both infrastructure and deployment. SIIA supports the certainty of licensing to control the terms of access to and use of the information its members possess, and it is here that we are concerned about not only the proposed exemption to the general

rule against circumventing technical measures, but also the continuation of the 2021 provision that invalidates license terms that apply to computational data analysis. We appreciate that this exception is already in Singaporean law.

At the same time, we recognize the difficult issues that generative artificial intelligence creates for copyright policy. In the United States, there are a number of existing doctrines that have provided the assumptions enabling an open internet to flourish, and we have opposed policy efforts by certain industries to use the issue around generative AI to undo those assumptions around indexing, caching, and certain kinds of data mining. And while our members may differ on how the copyright law applies to generative uses, we would not support changing existing law to enable (or disable) its development. Further, many of our members are providing choice and control for rights holders. We note that the growth in AI development has occurred hand-in-hand with the relatively untrammelled ability of copyright holders to license content for commercial use. Thus, for both legal and policy reasons, SIIA believes that restricting the ability of parties to license uses of their content for computational data analysis is ill-advised and opposes layering additional exemptions to access control on top of it.

For example, it is our understanding that, similar to the United States, Singapore's Computer Misuse Act does not apply to breaches of terms of service: these are considered contract infractions. When layered on top of its existing exemption from infringement and abrogation of commercial use terms, the owners of first-party data are left with limited tools to control their information. Information is increasingly sold as a service: ranging from films to textual works, to all kinds of financial and publicly available data. Existing Singaporean law invalidates these license terms. The proposed exemption would permit circumvention of access controls, leaving our members' works free for the taking.

We do not believe that Singapore intends such a result, as it could create issues under a variety of international instruments. For example, the United States and Singapore just celebrated the twentieth anniversary of the FTA between our two countries, which contains certain obligations relating to technological protection measures. Exemptions to that regime must “not impair the adequacy of legal protection of the effectiveness of legal remedies that the Party [country] provides against the circumvention of effective technological measures.”²

The rapidly growing market for licensing information ranging from databases and other compilations to educational works, and scientific, technical, and medical journals for generative AI would be potentially short-circuited. In addition, that exemption poses potential threats to *existing* markets for other kinds of licensing, as it permits the “unlocking” of our members’ works for computational data analysis. When they adopted technological protection measures into the FTA, our governments recognized that such measures are applied precisely to prevent that unauthorized unlocking, and carefully specifies acceptable exceptions and limitations to ensure that they remain targeted and narrow. This exemption to access control is not, as it covers an amorphous mass of “computational data analysis,” directly impairing the ability of holders to license their content not only in developing markets, but existing ones.

² U.S.-Singapore Free Trade Agreement, Article 16.4(7)(e) & (f), https://ustr.gov/sites/default/files/uploads/agreements/fta/singapore/asset_upload_file708_4036.pdf.

Conclusion

Again, our membership generally supports much of the work that Singapore has done to advance responsible artificial intelligence development and deployment. Its proactive steps around government investment, risk assessment, talent development, international cooperation have created a model worth emulating. Nonetheless, we urge policymakers to adopt a thoughtful approach in how a proposed exemption to the access control regime is applied to both existing and potential markets, especially in the absence of compelling evidence such an exemption is either necessary or desirable.

Thank you for considering our views.

Respectfully submitted,

/s/

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President

SIIA