

Ask:NUS Economists

Revisions to copyright law have far-reaching implications

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For The Straits Times

Q Why is the Government revising Singapore's copyright law?

A Copyright is the intellectual property right that underpins the software and the so-called creative content industries (writing, composing, and performing).

With advances in technology, the boundary between software and content is fast blurring – think Dota, Spotify, YouTube and Google search. (Disclosure: I own a minuscule number of shares in Alphabet, parent company of Google, and am closely related to a Google engineer.)

The law must keep up with such developments to fit social and economic needs. Last week, the Ministry of Law announced revisions to the Copyright Act. The Government has been consulting on the revisions since 2016.

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street, it affects almost everyone – who does not watch TV, stream videos, use smartphone apps, or patronise libraries or museums?

The number of consultations (two rounds in 2016 and 2017), and the long time the Government has taken to decide on the revisions, is a clear indication of the challenges. As with many changes in policy, there are winners and losers, and the Government must strike a balance.

Two changes with possibly large business and economic implications are the provisions to amend the definition of “fair use” and to explicitly allow text and data mining.

“Fair use” is a concept that Singapore adapted from US law. Under this principle, one can use copyrighted work to a limited extent without the permission of the owner. It is this principle that allows me to use parts of books in my lectures without copyright permission. Of course, the issue is the limits that define fair use. The US Copyright Act defines fair use by four factors: (i) the purpose and character of the use, including whether for commercial or

non-profit educational purposes; (ii) nature of the work; (iii) amount and substantiality of the portion used; and (iv) the economic effect of the use.

In adapting the US concept, Singapore added a fifth factor – “the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price”. The Government feels that this fifth factor has caused confusion and plans to delete it.

It is important to strike the right balance with fair use. For instance, the concept is a pillar of YouTube. Indeed, YouTube offers to support the fair use legal defence – up to US\$1 million (S\$1.36 million) – of content creators who are sued for copyright infringement.

Another important application of fair use in technology is Google Books. This project has digitised more than 25 million books for the benefit of anyone with an Internet connection, and, importantly, for posterity. Authors and publishers sued Google for copyright infringement but US courts decided that the actions of Google Books

were fair use.

The Government also plans to explicitly permit text and data mining of copyright material. A recent dispute between the career portal, LinkedIn, and a California start-up, hiQ Labs, exemplifies the issues. hiQ Labs has made a business of trawling public LinkedIn profiles to help clients identify employees who might be at risk of quitting. Who are they? Answer: those who post and update profiles on LinkedIn.

To analyse LinkedIn profiles, one would first have to amass and

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organise the profiles. Indeed, some years ago, one of my National University of Singapore colleagues did just that. We used the data to study the mobility of inventors and published the research in the *Strategic Management Journal*. Our Government proposes to legalise the use of copyright material for the purpose of such data analysis.

Interestingly, the legal action between hiQ Labs and LinkedIn was fought on various grounds but did not mention copyright infringement. This was likely because US courts would have recognised that LinkedIn did not have copyright over the profiles, and even if it did, the actions of hiQ Labs would be covered by fair use.

So, why the need for the new provision to protect text and data mining in Singapore? In the United States, the boundaries of copyright are continually shaped and clarified by private litigation such as the Google Books case.

By contrast, our market is so small that it might not be worthwhile for individual businesses to invest in legal action. Consequently, there is more of a

role for the Government to proactively delineate legal rights.

The business and economic effects of the amended definition of “fair use” and explicitly permitting text and data mining are difficult to predict. The legal fees that Google and LinkedIn spent suggest that the effects could be substantial. Hopefully, the Government has got it right and the revisions of our Copyright Act would stimulate entrepreneurship and innovation in the related fields.

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