

**Bird & Bird**

# Copyright Developments in Singapore



IFFRO Legal Issues Forum

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# What's new?



## **Class Licensing Scheme for CMOs** *(wef 1 May 2024)*

- CMOs are auto-licensed
- "Light touch" regulation model
- 5 Key areas: Members' rights; distribution of tariffs; dispute resolution; governance, records and reports & provision of information to the public



## **Text & Data Mining** **Exception** *(wef 1 November 2021)*

Old news perhaps; but still  
very much a hot topic!

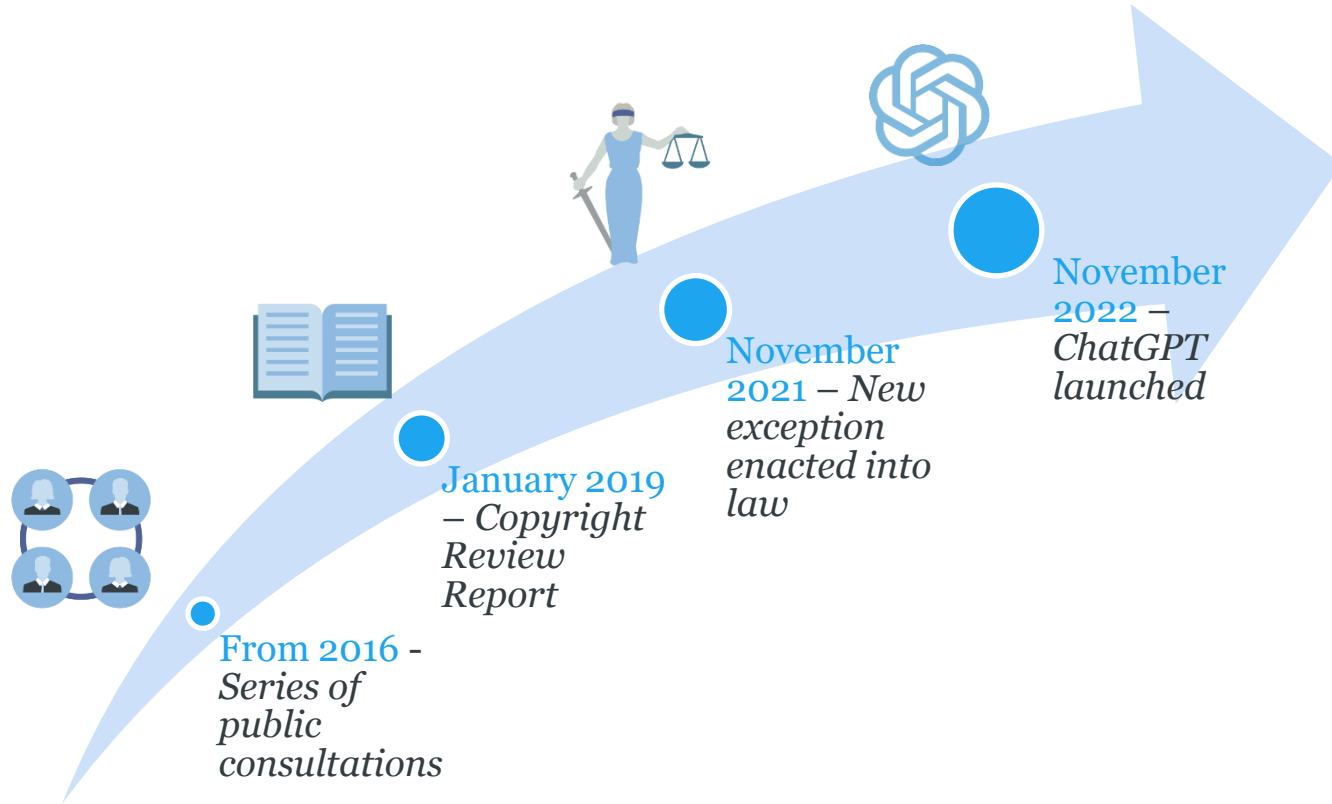


# What is TDM?



**TDM (aka Text and Data Mining)** = Using computational techniques to analyse large amounts of information to identify patterns, trends and other useful information

# Singapore's TDM exception – A Timeline



# How does Singapore's TDM exception compare to similar exceptions elsewhere?

UK



- For non-commercial research only

EU



- Applies to both commercial and non-commercial entities
- Rightsholder can opt-out except where use is for scientific research by a research or cultural institution

SG



- Applies to both commercial and non-commercial entities
- No limitation as to the purposes for which TDM is carried out (e.g., research)
- No right to opt-out

# What is allowed?



1. **Reproduce** works for **computational data analysis** and for preparing works for such analysis



2. **Supply to other persons / communicate to the public** works for the purpose of:

- verifying the results of the **computational data analysis**
- collaborative research or study relating to the purpose of **computational data analysis**

**"Computational data analysis"** includes:

- Using a computer program **to identify, extract and analyse information or data** from the work
- Using the work **as an example of a type of information or data to improve the functioning of a computer program** in relation to that type of information or data - *e.g., use of images to train a computer program to recognise images*



# Main safeguard: Requirement for "*lawful access*"



*What is lawful access?*

- Singapore Copyright Act 2021 ("**SCA**")
  - No definition of "*lawful access*"
  - Illustrative examples: No lawful access if user (i) circumvented a paywall; or (ii) gained access in breach of the terms of use of a database
- Supplemented by the anti-circumvention provisions in the SCA



# Anti-Circumvention Provisions

- **Section 425 SCA:** Prohibits circumvention of any access control measure applied to works



- *"Access control measure" (ACM)* = Any technology, device or component that, in the normal course of its operation, effectively controls access to the work to which the measure was applied
- Violation can attract both civil and criminal liabilities
- Subject to exceptions (4-yearly review)



**Public consultation in April 2024:** *Should there be a new exception to allow circumvention of ACMs for computational data analysis purposes?*



# Anti-Circumvention Provisions

- **Public consultation in April 2024** – *Should there be a new exception to allow circumvention of ACMs for computational data analysis purposes?*
- Rightsholders: **NOOOO!!!**

“

*While we were urged by technology companies to create a prescribed exception to advance AI technologies, we affirm the sentiments in the responses from rights owners that **ACMs are necessary to support the lawful access safeguard in the CDA Permitted Use**. Rights owners provided feedback that because content accessed by circumventing an ACM would not be lawfully accessed, creating a prescribed exception to allow circumvention would essentially weaken the lawful access safeguard. **Without the prescribed exception, rights owners can continue to rely on ACMs to control access to content used for CDA purposes and to be remunerated for such uses through charging for lawful access to their content.***

”

# No contractual opt-out

- **Section 187 SCA:** Any contract term is **void** to the extent that it purports to exclude or restrict the TDM exception.
- Applies to:



All contracts,  
including pre-  
existing contracts



Singapore law  
contracts



Foreign law contracts **only where:**

- foreign law was chosen wholly or mainly to evade any copyright exception; or
- the counterparty is a consumer who was a Singapore resident at the time of contract; & the essential steps for making the contract were taken in Singapore

# FINAL NOTES - *How now?*



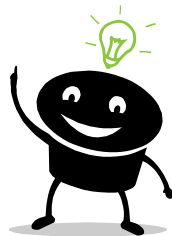
Does Singapore's broad TDM exception leave room for:

1. **licensing** of copyright works for AI training, or
2. a **copyright infringement claim** against unauthorised use of copyright works for AI training?

**YES!**

Quite apart from when there is no "*lawful access*", the TDM exception:

- May not apply to all the **possible acts** that a would-be licensee / infringer may wish to engage in
- Does not apply where the copy of the work is used for "*any other purpose*" apart from the permitted acts ← **Another safeguard!**
- Does not apply to **infringing outputs**
- Can be opted-out of in **foreign law contracts** (except in limited scenarios)



*Don't you have a million questions?*

# Get in touch



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# Thank you

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