

Copyright Notice Number: 1/2015

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COPYRIGHT NOTICE ON THE ILLEGAL DOWNLOADING AND FILE-SHARING VIA PEER TO PEER (P2P) PLATFORMS

Note: Copyright Notices are published by the Intellectual Property Office of Singapore (IPOS) to provide more guidance on specific areas of copyright law. This Copyright Notice specifically addresses the situation where a person is alleged to have downloaded or shared one (1) movie. Unless otherwise indicated, it does not apply to situations where a person is alleged to have downloaded or shared a large number of movies, or uploaded one or more movie(s) for other people to download.

1. What should you do if you receive a letter alleging that you have downloaded or shared a movie from an illegal source?

It is risky to simply ignore the letter, since you cannot be certain to what extent the owner of the copyright intends to pursue the case.

Accordingly, it would be prudent to consult a lawyer. In this regard, you may wish to sign up for an IP Legal Clinic held at IP101 (IPOS's Customer Service Centre). This is a reimbursable service (you can claim a portion or the entirety of the legal fees from IPOS) performed by private law firms where you can seek a one-off consultation with the lawyers on IP dispute matters. These one-to-one sessions are strictly confidential and are usually conducted on Thursday mornings. You may find out more about the legal clinics and make an appointment via our website www.ipos.gov.sg > Services > IP 101 (IPOS Service Centre) > IP Clinics (link - <http://www.ipos.gov.sg/Services/IP101/IPClinics.aspx>).

Alternatively, you may wish to consider selecting a law firm from the directory of IP service providers found at this link (http://www.ipos.gov.sg/Portals/0/IP%20ResourcePt_IPLitigation_ServiceProviders.pdf).

The FAQs that follow set out general comments, and may not necessarily be applicable in your specific case.

© IPOS 2015. This Copyright Notice is published by the Intellectual Property Office of Singapore. It is intended to be a concise note that provides impartial basic guidance on an area of copyright law, especially areas where there is particular confusion or misunderstanding. This Copyright Notice does not have any legally binding effect, is not a substitute for legal advice on particular cases, and should not be relied upon as legal advice. It is highly recommended that you seek legal advice from a lawyer that is tailored to your factual scenario.

2. Did you download the movie from an illegal source or share it?

If you did, you have clearly infringed the rights of the owner of the copyright in the movie. Under copyright law, the owner of the copyright in a movie has the exclusive rights to make copies of the film and to share or show the movie with or to the public. Any such acts have to be authorised by the copyright owner for them to take place legally.

If you claim that you did not download or share the movie from an illegal source, then much will depend on the evidence which the copyright owner has obtained. Under the law, to prove a civil infringement case, the copyright owner must show that it is more likely than not that you did download or share the movie from an illegal source, or alternatively, that you authorised someone else to download or share the movie from an illegal source.

If the copyright owner has identified your internet connection as one from which the movie has been made available to others without its consent, and has successfully obtained a Court Order which compelled your internet service provider to provide your subscriber details, it appears that the copyright owner has evidence that indicates that copyright infringing acts have taken place through your internet service connection.

It is open to you to question the accuracy of the investigations carried out by the copyright owner, or to produce evidence to the copyright owner to demonstrate that you and the other members of your household could not have carried out the acts of copyright infringement that are claimed (for example, evidence showing that you and all members of your household were overseas at the point in time that the infringement was said to have occurred). This is ultimately an evidential issue.

3. Assuming you have infringed copyright, what civil remedies are available to the copyright owner?

Civil remedies are the measures of relief that the court can grant to the copyright owner whose rights are infringed. These can be monetary and/or non-monetary in nature. Through civil remedies, the copyright owner is able to enforce their rights and obtain compensation from the infringer.

If copyright infringement has been established, the copyright owner has all of the following remedies –

S/N	Types of remedies	Examples / Remarks
(a)	an injunction (a court order to prevent and/or compel the doing of something);	For example, a court order directing you to stop downloading or sharing the movie in question.
(b)	monetary compensation based only on one of the following three options below –	
	(i) damages;	<p>In general, the objective of damages is to compensate the copyright owner for the harm caused to him as a result of the wrongful act of the infringer, but not to punish the infringer.</p> <p>Depending on the circumstances of the case, an appropriate measure of damages in this case could be the cost to download or to purchase a legal DVD of the movie in question.</p> <p>In certain circumstances, an infringer could also be liable to pay "additional damages" based on the flagrancy of the infringement, any benefit the infringer has accumulated by reason of the infringement and all other relevant matters.</p>
	(ii) an account of profits; (i.e. requiring the infringer to hand over to the copyright owner the profits he made out of the infringement)	<p>The rationale for an award for an account of profits is to prevent an unjust enrichment of the infringer at the expense of the copyright owner.</p> <p>In this case, an account of profits is unlikely to be relevant as an infringer would probably not have made any profit out of downloading or sharing the movie.</p>

	<p>(iii) statutory damages;</p>	<p>Statutory damages are intended to deal with situations where a copyright owner may have problems proving the actual losses he has suffered or the profits which an infringer may have made.</p> <p>If a copyright owner chooses to pursue an award based on statutory damages, the following applies –</p> <ul style="list-style-type: none"> (a) the statutory damages awarded must not amount to more than \$10,000 for each copyright work infringed; and (b) the statutory damages awarded must not amount to more than \$200,000 in total, unless the copyright owner proves that his actual loss from such infringement exceeds \$200,000. <p>In awarding statutory damages, the court may consider the following factors –</p> <ul style="list-style-type: none"> (a) the nature and purpose of the infringing act, including whether the infringing act was of a commercial nature or otherwise; (b) the flagrancy of the infringement; (c) whether the infringer acted in bad faith; (d) any loss that the rights-owner has suffered or is likely to suffer by reason of the infringement; (e) any benefit which the infringer has accumulated by reason of the infringement; (f) the conduct of the parties before and during the proceedings; (g) the need to deter other similar infringements; and (h) all other relevant matters. <p>To-date, no court cases in Singapore have considered how to calculate statutory damages in the context of downloading or sharing a movie via a peer-to-peer network.</p>
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(c)	an order for the delivery up of any articles used to carry out the prohibited act and/or any infringing copies; and	This is unlikely to be relevant in this case as no infringing physical copies are involved.
(d)	an order for the destruction of any articles used to carry out the prohibited act and/or any infringing copies.	This refers, for example, to deletion of the infringing copy of the movie stored in your hard drive or any other media.

If a copyright owner succeeds in a claim for copyright infringement against you, he may also be entitled to recover his reasonable legal and investigation costs from you.

Legal costs are likely to escalate if a dispute is protracted. It may be possible to contain the legal costs which you may need to pay to the copyright owner by making an offer to settle at an early stage. If the copyright owner does not accept the offer to settle and subsequently obtains a court judgement that is not more favourable than the offer to settle, he may not be able to recover his further legal costs from you, and may in fact be ordered to pay your legal costs instead. Your lawyer will be able to advise you further on this option.

4. Would you also have committed any criminal offence?

Certain copyright infringing acts (e.g. where there are commercial dealings in infringing works, or where the extent of the infringement is significant) may constitute a criminal offence as well. Penalties for criminal offences usually take the form of fines and/or imprisonment. While civil liability and remedies seek mainly to compensate the copyright owner for the infringer's wrongdoing, criminal liability and penalties seek mainly to punish the infringer and to deter similar wrongdoings in the future.

BitTorrent technology and other systems involving peer-to-peer networks are such that when downloading, many downloaders are also sharing parts of the movie with others at the same time.

As such, it is possible that the criminal offence provisions below may apply:

- (a) Section 136(3) of the Copyright Act, which provides that any person who knowingly distributes infringing copies of a copyrighted work either (i) for the purposes of trade; or (ii) for any other purpose, but to such an extent as to affect prejudicially the copyright owner, may be liable on conviction to a fine not exceeding \$50,000 and/or to imprisonment for a term not exceeding 3 years.

- (b) Section 136(3A) of the Copyright Act, which applies if (i) the act of copyright infringement by the infringer is wilful; and (ii) the extent of the infringement is significant and/or the infringer does the act to obtain a commercial advantage. The criminal offence under Section 136(3A) carries the penalty of a fine not exceeding \$20,000 and/or imprisonment for a term not exceeding 6 months for a first offence. Tougher penalties are imposed for a second or subsequent offence.

It is unlikely that these criminal provisions will apply where a person has downloaded or shared one (1) movie via a peer-to-peer network, though this will depend on the precise facts of each individual case.