DOES COPYRIGHT LAST FOR TOO LONG IN SINGAPORE?

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ABSTRACT

It is conventionally accepted that copyright needs to last beyond the death of the author in order to incentivise authors to create works, and that the lengthy protection period is but just a small price to pay to promote greater creativity. This orthodox logic is however riddled with flaws. Principally, copyright actually provides very little economic incentives for the author to create to begin with. Moreover, an author's non-monetary desire to publicly associate with his or her work does not readily apply after the author's death. Times have also changed such that public policy concerns now militate against having an extensive copyright duration. Finally, copyright law as-a-whole has not sufficiently mitigated the impact of a long copyright on the public's access to the work to the point where the long duration can be justified. This article therefore submits that the right duration should not exceed the life of the author.

I. INTRODUCTION

The conventional narrative is that copyright for authorial works should last a long time to economically incentivise authors to create creative works that would ultimately benefit society. In fact, so persuasive is this view that the global trend over the last two hundred years, of which Singapore is of no exception,[1] is to dramatically increase the length of the copyright term to truly biblical proportions: the life of the author plus 70 years after his or her death.[2] If we consider the average global life expectancy of a human today, at 72 years,[3] the average copyright term over an authorial work would easily exceed a hundred years! While this is a very good thing for the owner of the copyright and his or her heirs, the same cannot be said of the public at large as a generation of people would be deprived of the work's benefits. The question is thus whether such an extensive copyright term strikes the right balance between promoting intellectual creation and society's need for a free flow of information. This article finds that the current copyright duration does not achieve the right

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[1] Singapore adopts the 'life plus 70 years' duration in the Copyright Act 2021, s 114 [*Copyright Act 2021*].

[2] *Agreement on Trade-Related Aspects of Intellectual Property Rights*, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 UNTS 299, 33 ILM 1197 (1994) art 9(1) (entered into force 1 January 1995, as amended 23 January 2017) [*TRIPS Agreement*].

[3] The World Bank, "Life expectancy at birth, total (years)", online: <https://data.worldbank.org/indicator/SP.DYN.LE00.IN> (last accessed 9 Dec 2021).

balance at all. To permit copyright to extend beyond the death of the author, let alone for another 70 years, is excessive. It is therefore proposed that copyright should be shortened to the life of the author at most.

II. EVOLUTION OF THE COPYRIGHT TERM

To understand how Singapore got to the point where the copyright term for authorial works is 'life plus 70 years', we need to look at the evolution of copyright in the common law world, starting from its origins in the United Kingdom ("UK"). It was not always the case that the copyright duration was very lengthy, or even pegged to the life of the author. In fact, when copyright began life as a creature of statute in the UK with the passing of the *Statute of Anne 1709*, it only lasted for a very short copyright period of time: a maximum of 28 years.[4] It was only in 1814 that the 28 year term was substituted for the life of the author. This lasted for a while until the *Copyright Act 1842* which lengthened the term to 42 years from publication or until 7 years after the death of the author, whichever is longer. The 42 years period remained the *status quo* until the enactment of the *Copyright Act 1911* (and then in Singapore through a proclamation made by the Governor of Singapore) which then extended the copyright term to 'life plus 50 years'. This British duration then became the universally accepted minimum period across the world via the *Berne Convention of 1948* ("*Berne Convention*"). The *Berne Convention* period was subsequently extended by another 20 years through the *TRIPS Agreement* of 1995.[5] Singapore adopted this 20 year extension on 1 July 2004 which has been retained in the new *Copyright Act 2021*.[6]

III. ANALYTICAL FRAMEWORK FOR THIS ARTICLE

As there are a myriad of arguments that may favour the current length of copyright, this article will split the analysis into four parts. The first part will deal with the economic arguments for the current copyright term. Here, the article will disprove the conventional narrative that authors are predominantly money-minded and thus need a copyright term that lasts beyond their deaths to economically incentivise them to create. The second part will explore the possible non-economic arguments for a long copyright and find that these are not sufficiently compelling to justify a multi-

[4] There was an initial term of 14 years with an additional 14 years if the author was still alive after the initial term's expiry.

[5] *TRIPS Agreement*, *supra* note 2, art 9(1).

[6] *Copyright Act 2021*, *supra* note 1, s 114.

generational copyright. The third part will then argue that the policy arguments for the long copyright duration are outdated and unsound. In the final part, this article will posit that copyright law as-a-whole (subsistence, infringement and defences) has not sufficiently mitigated the impact of a long copyright on the public's access to the work to the point where the long duration can be justified.

IV. ANALYSIS OF THE ECONOMIC ARGUMENTS

The argument here is that copyright "provides the economic incentive that is essential to the creation of new works".[7] It goes like this: copyright grants authors exclusive rights in their works, allowing them to gain financial rewards by monetising those rights.[8] A longer copyright term would thus mean a greater incentive to create.[9] If so, then the copyright term should last until the incentive value of a longer term diminishes to insignificance. To the world at large, this 'vanishing point' of marginal utility is determined to be somewhere between one to two generations after the author's death.[10] The 'economic incentive' theory however rests on several flawed assumptions, which will be elaborated on below.

A. Creators are not 'rational profit maximisers'

It is conventionally assumed that authors are 'rational profit maximisers' who would only be willing to expend time, energy and resources in proportion to the expected monetary gains from their work. This is however false as creators can be motivated by reasons besides money.[11] Examples of creators working for free would be those in the open source movement where programmers create and share software for free and Wikipedia where anonymous volunteers contribute content *pro bono.*[12] Closer to home, Singaporeans creators from all kinds of backgrounds have worked for free. Former Prime

[7] Stanley M. Besen & Leo J. Raskind, "An Introduction to the Law and Economics of Intellectual Property" (1991) 5:1 J. Econ. Persp. 3, 5.
[8] *Ibid.*
[9] *Ibid.*
[10] 164 countries have signed the *TRIPS Agreement* which mandates that the necessary copyright duration should be the length of the author's life plus 70 years after the author's death. This duration is likely to encompass the life of the author's immediate successor and the generation after that, depending on the age of the immediate successor when the author created the work.
[11] Diane Leenheer Zimmerman, "Copyrights as Incentives: Did We Just Imagine That" (2011) 12:1 Theoretical Inq L 29, at 43 [Diane Leenheer Zimmerman].
[12] *Ibid.*

Minister Lee Kuan Yew donated royalties from his bestselling books to charitable causes.[13] Local artist Peter Kiew sketches strangers on the MRT without charge and would vehemently reject any attempt by contented recipients to pay him for his work.[14] In perhaps the most extreme example, vandals Andreas Von Knorre and Elton Hinz sprayed graffiti on Singapore's MRT trains despite knowing full well that it would have meant hefty fines (and lengthy imprisonment).[15] These examples show that the call to create need not be from monetary incentives only. The desire to do a good deed, self-satisfaction from creating something or garnering social reputation (good or bad) may be just as incentivising as a pot of gold to the author.

B. Copyright gives too little economic incentives to create

Even if we buy the 'rational profit maximisers' theory, any money to be gained from a multi-generational copyright is too uncertain to be sufficiently consequential in incentivising people to create. The biggest issue is that the chance of a creative work being successful is not very high to begin with.[16] A writer's odds of success are dismal. According to the Huffington Post, only 2% of all books will sell beyond 5,000 copies.[17] Digitalisation has also enabled many to be self-publishers, saturating the market and putting success out of reach of all but the lucky few.[18] A similar story is also unfolding for artists. Only 19% of US artists made over $50,000 USD a year in 2016, well below the median US household income of $58,000 USD. This is likely to be worse in Singapore as our society does not

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[13] Mary Kwang, "Royalties will go to education in China and Singapore" (9 Oct 1998), Singapore Press Holdings online:<http://www.vrijmetselaarsgilde.eu/Maconnieke%20Encyclopedie/FMAP~1/REFORM/reform3/lee2_1009.html> (last accessed 9 Dec 2021).

[14] Justin Ong, "'No use for money': 72-year-old artist sketches strangers on the MRT for free" (29 Dec 2020), The Today online: <https://www.todayonline.com/singapore/no-use-money-72-year-old-artist-sketches-strangers-mrt-free> (last accessed 9 Dec 2021).

[15]Elena Chong, "Two Germans who vandalised MRT train in Bishan depot get 9 months, 3 strokes each" (5 Mar 2015), The Straits Times online <https://www.straitstimes.com/singapore/courts-crime/two-germans-who-vandalised-mrt-train-in-bishan-depot-get-9-months-3-strokes> (last accessed 9 Dec 2021).

[16] Diane Leenheer Zimmerman, *supra* note 11, at 38.

[17] William Dietrichhe, "The Writer's Odds of Success" (4 Mar 2013), The Huffington Post online: <https://www.huffpost.com/entry/the-writers-odds-of-succe_b_2806611> (last accessed 9 Dec 2021).

[18] *Ibid.*

regard art as particularly essential.[19] On the music front, songwriters are also being pummelled. In a recent article by the UK's *Guardian* newspaper, it was estimated that only one in 10 artists who sign to labels go on to achieve commercial success.[20] The research sector also does not appear to give much profit to its authors. The famous economist Joseph Stiglitz observed that the bulk of important research originated from non-profit governmental or educational institutions, which pay researchers a salary to continue researching, rather than from commercial entities who compensate the researchers with intellectual property instead.[21] While YouTube content creators appear to be earning substantial coin from their work,[22] this is likely an illusion. A recent German study found that 96.5% of aspiring YouTubers fail to earn enough money to pass the US poverty line.[23] These examples illustrate that a long copyright would be hardly motivational for creators when their works can barely support themselves, let alone their successors.

C. The lottery theory fails to justify a long copyright

Perhaps the 'economic incentive' from copyright is not from assured returns but rather from the hope of getting great rewards. Under the 'lottery' theory, creators are willing to toil away despite the low chances of financial success because they seek the chance to strike the proverbial pot of gold at the end of the rainbow.[24] Copyright would be instrumental here as it protects the chance of winning the lottery. The longer the term, the more chances the creator will get to win big.[25] While this may be a plausible reason in more risk-taking nations, it is unlikely to be so for Singapore because we are

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[19] Prisca Ang & Chelsea Kiew, "Artists defend value of creative work to society after survey sparks debate" (16 Jun 2020), The Straits Times online: <https://www.straitstimes.com/lifestyle/arts/artists-defend-value-of-creative-work-to-society-after-survey-sparks-debate> (last accessed 9 Dec 2021).

[20] Rhian Jones, "Songwriters fight to be heard in streaming revenues debate" (12 Feb 2021), The Guardian online: <https://www.theguardian.com/music/2021/feb/12/songwriters-fight-to-be-heard-in-streaming-revenues-debate> (last accessed 9 Dec 2021).

[21] Joseph E. Stiglitz, "Economic Foundations of Intellectual Property Rights" (2008) 57 DUKE L.J. 1693, at 1697.

[22] Amanda Perelli, "How much money YouTubers make, according to dozens of creators", Business Insider online: <https://www.businessinsider.com/how-much-money-youtube-creators-influencers-earn-real-examples-2021-6> (last accessed 9 Dec 2021).

[23] Bloomberg, "Why 'Success' on YouTube Still Means a Life of Poverty" (27 Feb 2018), Fortune online: <https://fortune.com/2018/02/27/youtube-success-poverty-wages/> (last accessed 9 Dec 2021).

[24] F.M. Scherer, "The Innovation Lottery", in Rochelle Dreyfuss et al., eds., *Expanding The Boundaries Of Intellectual Property: Innovation Policy For The Knowledge Society 3* (Oxford: Oxford University Press, 2001).

[25] *Ibid.*

notoriously risk-adverse.[26] In fact, a key concern for anyone joining the Singapore art industry is the lack of a stable income to offset the considerable time and monetary investment required to join it.[27]

Aside from whether the lottery theory adequately explains why authors create, there are also serious doubts as to whether copyright law should promote risk-taking when the chances of success are so low.[28] This is because people who gravitate towards this kind of risk taking may be afflicted by an 'optimism bias' that clouds their ability to weigh the pros and cons of their actions properly and ultimately encourages them to make unwise decisions or act imprudently.[29] It is thus submitted that copyright should not be too long as it would pander to such dangerous behaviour.

D. Copyrighted works generate most of their income at the start of their term

Another problem with the conventional narrative is the assumption that a copyrighted work would generate earnings throughout its entire copyright term, which is false for the vast majority of works. The bulk of the income from a copyrighted work actually comes from the immediate years post publication. For books, how long it stays on the shelf is up to the 'vagaries of popular taste'.[30] If a book is no longer popular, the publisher would stop selling it to make way for more in-demand books.[31] The same applies to other works like art, music and movies in today's consumerist society. This phenomenon is especially problematic for the author because we live in an era of short attention spans where the purchasing public's interest in a work can surge rapidly but also fade at a similar

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[26] Sharon Ong, "Risk aversion among Singaporean youth, survey reveals" (20 Sep 2019), ASEAN Economist online: <https://www.aseaneconomist.com/risk-aversion-among-singaporean-youth-survey-reveals/> (last accessed 9 Dec 2021).

[27] Sandra Davie, "askST: My daughters want to study fine arts. Should I worry?" (18 Apr 2021), The Straits Times online: <https://www.straitstimes.com/singapore/parenting-education/askst-my-daughters-want-to-study-fine-arts-should-i-worry> (last accessed 9 Dec 2021).

[28] Diane Leenheer Zimmerman, *supra* note 11, at 42.

[29] Diane Leenheer Zimmerman, *supra* note 11, at footnote 55 citing Christine Jolls, "Behavioral Law and Economics" in Peter Diamond & Hannu Vartiainen, eds, *Behavioral Economics And Its Applications* (Princeton: Princeton University Press, 2007) 115 and Peter R. Harris, Dale W. Griffin, & Sandra Murray, "Testing the Limits of Optimistic Bias: Event and Person Moderators in a Multilevel Framework" (2008) 95:5 J. Pers & Soc Psychol 1225.

[30] Ian Kilbey, "Copyright duration? Too long!" (2003) 25:3 E.I.P.R. 105 [Ian Kilbey].

[31] *Ibid.*

pace.[32] In essence, the author's work must be in demand now or it may never be so. While research articles may be more evergreen,[33] it is often the case that their contents cannot be monetised for a significant amount of time post publication,[34] if they can even be monetised at all.[35]

E. Authors do not necessarily benefit from the copyright

There are also numerous situations where an author may not benefit from the copyright in his or her work at all. Although the default position in the *Copyright Act 2021* is that the author is the first owner of the copyright in his or her work,[36] the exceptions to this rule can encompass a large proportion of copyright work creators. An example is the employer-employee exception. Unless one is lucky, we will all be employees at some point in our lives, and in predominantly white-collar Singapore,[37] this means we will write many literary works for the organisation we are serving. These works may be commercially valuable to us, the white-collared author, but the copyright would be almost always vested in the employer as the default position is that the employer automatically acquires the copyright in the employee's works if the works were done in the course of the author's employment.[38] This is made worse by how 'course of employment' is liberally interpreted to also

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[32] Dream McClinton, "Global attention span is narrowing and trends don't last as long, study reveals" (17 Apr 2019), The Guardian online: <https://www.theguardian.com/society/2019/apr/16/got-a-minute-global-attention-span-is-narrowing-study-reveals> (last accessed 9 Dec 2021).

[33] *Ibid.*

[34] OLR Research Report, "R&D life cycles" <https://www.cga.ct.gov/2015/rpt/2015-R-0207.htm> (last accessed 9 Dec 2021): The length of time between the research & development phase and the monetisation of the intellectual property varies from industry to industry. However, what is common to all research works is that there is usually a significant length of time between the creation of the intellectual property and its commercialisation.

[35] Not all kinds of research can give rise to a valuable copyright. Copyright only protects the expression and not the ideas of the author so the nature of the copyright in a research work can be useless from a commercial standpoint. A case in point is the copyright in a telephone book. Only the selection and arrangement of the telephone numbers listed in the book would be protected and not the numbers *per se*. This is despite the latter likely taking the most time to compile and is the most valuable aspect of the book. As a result, a rival company can just take the numbers and use them in their book so long as the selection and arrangement are sufficiently different. See *Global Yellow Pages Ltd v Promedia Directories Pte Ltd* [2016] 2 SLR 165 [*Global Yellow Pages Ltd*].

[36] *Copyright Act 2021*, *supra* note 1, s 133(1)(a).

[37] Ministry of Manpower Singapore, "Labour Force In Singapore 2017" <https://stats.mom.gov.sg/iMAS_PdfLibrary/mrsd_2017LabourForce_survey_findings.pdf> (last accessed 9 Dec 2021) at Chart 19.

[38] *Copyright Act 2021*, *supra* note 1, s 134(3).

include things that the author ought to have created for the employer and not the employer's rivals.[39] It is thus rare for the public at large to ever benefit from the copyright in their work despite contributing so disproportionately to the overall volume of copyrighted works.

F. More monetary rewards do not equal more creativity

Lastly, the conventional narrative's assumption that there is a causal link between monetary rewards and greater creativity is also suspect. Dangling monetary rewards may instead undermine the quality of works produced.[40] To explain why this is so, we need to understand how creators are motivated to create. A creator has two sources of motivation: the first is an intrinsic one to get self-satisfaction from expressing one's creativity, and the second is an external one to create for some rewards, usually monetary.[41] While having an excess of the first is not problematic, having too much of the second is. If the extrinsic motivator becomes so strong that the creator perceives it as controlling, then creativity drops.[42] This is because the creator would treat the creative activity as "a means to an end rather than an end in itself", making him less personally invested in the work at hand, resulting in a less creative product.[43] It is thus said that "[t]ruly creative people respond most strongly to some innate drive to solve problems or to produce art and are unlikely to be encouraged to make a greater effort by the promise of profit if their work is successful" .[44]

The correlation between lower creativity and higher monetary incentives is backed by empirical evidence. Experiments by various psychologists have shown that "higher monetary incentives [lead] to worse performance" when cognitive work is being done.[45] Outside of the university context, we see this play out regularly in the arts scene, especially in the movie sector. Some of the most commercially successful movies have been slammed for being 'unimaginative'. Take the famously panned yet commercially successful third movie of the third trilogy of the popular Star Wars genre as an example. A quick look at the influential movie review aggregation website Rotten Tomatoes reveals

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[39] See *Nanoflim Technologies International Pte Ltd v Semivac International Pte Ltd* [2018] 5 SLR 956.

[40] Diane Leenheer Zimmerman, *supra* note 11, at 49.

[41] Edward L. Deci & Richard M. Ryan, *Intrinsic Motivation and Self-determination in Human Behavior* (Springer, 1985) at 66, 149, 310.

[42] *Ibid.*

[43] *Ibid.*

[44] Diane Leenheer Zimmerman, *supra* note 11, at 54.

[45] Dan Ariely, Uri Gneezy, George Loewenstein & Nina Mazar, "Large Stakes and Big Mistakes" (2008) 76 Rev. Econ. Stud. 451.

that the plot was generally criticised as 'bland' and 'derivative' by the audience, with much of the problem caused by the studio's desire to stick to tried and tested tropes to maximise sales.[46] Such are the perils of using money to encourage more creative works.

V. ANALYSIS OF THE NON-ECONOMIC ARGUMENTS

There are two possible non-economic arguments for a long copyright duration: to protect the creator's moral rights, and to cater to the creator's familial instincts to provide for his or her family. This section will look at each in turn and conclude that both are weak justifications for a long copyright term.

A. The 'moral rights' argument is weak

The moral rights argument goes like this: authors have a personal connection with their work. Thus, they want to protect their personality as expressed in it.[47] Conferring on authors 'moral rights' in their work, such as the rights of disclosure, attribution and integrity, enable them to remain publicly associated with their work.[48] Without such rights, authors would not be motivated to create new works as their expression would just be appropriated by someone else post publication.[49] In the context of the copyright duration, moral rights enable the author (and his or her immediate successors) to continue to require attribution as a condition precedent to further reproduction of his or her work. This would then allay the author's concerns that his or her work would be passed off by someone else, thereby encouraging the author to create more works.

However, the moral rights rationale does not justify copyright lasting beyond the author's death. As perceptively observed by Ricketson, the "authors' natural concern to protect their moral rights during their lifetime becomes less natural after the author's death".[50] Moreover, there are also no practical benefits to be gained by authors from the way their work is treated post death.[51] Perhaps the preservation of one's legacy after death is more compelling on those who believe in the existence of

[46] Rotten Tomatoes, "Star Wars: The Rise of Skywalker" <https://www.rottentomatoes.com/m/star_wars_the_rise_of_skywalker> (last accessed 9 Dec 2021).

[47] Sam Ricketson, "The Copyright Term" (1992) 23 International Review of Intellectual Property & Competition Law 753 at 771-772 [Ricketson].

[48] Cornish, "Authors in Law" (1995) 58 Modern Law Review 1 at 8-11.

[49] Ricketson, *supra* note 47, at 771-772.

[50] *Ibid*, at 773.

[51] Ian Kilbey, *supra* note 30.

an afterlife. To these authors, the prospect of looking down from above to see their work still being attributed to them might be the motivation to create while they still mingle with the living. This kind of motivation is however unlikely to be prevalent amongst Singaporean authors as only 34.5%[52] of the population subscribes to a religion that believes in an afterlife.

B. Copyright's appeal to the author's familial instincts is minimal

The next oft-cited reason for why copyright has to last so long is the need to appeal to the author's natural instincts to provide for his or her spouse and children. While this can be a strong emotional pull on individuals to create, it simply does not apply to the vast majority of creators. As explained previously, the financial incentives from creating copyrighted works are not usually high enough to be even capable of sustaining the author during his life, let alone his or her next generation and spouse. This theory also does not adequately explain why some of the most creative people did not have any family to leave their works behind for. Leonardo da Vinci, John Locke and Ludwig van Beethoven were all single throughout their life but yet they each produced some of the world's most influential and timeless works. In Singapore, the iconic singer-songwriter and film director Dick Lee and legal academic cum accomplished playwright Eleanor Wong are also similarly without any offspring to leave their influential works to. Even if we do recognise the power of familial instincts as a core driver of creative content, its relevance to Singapore is diminishing as more and more Singaporeans are shunning children and even marriage.[53]

VI. ANALYSIS OF THE POLICY ARGUMENTS

A. A multi-generational copyright fails to advance Singapore's societal objectives

It is often said that the primary policy reason why copyright lasts beyond the death of the author is to achieve the societal objective of enabling authors to provide for their family after their death,[54] presumably so that the government does not have to pick up the tab. This reason is however flawed

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[52] Singapore Department of Statistics, "Singapore Census of Population 2020" <https://www.singstat.gov.sg/-/media/files/publications/cop2020/sr1/findings.pdf> (last accessed 9 Dec 2021) at Chapter 5: Religions that believe in an afterlife are Christianity, Judaism and Islam.

[53] Grace Ho, "Fewer S'poreans marrying and having children: Population census" (16 Jun 2021), The Straits Times online: <https://www.straitstimes.com/singapore/politics/fewer-sporeans-marrying-and-having-children-population-census> (last accessed 9 Dec 2021).

[54] Gerald Dworkin, "Intellectual Property Rights: What Are Appropriate Terms of Protection" (1997) 18 Sing L Rev 553 at 563 [Gerald Dworkin].

on many levels. The most obvious flaw is that this view is hopelessly out of date. While it is true that copyright was necessary to support the immediate descendants of the author when the copyright term was extended to life plus 50 years in 1911, we no longer live in that bygone era. Back then, most families relied on a single breadwinner for income[55]. An author who spent many unpaid years creating his work but perished not long after its publication would have led to his family becoming destitute, and this was not a remote possibility as a person's life in that era was often brutish, nasty and short.[56] Authors and their families no longer face such a predicament these days as single income families are now the minority in Singapore.[57] When you add in the extra facts that household incomes have ballooned58 and education levels have skyrocketed,[59] it would be even more ludicrous to think that an inheritable copyright is necessary to stave off family poverty. The reality today is that an author's premature death and corresponding demise of the copyright would not condemn the author's family to crippling poverty because the surviving family members would likely be rich enough to care for themselves and highly employable in their own right. Moreover, as the average lifespan has increased dramatically in the last hundred years,[60] there would now be more than enough time for authors to

[55] Pundarik Mukhopadhaya, "Changing labor-force gender composition and male-female income diversity in Singapore" (2001) 12:4 Journal of Asian Economics 547 at 552, DOI: <10.1016/S1049-0078(01)00102-6>; There is no data for Singapore prior to 1975. However, the data from that point onwards shows a massive increase in female participation in the workforce while male participation remained largely the same which equates to a demise in single income families.

[56] Ministry of National Development Singapore, "Our Early Struggles" <https://www.mnd.gov.sg/our-city-our-home/our-early-struggles> (last accessed 9 Dec 2021).

[57] Justin Ong, "Rising household incomes, more working couples in Singapore over past decade: Census" (18 Jun 2021), The Straits Times online: <https://www.straitstimes.com/singapore/rising-household-incomes-more-working-couples-in-singapore-over-past-decade-census> (last accessed 9 Dec 2021).

[58] Since independence, Singaporeans have become some of the richest people in the world. In 2020, the Gross Domestic Product per capita was $59,797, and that was notwithstanding the COVID-19 pandemic's catastrophic effect on the local economy (See The World Bank, "GDP per capita (current US$) – Singapore" <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=SG&most_recent_value_desc=true > (last accessed 9 Dec 2021)).

[59] Goh, C. B., & Gopinathan, S., "Education in Singapore: Development since 1965" in B. Fredriksen & J. P. Tan, eds, *An African Exploration of the East Asian Education* (Washington, DC: The World Bank, 2008) 80-108.

[60] Singapore's life expectancy for men and women were 81.4 years and 85.7 respectively in 2019 (See Channel NewsAsia, "Singaporeans' life expectancy among highest in the world: Public sector report" <https://www.channelnewsasia.com/singapore/public-sector-report-life-expectancy-spor-covid-19-570646> (last accessed 9 Dec 2021)). There is no data for Singapore's average life expectancy pre-1950. However it is unlikely to be more than the UK's which was 51 years for men and 55 years for women in 1910 (See Jane Kirby, "Life expectancy in Britain almost 30 years higher than a century ago" (1 Sep 2015), The Independent online:

earn enough money to bequeath to their family by producing more works, eliminating the need to rely on continued copyright royalties from any one particular work after the author's death.

Another flaw with an inheritable copyright is that it goes against the principles of a meritocratic society. This is especially problematic for Singapore because we strongly aspire to achieve such a society.[61] A meritocracy is a social system where people get ahead in life based on their own accomplishments rather than on extraneous factors, such as their parents' social class or wealth. As such, the core aspect of a meritocratic society is that one must have earned what he has received – an individual's wealth or status must have been 'merited' by his deeds. Inheriting the fruits of someone else's labour would thus be incongruous with such a society. Unfortunately, this is exactly what an inheritable copyright does. The descendants played no part in the creation of the author's work but yet are allowed to benefit from it. In short, they did not deserve the copyright proceeds at all.

While this article recognises that the meritocracy argument can be extended to include the banning of all forms of inheritance, it makes no comment on it.[62] It would however suffice to say that an inheritable copyright poses more problems than other kinds of inheritable property because, unlike those, copyright can have a very detrimental impact on society's technological development if it lasts for too long. Property rights are inherently 'selfish' as they deliberately create zones of exclusivity.[63] This is problematic when the property that is fenced up is potentially useful information for society. If society cannot access the information freely for multiple generations, this can produce a significant drag on its technological progress. It is therefore imperative that we treat an inheritable copyright as much more than just a mere bequest to one man.

<https://www.independent.co.uk/life-style/health-and-families/health-news/life-expectancy-in-britain-almost-30-years-higher-than-a-century-ago-10481491.html> (last accessed 9 Dec 2021)). This would mean a 30-year increase for both men and women's life expectancy since the Copyright Act 1911.

[61] Although there has been some public dissatisfaction of late with the concept of a meritocracy in Singapore, chiefly because it can ironically promote social ossification and elitism, the political leadership still supports the meritocratic ideal (See, Melissa Heng, "Meritocracy still key principle for recognising individuals in Singapore, says Ong Ye Kung" (27 Jul 2019), The Straits Times online: <https://www.straitstimes.com/singapore/meritocracy-still-key-principle-for-recognising-individuals-in-singapore-says-ong-ye-kung> (last accessed 9 Dec 2021)).

[62] If you are interested, this article talks about whether inheritance is justified: Haslett, D. W. "Is Inheritance Justified?" (1986) 15:2 *Philosophy & Public Affairs* 122.

[63] George Wei, "A Look Back at Public Policy, the Legislature, the Courts and the Development of Copyright Law in Singapore: Twenty-Five Years on" (2012) 24:Special Issue SAcLJ 867 at para 32 [George Wei].

Conferring upon the descendants of the author a windfall would also have the perverse impact of discouraging them to be as motivated to create their own intellectual property. In a capitalistic society like Singapore's, the *enticement* to produce is the core driver of productivity in the economy so the most effective way of enticing people to produce would be to distribute income and wealth according to the productivity of each person.[64] This is however absent in the case of an inheritable copyright because the copyright which is inherited by the author's successor would be divorced from the successor's own productivity. As a result, since the author's successor would be richly rewarded without the need to work anyway, the successor would be naturally discouraged from creating his or her own works.

Furthermore, permitting long copyrights would entrench the dominance of the reigning intellectual property giants of the world at the expense of global economic development. It is a common criticism of intellectual property rights that they are truncheons wielded by the more developed world to club the less developed into delaying their rise up the economic value chain. Although one would no longer think of Singapore as a developing nation these days, we are apparently still being clubbed by more developed nations. Despite the shift towards a knowledge based economy, we remain a significant net importer of intellectual property.[65] To preserve the copyright term would thus perpetuate the imbalanced trade relationship between the intellectual property giants and us. Moreover, as Singapore has itself gained quite a fair repertoire of intellectual property, there is now the moral issue of whether we should also partake in the same clubbing of less developed nations for our own selfish gains.

B. A long copyright term is superfluous to protect the author's privacy

A potentially more convincing policy reason for a long copyright may be that it serves an important role in protecting the author's privacy. This would be especially pertinent to Singapore as we do not have a statutory or common law right to privacy *per se*.[66] It might appear odd to use copyright to protect one's privacy but it can be a powerful tool if the right conditions are met. How it does so is

[64] Milton Friedman, *Capitalism & Freedom* (Chicago: University of Chicago Press, 1962) at 161-162.

[65] Singapore exported S$11.4B worth of local intellectual property and imported S$23.2B of foreign intellectual property in 2020 (see Singapore Department of Statistics, "Overall Exports and Imports Of Services, 2016-2020" <https://www.singstat.gov.sg/modules/infographics/singapore-international-trade> (last accessed 9 Dec 2021)).

[66] Ng-Loy Wee Loon, *Law of Intellectual Property of Singapore*, 3rd ed (Sweet & Maxwell, 2021) at para 8.0.4 [Ng-Loy Wee Loon].

by permitting the copyright owner to restrain any unauthorised reproduction of the copyrighted material which then indirectly prevents its dissemination to the public. An example of how this would work in practice is the fact scenario in *Lee Wei Ling v Attorney-General*.[67] The dispute there revolved around a contractual arrangement between the Singapore Government and former Prime Minister Lee Kuan Yew regarding the rights in some transcripts of interviews of the latter by the former. Under the arrangement, the former Prime Minister was to have the copyright over the transcripts while the Government was to have only the physical right to possession to them. This legal construct had the effect of restraining the government from reproducing the transcripts without the former Prime Minister's consent, effectively granting him the right to privacy in those documents.[68]

Interestingly, the previous iteration of the *Copyright Act*[69] also facilitated this need for greater privacy safeguards in Singapore by enabling copyright to be perpetual in unpublished works.[70] This was possible because the copyright term in an authorial work was pegged to the time when the work is first published or made publicly available.[71] The relevant provisions were however repealed in the *Copyright Act 2021* as Parliament found that the need for a bigger pool of works in the public domain outweighed the justifications for privacy.[72]

However, privacy is ultimately not a strong justification for a long copyright. For one, there is a much better way to protect one's privacy: through the breach of confidence tort. Under this better method, the protection offered would be more comprehensive, there is no need for the information to be fixed in some material form,[73] more types of information can be protected,[74] and there are also

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[67] [2017] 2 SLR 786.

[68] *Ibid* at para 49.

[69] Copyright Act 1987, ss 28(3) and 28(6).

[70] Ng-Loy Wee Loon, *supra* note 66, at para 8.0.4.

[71] *Ibid.*

[72] Ministry of Law and Intellectual Property Office of Singapore, *Singapore Copyright Review Report* (17 January 2019) at paras 2.3.5 and 2.3.6 [Singapore Copyright Review Report 2019].

[73] The fixation requirement is a condition precedent for copyright to subsist in any authorial work. This is as copyright, unlike confidential information in breach of confidence, is a property right which requires that the boundaries of the property holder's rights can be delineated by third parties (See Ng-Loy Wee Loon, *supra* note 66, at para 6.3.16).

[74] Copyright only protects expressions and not ideas or facts, hence any confidential information that pertains to the latter two cannot be protected at all. This is unlike in breach of confidence where what is termed as 'confidential information' does not turn on whether the information is an 'expression' or a fact or idea.

fewer ways for a defendant to defend his reproduction of information.[75] Another more fundamental reason is that protecting the author's privacy is not the purpose of copyright law. Copyright in Singapore has always been viewed as a means to an end – the end being the creation of works for the public to eventually enjoy.[76] It would thus be illogical to increase the copyright term so as to protect works from ever being seen by the public.

C. A long copyright term is impractical

Even if we ignore the policy arguments raised thus far, there is still the issue of impracticality arising from copyright lasting multiple generations, in particular, the problem with orphan works. Orphan works are copyrighted works whose owner cannot be identified or located because too much time has elapsed since the author's death.[77] Such works are highly detrimental to society because "[t]he inability to request for permission to use the work means that it cannot be legally used, even if the prospective user has spent much time and effort to find the owner".[78] Unfortunately, no adequate solution has been found for this pressing problem. An 'orphan works registry' was floated as a possible addition to the *Copyright Act 2021* but it was shot down by the law reform committee because it was deemed too administratively costly for the government to operate and would have also added litigation costs for the parties should they fail to come to an agreement.[79] Aside from this copyright registry idea, other methods involving the government or a court determining the appropriate copyright fee were

[75] Copyright only confers a limited monopoly right. There is a need to prove that there was a substantial taking of the plaintiff's work by the defendant which is a concept not found in breach of confidence. Moreover, notwithstanding infringement being made out, the defendant may also rely on a copyright defence, such as fair use, to excuse the defendant's breach. Whether the fair use defences can be made out depends a lot on the policy dimension. Thus, confidential information that enjoys copyright but is of interest to society would be much less protected than those that only concern the individual. This is unlike the breach of confidence protections where the defences are much more narrowly defined to only protect situations where it is against the public interest to enable the plaintiff to succeed.

[76] Ng-Loy Wee Loon, *supra* note 66, at paras 5.1.2 to 5.1.3.

[77] This problem arises because copyrighted works do not have a registry for the public to view in one compendium to determine which works belong to whom. A voluntary registry was proposed in the public consultations for the *Copyright Act 2021* but it was rejected by the committee (See Annex A of the Singapore Copyright Review Report 2019, *supra* note 72, at 6-8).

[78] Singapore Copyright Review Report 2019, *supra* note 72, at Annex A pages 29-31.

[79] *Ibid.*

also proposed[80]. These proposals were similarly rejected, on the basis that they would either lead to undue market interference, would be too costly for the government to administer or insufficient to prevent costly litigation between the copyright owner and the copyright user.[81]

In light of the foregoing, it is submitted that we have made life unnecessarily difficult for ourselves. The 'Gordian's knot' can be easily untied if we just reduce the copyright term to only the author's life. There would no longer be any orphan works to worry about as it would become very easy to know when the copyright has expired – when the author's obituary appears in the newspapers.

VII. IS THERE SUFFICIENT MITIGATION?

Notwithstanding the points raised thus far, some may still argue that the nature of copyright as a limited monopoly right can still accommodate the longer 'life plus 70 years' copyright term without overly compromising the public's free access to the work. The thrust of such an argument would be that the legal requirements to find copyright subsistence and infringement are broad enough such that the public can still make use of the copyrighted work freely for useful purposes. It is however submitted that the legal exceptions to copyright's exclusive power are actually insufficient and even if they may be, they are built on pillars of sand.

To establish copyright infringement, the owner must prove that, firstly, copyright exists in the work allegedly infringed; secondly, there was a substantial taking of the owner's work; and, thirdly, the alleged infringer does not have any defences that can be raised. This article will look at each step in turn.

A. Copyright subsistence

Beginning with the first step, finding copyright subsistence, the key criterion that the copyright owner needs to prove is that the copyrighted work in question had sufficient 'originality'. This is found when the author applied intellectual effort towards the creation of the work.[82] As a result, only expressions of facts and ideas can give rise to copyright. This requirement *per se* is however not particularly impactful as anything other than an unorganised dump of raw facts or ideas would have

[80] *Ibid* at 29: The other proposals made to the law reform committee were: (a) Limitation of remedies to a reasonable fee in a subsequent court case or case brought by the copyright owner before a tribunal; (b) Payment of a government-determined fee to a government body, which will be held on behalf of the copyright owner and paid to the owner upon application to the body; and (c) Payment of a government-determined fee directly to the copyright owner if and when the owner approaches the user.

[81] Singapore Copyright Review Report 2019, *supra* note 72, at Annex A pages 29-31.

[82] *Global Yellow Pages Ltd*, *supra* note 35, at para 24.

sufficient originality to find copyright. The common law therefore created the additional *de minimis* threshold which the work must pass to have copyright.[83] Under this rule, the work must be sufficiently 'consequential',[84] which is when the work is not 'commonplace or banal'.[85]

One may argue that it is through this *de minimis* threshold that the effects of a long copyright can be mitigated. If common phrases could be the subject of copyright then the free flow of information in society would be greatly constricted. It could even go as far as undermining the "evolution of a language and hence the culture of a society".[86] As such, by providing courts with a legal mechanism to exclude certain kinds of works from falling under the protection of copyright based on how banal or commonplace they are, the law can avoid the problem of allowing such works to have copyright.

However, it would appear that the *de minimis* threshold is incongruous with the *Copyright Act 2021*. To see whether an authorial work is sufficiently consequential to enjoy copyright would amount to evaluating the work on its merits but that is not permitted under the Act – as per a plain and purposive reading of it.[87] The common law *de minimis* requirement was therefore introduced *per incuriam* and would likely crumble in the face of a direct challenge to its validity.

Moreover, even if some legal witchcraft can be conjured up to keep it consistent with the statute, the effect of the *de minimis* threshold is rather minimal. Only the most banal and commonplace works appear to be deprived of copyright. This is as very basic things such as 'rudimentary drawings' of fire doors[88] and telephone directories[89] have been found sufficiently consequential to have copyright. If such common and useful things can remain locked behind a copyright paywall, then it is hard to say

[83] *Tay Long Kee Impex Pte Ltd v Tan Beng Huwah* [2000] 1 SLR(R) 786 at para 44 [*Tay Long Kee Impex Pte Ltd*].
[84] *Ibid.*
[85] The Singapore Court of Appeal in *Tay Long Kee Impex Pte Ltd* did not elaborate on what it would take for a work to pass the threshold requirement, only that the modified warranty in the case did not meet this threshold. However, it has been persuasively argued by Prof David Llewelyn that it should be when the work is 'banal or commonplace' (See David Llewelyn, Ng Hui Ming & Nicole Oh, *Cases, Materials & Commentary on Singapore Intellectual Property Law* (Academy Publishing, 2018) at para 04.025).
[86] Ng-Loy Wee Loon, *supra* note 66, at para 6.1.12.
[87] Save for section 20(1)(a)(iii) of the *Copyright Act 2021*, where whether a work is one of 'artistic craftsmanship' requires an evaluation of artistic merit by the judge (Ng-Loy Wee Loon, *supra* note 66, at para 6.1.30), there is no requirement to find that an authorial work has sufficient merit. The Singapore Court of Appeal has affirmed this interpretation in *Asia Pacific Publishing Pte Ltd v Pioneers & Leaders (Publishers) Pte Ltd* [2011] 4 SLR 381.
[88] *Flamelite (S) Pte Ltd v Lam Heng Chung* [2001] 3 SLR(R) 610 [*Flamelite*].
[89] *Global Yellow Pages Ltd*, *supra* note 35.

whether the *de minimis* threshold has a more than *de minimis* impact on preventing works from being unduly fenced up from the public domain.

B. Copyright infringement

Moving on to the next step, the question is whether there was a 'substantial taking' of the copyright owner's work. The legal test to establish this is quite lenient to the copyright owner and thus fails to mitigate the negative impact of a long copyright. Although the test appears difficult to make out as the alleged infringer must have overly appropriated the benefit of another's skill and labour,[90] it may not actually be so as the copyright owner can avail himself to multiple legal doctrines to make it much easier to find a substantial taking. The first is the *prima facie* presumption of copying which would arise whenever the defendant's work is substantially similar to the plaintiff's work and the defendant had prior access to it.[91] This would then shift the burden of proof to the defendant to then show that he did not copy the plaintiff's work. As we all know, whoever who bears the burden of proof would be at a disadvantage in court. This is further compounded by the fact that the defendant's intentions are irrelevant and even subconscious copying would amount to an infringement.[92]

The second stone around the defendant's neck is the potential for infringement to be found even though the defendant's work did not share any identical portions with the plaintiff's work – the 'altered copying' situation. In such cases, the defendant's work did not directly lift any portion of the plaintiff's work into his, but rather, incorporated the plaintiff's work with modifications. Intuitively, one would expect no finding of infringement since what is appropriated would be the plaintiff's idea and not his expression of the idea. Case law however disagrees and finds that an idea can be protected so long as the idea taken was a 'detailed' one.[93] In the English case of *Designers Guild Ltd v Russell Williams (Textiles) Ltd*,[94] the plaintiff claimed that her fabric design, which comprised flowers superimposed onto a red

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[90] *Designers Guild Ltd v Russell Williams (Textiles) Ltd* [2000] 1 WLR 2416; endorsed by the Singapore High Court in *Virtual Map (Singapore) Pte Ltd v Singapore Land Authority* [2008] 3 SLR(R) 86 at para 14. This usually requires that the plaintiff prove that the defendant copied a quantitatively or qualitatively significant portion of the plaintiff's work (see *Creative Technology Ltd v Aztech Systems Pte Ltd* [1996] 3 SLR(R) 673).

[91] *Flamelite*, *supra* note 88, at para 28.

[92] *Ibid* at para 31.

[93] Ng-Loy Wee Loon, *supra* note 66, at paras 10.1.34-10.1.35: The line between what is a 'general idea', which is not protected by copyright, and a 'detailed idea', which is protected, is not clear. A suggested rough guide is whether the defendant 'over-borrowed' the skill, labour and judgement that went into the creation of the work.

[94] [2000] 1 WLR 2416.

and white striped background, was infringed by the defendant. Both designs however did not share any identical elements: the flowers were of a different type and the stripes were of a different thickness. Only the overall impression was similar. The plaintiff therefore claimed that the defendant appropriated her idea of using 'flowers superimposed on a red and white striped background'. The House of Lords held that this was sufficient to find infringement by the defendant. In their Lordships' opinion, there was no need for any identifiable part of the defendant's work to be the same as the plaintiff's for there to be infringement as having sufficient similarity between the two would suffice. As such, since the defendant's and plaintiff's works were similar, there was infringement.[95] In so holding, the court permitted ideas to be protected. Recognising altered copying poses a big problem for copyright law because it blurs the line between ideas and expressions. Should copyright start protecting the former then the pool of information that the public can use freely would be significantly decreased and this would be greatly exacerbated if the copyright term was biblically long.

C. Defences to copyright infringement

We shall now turn to the last step – whether the defendant can avail himself of any defences to excuse his act of infringement. Numerous permitted uses in the *Copyright Act 2021* would excuse an act of infringement.[96] Except for the open-ended general fair use defence in section 190[97] where the only condition to satisfy is that the defendant's use must be fair, which is to be assessed by reference to all factors, including the Statutory Factors,[98] the other defences are all narrowly defined. The general

[95] Lord Hoffman and Lord Millet found infringement on the basis that the similarities between the plaintiff's and defendant's works established that there was copying and those copied parts amounted to a substantial taking of the plaintiff's work. Lord Scott used a different test where the reference should be how similar, holistically, the plaintiff's work was to the defendant's. If there was a substantial similarity between the works, then the infringer incorporated a substantial part of the independent skill and labour contributed by the original author in creating the copyright work and therefore there was infringement. As both works were extensively similar overall, his lordship found infringement. Although the Singapore High Court in *Virtual Map (Singapore) Pte Ltd v Singapore Land Authority* [2008] 3 SLR(R) 86 did not decide which test is to be preferred, it is likely that Lord Scott's would be used going forward since the District Court in that case voiced support for his test (*Singapore Land Authority v Virtual Map (Singapore) Pte Ltd* [2007] SGDC 216 at para 54).

[96] *Copyright Act 2021*, *supra* note 1, Part 5.

[97] *Copyright Act 2021*, *supra* note 1.

[98] *Copyright Act 2021*, , *supra* note 1, s 191; The Statutory Factors are: (a) the purpose and character of the use, including whether the use is of a commercial nature or is for non-profit educational purposes; (b) the nature of the work or performance; (c) the amount and substantiality of the portion used in relation to the whole work or performance; and (d) the effect of the use upon the potential market for, or value of, the work or performance.

fair use defence is therefore the only plausible means to mitigate the effects of a long copyright sufficiently, but as will be shown below, it fails to do so.

It is submitted that the most important thing needed to mitigate the effect of a long copyright for the general fair use defence is to permit the public to freely use the copyrighted work so long as the purpose of doing so is to build upon it. This would be possible if the 'transformative use' doctrine is used to find fair use. Under the doctrine, fair use would be found if the defendant's work does not "merely supersede the objects of the original creation" but rather "adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message".[99] Such an approach would provide the right balance between the protecting the copyright holder's interests and the public's because the copyright user would be allowed to benefit society using the author's works so long as he does not directly compete with the author by using his works for the same purposes as the author.

However, the open-ended general fair use defence is a surprisingly narrowly circumscribed one that has no room for the transformative use doctrine. It remains to be seen whether the local courts would embrace the transformative use doctrine[100] but it is unlikely that they would. For one, Singapore has retreated from a purely utilitarian approach to copyright[101] which would encourage courts to support the doctrine. We are now placing greater emphasis on the 'moral' aspects of the copyright, as evidenced by how the new *Copyright Act 2021* has an entire section devoted to the author's moral rights, which include, amongst others, the 'right to be identified'.[102] Apart from this, the Singapore Government is also trying to brand copyright infringement as an act of 'stealing' in the minds of the public.[103] Another reason is that the structure of the *Copyright Act 2021* is at odds with the transformative use doctrine. The Statutory Factors expressly require the courts to consider not just the purpose of the infringement, but also the effect the infringement has on the copyright owner's income and the nature of the work taken[104] which must necessarily mean that the transformative use doctrine by itself, which looks only at the purposes of the works, cannot be decisive.

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[99] *Google v Perfect 10* 487 F (3d) 701 (9th Cir 2007).

[100] See *Global Yellow Pages Ltd*, supra note 35, at paras 77 to 81: The Singapore Court of Appeal cited the transformative use doctrine but did not voice any opinion on whether it should be applied locally.

[101] George Wei, *supra* note 63 at paras 23-24.

[102] *Copyright Act 2021*, supra note 1, Part 7.

[103] Ng-Loy Wee Loon, *supra* note 66, at para 2.2.3.

[104] Factor (c) in the *Copyright Act 2021*, *supra* note 1, s 191.

Notwithstanding the above, even if we treat the general fair use doctrine as sufficient mitigation, there is still the possibility that an open-ended fair use doctrine is incongruent with Singapore's treaty obligations under the TRIPS Agreement. Article 13 of TRIPS sets out a three-step test to evaluate the legitimacy of any exceptions to copyright: the exception must be confined to certain special cases, the exception must not conflict with the normal exploitation of the work, and the exception does not unreasonably prejudice the legitimate interests of the right holder.[105] A local court has yet to interpret Article 13 but a very persuasive body, The World Trade Organisation ("WTO"), has done so. A WTO panel in the United States interpreted Article 13 strictly: each criterion acts on a cumulative basis, with each step constituting a separate and independent requirement.[106] As Article 13 begins with the criterion that the exceptions to the copyright owner's rights must be confined to 'certain special cases', the overriding obligation imposed by TRIPS on member states must be to ensure that any exceptions to the copyright owner's rights are narrow in scope and clearly defined – in short, no open-ended exceptions are permitted.[107]

VIII. A COMPROMISE SOLUTION?

Even if we were to ignore all the arguments above and decide to keep the 'life plus X years' formulation, the length should still be shortened to the original *Berne Convention* duration. This is as the recent extension to 70 years from 50 appears to have been made on dubious grounds. Rather disturbingly, the 20 year extension was primarily driven by administrative convenience rather than a rigorous assessment of whether the extension was justified from the standpoint of the author or the public. As observed by Dworkin, the main reason for the harmonisation of the copyright term to 70 years from 50 years is that it was more "convenient to harmonise upwards than downwards".[108] This was as the European Union ("EU"), a major proponent of the TRIPS Agreement, feared that the process of making '70 year' member states reduce their term to 50 years would have entailed too many transitional provisions and would have set back the EU's objective of creating a single market by the

[105] TRIPS Agreement, *supra* note 2, art 13: "Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder."

[106] WTO, *WTO Analytical Index: TRIPS Agreement – Article 13 (Jurisprudence)* at para 5.

[107] *Ibid* at para 6.

[108] Gerald Dworkin, *supra* note 54, at 565.

dawn of the 21st century.[109] It is thus submitted that the TRIPS copyright extension was an act of a politician's wants overruling the public's needs which cannot be justified.

IX. CONCLUSION

Gripes with copyright have existed since the beginning of copyright itself. Achieving the right balance has always been difficult and will continue to be so. It is however worrying that the trend in the last 100 years is to blindly adhere to a mantra of continuous extensions to the copyright term which is increasingly divorced from the reality on the ground. Copyright holders are now akin to 'dynastic kings' who control a rapidly expanding domain of intellectual property that they can pass down to multiple heirs before entering the commons. Unfortunately, the great irony is that this system helps neither the author nor the public. We therefore need to shake off our rose-tinted glasses and see the conventional narrative of 'long copyrights equal great benefits to society' for what it really is – outdated and unsound reasoning. Ultimately, it is hoped that the points raised in this short article can prod policymakers to pare back the unduly long copyright duration to a more reasonable one that lasts no longer than the life of the author.

[109] *Ibid.*