

# LHAG Insights



**Special Alert!**

Intellectual Property



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## Employers' Liability for Copyright Infringement

Installation of a software without a valid license is a copyright infringement. In Malaysia, section 13 of the Copyright Act 1987 makes this clear by conferring exclusive rights to software developers and owners to reproduce, communicate and distribute copies of the software to the public. No other person may exercise those exclusive rights unless with the owner's consent.<sup>1</sup>

The position is less certain in cases where an employee, without the employer's knowledge, uses a software without a valid license or engages in some other form of unauthorized use or distribution.

In this regard, to what extent are employers liable for the actions of their employees, more so in the context of copyright infringement?

Malaysia recognises the principle of vicarious liability whereby an employer may be held liable for the actions of their employees. To establish vicarious liability, it must be shown that the employee was acting in the course of their employment, and that there was a sufficient connection between the employees' actions and their

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<sup>1</sup> Copyright Act 1987, s 36(2)

duties and responsibilities.<sup>2</sup> However, the extent to which this principle applies to copyright infringement is, as noted above, less than certain.

The recent Singapore High Court case of *Inzign Pte Ltd* [2023] SGHC 50 would shed some light. Here, the employer was held vicariously liable for its employee's infringing act of installing an unlicensed software program. As a result, the employer was ordered to pay damages. The key takeaways from this case are –

- Employers can be vicariously liable for copyright infringement committed by their employees in the course of their employment.<sup>3</sup>
- Employers have a duty to take reasonable steps to prevent and monitor possible copyright infringement by their employees.<sup>4</sup>
- Once found liable, employers may be required to pay damages to the copyright owner.<sup>5</sup>

The case serves as an important reminder for employers to take proactive steps to monitor and prevent possible copyright infringement by their employees, which include –

- **Educating and training employees:** Employers should educate their employees on the importance of using licensed software and the consequences of software infringement.<sup>6</sup>
- **Using software asset management tools:** These tools assist employers keep track of the software

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<sup>2</sup> *GMP Kaisar Security (M) Sdn Bhd v Mohamad Amirul Amin bin Mohamed Amir* [2022] 6 MLJ 369

<sup>3</sup> *Inzign Pte Ltd* [2023] SGHC 50 at para 35

<sup>4</sup> *Ibid* at para 23

<sup>5</sup> *Ibid* at para 53

<sup>6</sup> RightsDirect, "Copyright Compliance in the Digital Workplace" (RightsDirect, January 2023) <<https://www.rightsdirect.com/wp-content/uploads/sites/6/2023/01/Compliance-in-the-Digital-Workplace.pdf> > accessed 2 April 2023

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used in their organization and ensure that they comply with licensing agreements.<sup>7</sup>

- **Conducting regular compliance reviews:** Employers can conduct regular compliance reviews to identify potential violations and take corrective actions.<sup>8</sup>
- **Implementing a strong IT governance framework:** A strong IT governance framework can help to ensure that software usage is in compliance with licensing agreements and legal requirements.<sup>9</sup>

In conclusion, employers when faced with a similar predicament may find it difficult to escape liability merely by arguing lack of knowledge. Hence, prevention is better than cure.

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<sup>7</sup> Emiliano Pardo Saguier, "How to Monitor the Use of Pirated Software Inside the Organization" (InvGate, 2 September 2022)

<<https://blog.invgate.com/monitor-pirated-software>> accessed 30 March 2023

<sup>8</sup> *Supra* n 6

<sup>9</sup> Peter Wheatcroft, "The IT Assets Conundrum" (The Chartered Institute for IT, 1 November 2006)

<<https://www.bcs.org/articles-opinion-and-research/the-it-assets-conundrum>> accessed 28 March 2023