



# LAWS OF MALAYSIA

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**Act 332**

## **COPYRIGHT ACT 1987**

*As at 1 July 2012*

**COPYRIGHT ACT 1987**

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**LAWS OF MALAYSIA****Act 332****COPYRIGHT ACT 1987**

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**LAWS OF MALAYSIA****Act 332****COPYRIGHT ACT 1987**

An Act to make better provisions in the law relating to copyright and for other matters connected therewith.

[1 December 1987, P.U.(B)586/1987]

**BE IT ENACTED** by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

**PART I****PRELIMINARY****Short title, application and commencement**

1. (1) This Act may be cited as the Copyright Act 1987 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint and different dates may be appointed for the coming into force of different provisions of this Act.

(2) This Act shall apply throughout Malaysia.

**Extent of application**

2. (1) Subject to this section and section 59A and regulations made under section 59A, this Act shall apply in relation to works made before the commencement of this Act as it applies in relation to works made after the commencement of this Act:

Provided that this section shall not be construed as reviving any copyrights which had expired before the commencement of this Act.

(2) Where only by virtue of subsection (1) copyrights subsist in works that were made before the commencement of this Act, nothing done before the commencement of this Act shall be taken to constitute an infringement of those copyrights.

(3) For the purposes of this section, a work the making of which extended over a period of time shall not be deemed to have been made before the commencement of this Act unless the making of the work was completed before such commencement.

### **Interpretation**

**3.** In this Act, unless the context otherwise requires —

“adaptation” includes any of the following, that is to say—

- (a) in relation to a literary work, a version of the work (whether in its original language or a different language) in which it is converted into a dramatic work;
- (b) in relation to a dramatic work, a version of the work (whether in its original language or a different language) in which it is converted into a literary work;
- (c) in relation to a literary or dramatic work—
  - (i) a translation of the work;
  - (ii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;
- (d) in relation to a literary work in the form of a computer program, a version of the work, whether or not in the language, code or notation in which the work was originally expressed not being a reproduction of the work;
- (e) in relation to a musical work, an arrangement or transcription of the work;

- (f) in relation to a literary or artistic work, a version of the work (whether in its original language or a different language) in which it is converted into a film;

“appointed date” has the same meaning as is assigned to that expression in the Intellectual Property Corporation of Malaysia Act 2002 [Act 617];

“artistic work” means—

- (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality;
- (b) a work of architecture being a building or a model for a building; or
- (c) a work of artistic craftsmanship,

but does not include a layout-design within the meaning of the Layout-Designs of Integrated Circuits Act 2000 [Act 601];

“Assistant Controller” means the person appointed or deemed to have been appointed to be an Assistant Controller under subsection 5(2) or (3);

“author”—

- (a) in relation to literary works, means the writer or the maker of the works;
- (b) in relation to musical works, means the composer;
- (c) in relation to artistic works other than photographs, means the artist;
- (d) in relation to photographs, means the person by whom the arrangements for the taking of the photograph were undertaken;
- (e) in relation to films or sound recordings, means the person by whom the arrangements for the making of the film or recording were undertaken;

(f) in relation to broadcasts transmitted from within any country, means—

(i) the person transmitting the programme, if he has responsibility for the selection of its contents; or

(ii) any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission;

(g) in relation to any other cases, means the person by whom the work was made;

“broadcast” means a transmission, by wire or wireless means, of visual images, sounds or other information which—

(a) is capable of being lawfully received by members of the public; or

(b) is transmitted for presentation to members of the public,

and includes the transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting service or with its consent;

“broadcasting service” means any service of radio or television broadcast, operated under the general direction and control of or under licence by the Government, in any part of Malaysia;

“building” includes any fixed structure, and a part of a building or fixed structure;

“citizen” includes a person who, if he had been alive on the relevant day, would have qualified for citizenship under the Federal Constitution;

“communication to the public” means the transmission of a work or performance through wire or wireless means to the public, including the making available of a work or performance to the public in such a way that members of the public may access the work or performance from a place and at a time individually chosen by them;

“computer program” means an expression, in any language, code or notation, of a set of instructions (whether with or without related information) intended to cause a device having an information processing capability to perform a particular function either directly or after either or both of the following:

(a) conversion to another language, code or notation;

(b) reproduction in a different material form;

“Controller” means the Controller of Copyright as designated in subsection 5(1);

“copy” means a reproduction of a work in written form, in the form of a recording or film, or in any other material form;

“copyright” means copyright under this Act;

“Corporation” means the Intellectual Property Corporation of Malaysia established under the Intellectual Property Corporation of Malaysia Act 2002;

“Deputy Controller” means the person appointed or deemed to have been appointed to be a Deputy Controller under subsection 5(2) or (3);

“derivative works” means the works mentioned in paragraphs 8(1)(a) and (b);

“educational institution” shall have the same meaning as assigned to it in the Education Act 1961 [*Act 550*];

“film” means any fixation of a sequence of visual images on material of any description, whether translucent or not, so as to be capable by use of that material with or without any assistance of any contrivance—

(a) of being shown as a moving picture; or

(b) of being recorded on other material, whether translucent or not by the use of which it can be so shown,

and includes the sounds embodied in any soundtrack associated with a film;

“fixation” means the embodiment of sounds, images or both, or the representation thereof, in a material form sufficiently permanent or stable to permit them to be perceived, reproduced or otherwise communicated during a period of more than transitory duration by using a device;

“future copyright” means copyright which will or may come into existence in respect of any future works or class of works or other subject matter, or on the coming into operation of any provision of this Act, or in any future event;

“Government” means the Government of Malaysia or the Government of any State;

“graphic work” includes—

- (a) any painting, drawing, diagram, map, chart or plan; and
- (b) any engraving, etching, lithograph, woodcut or similar work;

“infringing copy”—

- (a) in relation to copyright, means any reproduction of any work eligible for copyright under this Act the making of which constitutes an infringement of the copyright in the work or, in the case of any article imported into Malaysia without the consent of the owner of the copyright, the making of which was carried out without the consent of the owner of the copyright;
- (b) in relation to performers’ right, means any reproduction of any recording of a performance the making of which constitutes an infringement of the performers’ right or, in the case of any recording imported into Malaysia without the consent of the performer, the making of which was carried out without the consent of the performer;

“licence” means a lawfully granted licence in writing, permitting the doing of an act controlled by copyright;

“licensing body” means a society or organization which is declared as a licensing body under section 27A;

“licensing scheme” means a scheme (including anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name) setting out—

- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant copyright licences; and
- (b) the terms on which licences would be granted in those classes of case;

“literary work” includes—

- (a) novels, stories, books, pamphlets, manuscripts, poetical works and other writings;
- (b) plays, dramas, stage directions, film scenarios, broadcasting scripts, choreographic works and pantomimes;
- (c) treatises, histories, biographies, essays and articles;
- (d) encyclopedias, dictionaries and other works of reference;
- (e) letters, reports and memoranda;
- (f) lectures, addresses, sermons and other works of the same nature;
- (g) tables or compilations, whether or not expressed in words, figures or symbols and whether or not in a visible form; and
- (h) computer programs,

but does not include official texts of the Government or statutory bodies of a legislative or regulatory nature, or judicial decisions, or political speeches and political debates, or speeches delivered in the course of legal proceedings, and the official translation thereof;

“performance”—

(a) includes—

- (i) a performance of a dramatic work, or part of such a work, including such a performance given with the use of puppets, or the performance of an improvised dramatic work;
- (ii) a performance of a musical work or part of such a work, or the performance of an improvised musical work;
- (iii) the reading, recitation or delivery of a literary work, or part of such a work, or the reading, recitation or delivery of an improvised literary work;
- (iv) a performance of a dance;
- (v) a performance of a circus act or a variety act or any similar presentation or show; or
- (vi) a performance in relation to expressions of folklore,

which is given live by one or more persons in Malaysia, whether in the presence of an audience or otherwise; but

(b) does not include—

- (i) any reading, recital or delivery of any item of news or information;
- (ii) any performance of a sporting activity; or
- (iii) a participation in a performance by a member of an audience;

“manuscript”, in relation to a work, means the original document embodying the work, whether written by hand or not;

“material form”, in relation to a work or a derivative work, includes any form (whether visible or not) of storage from which the work or derivative work, or a substantial part of the work or derivative work can be reproduced;

“Minister” means the Minister for the time being charged with the responsibility for intellectual property;

“musical work” means any musical work, and includes works composed for musical accompaniment;

“performer” means an actor, singer, musician, dancer or any person who acts, sings, delivers, declaims, plays in, interprets, or otherwise performs a performance;

“performers’ right” means the performers’ right under this Act;

“photograph” means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;

“premises” means any place, stationary or otherwise established or set up by any person, whether such place is with or without enclosure, and also includes vehicles, aircraft, ships and any other vessel;

“qualified person”,—

(a) in relation to an individual, means a person who is a citizen of, or a permanent resident in, Malaysia; and

(b) in relation to a body corporate, means a body corporate established in Malaysia and constituted or vested with legal personality under the laws of Malaysia;

“rebroadcast” means a simultaneous or subsequent broadcast by one broadcasting service of the broadcast of another broadcasting service, whether situated in Malaysia or abroad, and includes diffusion of such broadcast over wires; and “rebroadcasting” shall be construed accordingly;

“recording” means a sound recording or film, other than a recording made under subsection 16A(3);

“relevant day” means Merdeka Day in respect of Peninsular Malaysia and Malaysia Day in respect of Sabah, Sarawak and the Federal Territory of Labuan;

“reproduction” means the making of one or more copies of a work in any form or version, and in relation to an artistic work includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two dimensions of a three-dimensional work, and “reproducing” shall be construed accordingly;

“sculpture” includes a cast or model made for the purposes of a sculpture;

“sound recording” means any fixation of a sequence of sounds or of a representation of sounds capable of being perceived aurally and of being reproduced by any means, but does not include a soundtrack associated with a film;

“technological protection measure” means any technology, device or component that, in the normal course of its operation, effectively prevents or limits the doing of any act that results in an infringement of the copyright in a work;

“Tribunal” means the Copyright Tribunal established under section 28; and

“work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors.

## **Publication**

**4. (1)** Subject to this section, for the purposes of this Act—

- (a) a literary, musical or artistic work, or an edition of such a work, shall be deemed to have been published only if a copy or copies of the work have been made available with the consent of the author or of any person lawfully claiming under the author in a manner sufficient to satisfy the reasonable requirements of the public, whether by sale or otherwise;

- (b) a film shall be deemed to have been published only if a copy or copies of the film have been sold, let on hire, or offered or exposed for sale or hire, with the consent of the author or of any person lawfully claiming under the author in a manner sufficient to satisfy the reasonable requirements of the public;
- (c) a sound recording shall be deemed to have been published only if a copy or copies of such sound recording have been made available with the consent of the author or of any person lawfully claiming under the author in a manner sufficient to satisfy the reasonable requirements of the public; and
- (d) a fixed performance shall be deemed to have been published only if a copy or copies of the fixed performance have been made available with the consent of the performer in a manner sufficient to satisfy the reasonable requirements to the public.

(2) For the purposes of this Act, the performance of a literary or musical work and the exhibition of an artistic work does not constitute publication of the work.

(3) For the purposes of this Act, a publication shall be deemed to be a first publication in Malaysia if—

- (a) the work or performance was first published in Malaysia and not elsewhere; or
- (b) the work or performance was first published elsewhere but published in Malaysia within thirty days of such publication elsewhere.

(4) Where in the first instance a part only of a work or performance is published, that part shall be treated for the purposes of this Act as a separate work or performance, as the case may be.

### **Controller, Deputy Controllers and Assistant Controllers**

**5.** (1) The Director General of the Corporation shall be the Controller of Copyright.

(2) The Minister may appoint, on such terms and conditions as the Minister may determine, from amongst any public officers and persons in the employment of the Corporation, such number of \*Deputy Controllers of Copyright, Assistant Controllers of Copyright and other officers as may be necessary for the proper administration of this Act, and may revoke the appointment of any person so appointed or deemed to have been so appointed under subsection (3).

(3) The persons holding office as Deputy Controllers, Assistant Controllers and other officers under this Act before the appointed date shall on the appointed date be deemed to have been appointed as Deputy Controllers, Assistant Controllers and such other officers under subsection (2).

(4) Subject to the general direction and control of the Controller and to such conditions or restrictions as may be imposed by the Controller and subject to section 41A, a Deputy Controller or an Assistant Controller may exercise any function of the Controller under this Act, and anything by this Act appointed or authorized or required to be done or signed by the Controller may be done or signed by any Deputy Controller or Assistant Controller and the act or signature of a Deputy Controller or an Assistant Controller shall be as valid and effectual as if done or signed by the Controller.

(5) The Controller or Deputy Controller may perform all the duties imposed and exercise all the powers conferred on an Assistant Controller under this Act.

## PART II

### GENERAL PROVISIONS

#### **No copyright except by virtue of this Act**

**6.** Subject to this Act, no copyright shall subsist otherwise than by virtue of this Act.

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\*NOTE—The Deputy Controllers of Copyright, Assistant Controllers of Copyright and other officers appointed by the Corporation before the date of coming into operation of this Act shall be deemed to have been appointed under subsection 5(2) of the Copyright Act 1987 [Act 332]—see subsection 38(1) of the Copyright (Amendment) Act 2012 [Act A1420].

**Works eligible for copyright**

7. (1) Subject to this section, the following works shall be eligible for copyright:

- (a) literary works;
- (b) musical works;
- (c) artistic works;
- (d) films;
- (e) sound recordings; and
- (f) broadcasts.

(2) Works shall be protected irrespective of their quality and the purpose for which they were created.

(2A) Copyright protection shall not extend to any idea, procedure, method of operation or mathematical concept as such.

(3) A literary, musical or artistic work shall not be eligible for copyright unless—

- (a) sufficient effort has been expended to make the work original in character; and
- (b) the work has been written down, recorded or otherwise reduced to material form.

(4) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work involves an infringement of copyright in some other work.

(5) Copyright shall not subsist under this Act in any design which is registered under any written law relating to industrial design.

(6) (*Deleted by Act A1420*).

(7) For the purpose of this section, “any written law relating to industrial design” includes:

- (a) the United Kingdom Designs (Protection) Act 1949 [Act 214];
- (b) the United Kingdom Designs (Protection) Ordinance of Sabah [*Sabah Cap. 152*]; and
- (c) the Designs (United Kingdom) Ordinance of Sarawak [*SWK Cap. 59*].

### **Derivative works**

**8.** (1) The following derivative works are protected as original works:

- (a) translations, adaptations, arrangements and other transformations of works eligible for copyright; and
- (b) collections of works eligible for copyright, or compilation of mere data whether in machine readable or other form, which constitute intellectual creation by reason of the selection and arrangement of their contents.

(2) Protection of works referred to in subsection (1) shall be without prejudice to any protection of the existing works used.

### **Copyright in published editions of works**

**9.** (1) Copyright shall subsist, subject to the provisions of this Act, in every published edition of any one or more literary, artistic or musical work in the case of which either—

- (a) the first publication of the edition took place in Malaysia;  
or
- (b) the publisher of the edition was a qualified person at the date of the first publication thereof:

Provided that this subsection does not apply to an edition which reproduces the typographical arrangement of a previous edition of the same work or works.

(2) Subject to the provisions of this Act, the publisher of an edition shall be entitled to any copyright subsisting in the edition by virtue of this section.

(3) Subject to the provisions of this Act, the act restricted by the copyright subsisting by virtue of this section in an edition is the making of a reproduction of the typographical arrangement of the edition.

(4) Reproduction of the typographical arrangement of a published edition for any purpose including research, private study, criticism, review or the reporting of news or current events does not infringe the copyright subsisting by virtue of this section if such reproduction is compatible with fair dealing:

Provided that if such reproduction is made public it is accompanied by an acknowledgement of the title of the work and its authorship, except where the work is incidentally included in a broadcast.

(5) The Government, the National Archives, or any State Archives, the National Library, or any State library, or any public libraries and educational, scientific or professional institutions as the Minister may by order prescribe, may reproduce the typographical arrangement of a published edition without infringing the copyright subsisting by virtue of this section if such reproduction is in the public interest and is compatible with fair dealing and the provisions of any regulations.

### **Qualification for protection**

**10.** (1) Copyright shall subsist in every work eligible for copyright of which the author or in the case of a work of joint authorship, any of the authors is, at the time when the work is made, a qualified person.

(2) Copyright shall also subsist in every work which is eligible for copyright and which—

(a) being a literary, musical or artistic work or film or sound recording is first published in Malaysia;

(b) being a work of architecture is erected in Malaysia or being any other artistic work is incorporated in a building located in Malaysia;

(c) being a broadcast is transmitted from Malaysia.

(3) Notwithstanding subsections (1) and (2), copyright shall subsist, subject to this Act, in every work eligible for copyright if the work is made in Malaysia.

### **Qualification for protection of performer**

**10A.** Performers' right shall subsist in every performances of which the performer is—

(a) a citizen or permanent resident of Malaysia; or

(b) not a citizen or permanent resident of Malaysia but whose performance—

(i) takes place in Malaysia;

(ii) is incorporated in sound recordings that are protected under this Act; or

(iii) has not been fixed in a sound recording but is included in a broadcast qualifying for protection under this Act.

### **Copyright in works of Government, Government organizations and international bodies**

**11.** (1) Copyright shall subsist in every work which is eligible for copyright and which is made by or under the direction or control of the Government and such Government organizations or international bodies as the Minister may by order prescribe.

(2) Section 10 shall not be taken to confer copyright on works to which this section applies.

### **Administration of Government copyright**

**12.** Where the copyright in any work is vested in the Government, the Ministry or Department concerned with the copyright shall be

responsible for the administration and control of that copyright on behalf of the Government:

Provided that the Ministry or Department concerned may authorize the Director of National Archives to administer and control that copyright on behalf of the Government.

### PART III

#### NATURE AND DURATION OF COPYRIGHT

##### **Nature of copyright in literary, musical or artistic works, films and sound recordings**

**13.** (1) Copyright in a literary, musical or artistic work, a film, or a sound recording or a derivative work shall be the exclusive right to control in Malaysia—

- (a) the reproduction in any material form;
- (aa) the communication to the public;
- (b) the performance, showing or playing to the public;
- (c) *(Deleted by Act A994)*;
- (d) *(Deleted by Act A994)*;
- (e) the distribution of copies to the public by sale or other transfer of ownership; and
- (f) the commercial rental to the public,

of the whole work or a substantial part thereof, either in its original or derivative form provided that—

- (A) the exclusive right to control the distribution of copies refer only to the act of putting into circulation copies not previously put into circulation in Malaysia and not to any subsequent distribution of those copies or any subsequent importation of those copies into Malaysia; and

- (B) the exclusive right to control commercial rental in relation to films shall only apply when such commercial rental has led to widespread copying of such work materially impairing the exclusive right of reproduction.

(2) Notwithstanding subsection (1), the right of control under that subsection does not include the right to control—

- (a) the doing of any of the acts referred to in subsection (1) by way of fair dealing including for purposes of research, private study, criticism, review or the reporting of news or current events:

Provided that it is accompanied by an acknowledgement of the title of the work and its authorship, except that no acknowledgment is required in connection with the reporting of news or current events by means of a sound recording, film or broadcast;

- (b) the doing of any of the acts referred to in subsection (1) by way of parody, pastiche or caricature;
- (c) the inclusion in a film or broadcast of any artistic work situated in a place where it can be viewed by the public;
- (d) the reproduction and distribution of copies of any artistic work permanently situated in a place where it can be viewed by the public;
- (e) the incidental inclusion of a work in an artistic work, sound recording, film or broadcast;
- (f) the inclusion of a work in a broadcast, performance, showing, or playing to the public, collection of literary or musical works, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair practice:

Provided that mention is made of the source and of the name of the author which appears on the work used;

- (ff) any use of a work for the purpose of an examination by way of setting the questions, communicating the questions

to the candidates or answering the questions:

Provided that a reprographic copy of a musical work shall not be made for use by an examination candidate in performing the work;

- (g) the reproduction made in schools, universities or educational institutions of a work included in a broadcast intended for such schools, universities or educational institutions;
- (gg) the making of a sound recording of a broadcast, or a literary, dramatic or musical work, sound recording or a film included in the broadcast insofar as it consists of sounds if such sound recording of a broadcast is for the private and domestic use of the person by whom the sound recording is made;
- (ggg) the making of a film of a broadcast, or a literary, artistic, dramatic or musical work or a film included in the broadcast insofar as it consists of visual images if such making of a film of the broadcast is for the private and domestic use of the person by whom the film is made;
- (gggg) the making and issuing of copies of any work into a format to cater for the special needs of people who are visually or hearing impaired and the issuing of such copies to the public by non-profit making bodies or institutions and on such terms as the Minister may determine;
- (h) the reading or recitation in public or in a broadcast by one person of any reasonable extract from a published literary work if accompanied by sufficient acknowledgement;
- (i) any use made of a work by or under the direction or control of the Government, by the National Archives or any State Archives, by the National Library, or any State library, or by such public libraries and educational, scientific or professional institutions as the Minister may by order prescribe, where such use is in the public interest and is compatible with fair practice and the provisions of any regulations, and—

- (i) no profit is derived therefrom; and
  - (ii) no admission fee is charged for the performance, showing or playing, if any, to the public of the work thus used;
- (j) the reproduction of any work by or under the direction or control of a broadcasting service where such reproduction or any copies thereof are intended exclusively for a lawful broadcasting and are destroyed before the end of the period of six calendar months immediately following the making of the reproduction or such longer period as may be agreed between the broadcasting service and the owner of the relevant part of the copyright in the work:

Provided that any reproduction of a work made under this paragraph may, if it is of exceptional documentary character, be preserved in the archives of the broadcasting service which are hereby designated official archives for the purpose, but subject to this Act, shall not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work;

- (k) the performance, showing or playing of a work by a non-profit making club or institution where such performance, showing or playing is for charitable or educational purpose and is in a place where no admission fee is charged in respect of such performance, showing or playing;
- (l) any use of a work for the purposes of any judicial proceedings, the proceedings of a royal commission, a legislative body, a statutory or Governmental inquiry, or of any report of any such proceedings, or for the purpose of the giving of professional advice by a legal practitioner;
- (m) the making of quotations from a published work if they are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries:

Provided that mention is made of the source and of the name of the author which appears on the work thus used;

- (n) the reproduction by the press, the broadcasting or the showing to the public of articles published in newspapers or periodicals on current topics, if such reproduction, broadcasting or showing has not been expressly reserved:

Provided that the source is clearly indicated;

- (o) the reproduction by the press, the broadcasting or the performance, showing or playing to the public of lectures, addresses and other works of the same nature which are delivered in public if such use is for informatory purposes and has not been expressly reserved;
- (p) the commercial rental of computer programs, where the program is not the essential object of the rental; and
- (q) the making of a transient and incidental electronic copy of a work made available on a network if the making of such copy is required for the viewing, listening or utilization of the said work.

(2A) For the purposes of paragraph (2)(a), in determining whether a dealing constitutes a fair dealing, the factors to be considered shall include —

- (a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;
- (b) the nature of the copyright work;
- (c) the amount and substantiality of the portion used in relation to the copyright work as a whole; and
- (d) the effect of the dealing upon the potential market for or value of the copyright work.

(3) For the purposes of paragraph (2)(l), “a legislative body” means the Parliament of Malaysia or, in relation to a State, the authority having power under the Constitution of that State to make laws for the State, as the case may be.

**Design documents and models**

**13A.** (1) It shall not be an infringement of any copyright in a design document or model recording or embodying a design for anything other than an artistic work or a typeface—

- (a) to make an article to the design, or to copy or to reproduce an article made to the design; or
- (b) to issue to the public, or include in a film, broadcast or cable programme service, anything the making of which was, by virtue of paragraph (a), not an infringement of that copyright.

(2) In this section—

“design” means the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article, other than surface decoration; and

“design document” means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise.

**Effect of exploitation of design derived from artistic work**

**13B.** (1) This section applies where an artistic work has been exploited, by or with the licence of the copyright owner, by—

- (a) making, by an industrial process or means, articles falling to be treated for the purposes of this Act as copies of the work; and
- (b) marketing such articles in Malaysia or elsewhere.

(2) After the end of the period of twenty-five years from the end of the calendar year in which such articles are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.

(3) Where only part of an artistic work is exploited as mentioned in subsection (1), subsection (2) applies only in relation to that part.

(4) The Minister may by order make provision—

(a) as to the circumstances in which an article, or any description of article, is to be regarded for the purposes of this section as made by an industrial process or means; and

(b) for excluding from the operation of this section such articles of a primarily literary or artistic character as he thinks fit.

(5) In this section—

(a) references to articles do not include films; and

(b) references to the marketing of an article shall be construed as references to it being sold or let for hire or offered or exposed for sale or hire.

**13C.** *(Deleted by Act A1420).*

### **Nature of copyright in works of architecture**

**14.** Copyright in a work of architecture shall include the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original:

Provided that the copyright in any such work shall not include the right to control the reconstruction or rehabilitation in the same style as the original, of a building to which that copyright relates.

### **Nature of copyright in broadcasts**

**15.** (1) Copyright in a broadcast shall be the exclusive right to control in Malaysia the recording, the reproduction, and the rebroadcasting, of the whole or a substantial part of the broadcast, and the

performance, showing or playing to the public in a place where an admission fee is charged of the whole or a substantial part of a television broadcast either in its original form or in any way recognizably derived from the original.

(2) Notwithstanding subsection (1), paragraphs 13(2)(a), (g), (gg), (ggg), (gggg), (h) and (o) shall also apply to the copyright in a broadcast.

(3) The copyright in a television broadcast shall include the right to control the taking of still photographs from such broadcasts.

### **Broadcasting of works incorporated in films**

**16.** (1) Where the owner of the copyright in any literary, musical or artistic work authorizes a person to incorporate the work in a film and a broadcasting service broadcasts the film in the absence of any express agreement to the contrary between such owner and person, it shall be deemed that the owner of the copyright authorized the broadcast.

(2) Notwithstanding subsection (1), where a broadcasting service broadcasts a film in which a literary, musical or artistic work is incorporated, the owner of the right to broadcast the literary, musical or artistic work shall be entitled to receive fair compensation from the broadcasting service.

### **Nature of performers' right**

**16A.** (1) Performers' right shall be the exclusive right to control in Malaysia—

- (a) the communication to the public of a performance, except where the performance used in such communication is itself a live broadcast performance;
- (b) the fixation of an unfixed performance;
- (c) the reproduction of the fixation of a performance;

(d) the first distribution to the public of a fixation of a performance, or copies thereof, through sale or other transfer of ownership; and

(e) the commercial rental to the public of a fixation of a performance, or copies thereof, irrespective of the ownership of the copy rented.

(2) A performer shall cease to have the exclusive right under paragraph (1)(b) once he has given consent to the fixation of his performance.

(3) Notwithstanding subsection (1), the right to control under that subsection does not include the right to control—

(a) a direct or an indirect sound recording or an indirect film of a performance —

(i) being a sound recording or film made solely for the purpose of the private and domestic use of the person who made it; or

(ii) being a sound recording or film made solely for the purpose of use in scientific research;

(b) a direct or indirect sound recording or film of a performance —

(i) made for the purpose of, or associated with, the reporting of news or current events;

(ii) made for the purpose of criticism or review; or

(iii) made for the purpose of a judicial proceeding, a proceeding of a royal commission or legislative body, a statutory or Governmental inquiry, or the report of any such proceeding or inquiry, or for the purpose of the giving of professional advice by a legal practitioner;

(c) an indirect sound recording or film of a performance —

- (i) being a sound recording or film made by, or on behalf of, the body administering an educational institution solely for the educational purposes of that institution or of another educational institution; or
  - (ii) being a sound recording or film made by, or on behalf of, the body administering an institution assisting persons with a print disability solely for the purpose of the provision, whether by the institution or otherwise, of assistance to persons with a visual, aural, intellectual and print disability;
- (d) a direct sound recording or film of a performance made by or under the direction or control of a broadcasting service who has the consent of the performer to broadcast the performance, and such recording or film is destroyed before the end of the period of six months immediately following the making of the recording or film or such longer period as may be agreed between the broadcasting service and the performer;
- (e) a direct or an indirect sound recording or an indirect film of a performance made by a person who reasonably believes, due to a fraudulent or innocent misrepresentation made to the person, that the performer has authorized the making of the recording by the person;
- (f) a copy of a sound recording or film referred to in paragraphs (a), (b), (c) and (d), being a copy made solely for a purpose referred to in any of those paragraphs;
- (g) a copy of a sound recording or film referred to in paragraph (e), being a copy made solely for the purpose referred to in that paragraph; and
- (h) a copy of a sound recording or film referred to in paragraph (f), being a copy made—
- (i) by a person who believes, due to a fraudulent or innocent representation made to the person, that

the performer has consented to the making of the copy; or

- (ii) solely for a purpose referred to in paragraphs (a), (b), (c) and (d).

(4) For the purpose of this section—

“direct” in relation to a sound recording or film of a performance, means made directly from a performance;

“indirect” in relation to a sound recording or film of a performance, means made from a broadcast or re-broadcast of the performance.

### **Equitable remuneration**

**16B.** (1) Where a sound recording is published for commercial purposes or a reproduction of such recording is publicly performed or used directly for broadcast or other communication to the public, an equitable remuneration for the performance shall be payable to the performer by the user of the sound recording.

(2) Remuneration shall not be considered inequitable merely because it was paid by way of single payment.

(3) Nothing in this section shall be construed so as to deprive a performer of the right to agree by contract on terms and conditions more favourable for him in respect of his performance.

(3A) In the absence of a contract on the equitable remuneration payable under subsection (1), the performer may apply to the Tribunal to determine the amount payable as equitable remuneration.

(3B) The performer may also apply to the Tribunal—

- (a) to vary any contract as to the amount payable as equitable remuneration; or
- (b) to vary any previous determination of the Tribunal relating to the equitable remuneration.

(3C) An application by a performer under paragraph (3B)(b) may only be made within twelve months from the date of a previous determination, unless special leave by the Tribunal has been obtained.

(3D) On an application under this section, the Tribunal shall consider the matter and make such order as to the method of calculation and payment of equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the sound recording.

(3E) A contract is of no effect in so far as it purports to prevent a performer questioning the amount of equitable remuneration or to restrict the powers of the Tribunal under this section.

(4) For the purpose of this section, “published for commercial purpose” means the sound recording has been made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them.

### **Duration of copyright in literary, musical or artistic works**

**17.** (1) Except as otherwise provided in this Act, copyright in any literary, musical or artistic work which subsists in such work under this Act shall subsist during the life of the author and shall continue to subsist until the expiry of a period of fifty years after his death.

(2) Where a literary, musical or artistic work had not been published before the death of the author, copyright which subsists in such work under this Act shall continue to subsist until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year in which the work was first published.

(3) Where a literary, musical or artistic work is published anonymously or under a pseudonym, copyright which subsists in such work under this Act shall continue to subsist until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year in which the work was first published or first made available to the public or made, whichever is the latest:

Provided that in the event of the identity of the author becoming known, the duration of copyright shall be calculated in accordance with subsection (1).

(4) In this section, a reference to “author” shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

### **Duration of copyright in published editions**

**18.** Copyright which subsists in a published edition under this Act shall continue to subsist until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year in which the edition was first published.

### **Duration of copyright in sound recording**

**19.** Copyright which subsists in a sound recording under this Act shall continue to subsist until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year in which the recording was first published or, if the sound recording has not been published, from the beginning of the calendar year following the year of fixation.

### **Duration of copyright in broadcasts**

**20.** Copyright which subsists in a broadcast under this Act shall continue to subsist until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year in which the broadcast was first made.

**21.** *(Deleted by Act A994).*

### **Duration of copyright in films**

**22.** Copyright which subsists in a film under this Act shall continue to subsist until the expiry of a period of fifty years computed from the

beginning of the calendar year next following the year in which the film was first published.

### **Duration of copyright in works of Government, Government organizations and international bodies**

**23.** Copyright which subsists in works of the Government, Government organizations and international bodies under this Act shall continue to subsist until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year in which the work was first published.

### **Duration of performers' rights**

**23A.** Rights in a performance which subsists under this Act shall continue to subsist until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year in which the performance was given or was fixed in a sound recording.

### **Duration of an equitable remuneration**

**23B.** The right to equitable remuneration shall subsist from the time the sound recording is published until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year of publication or, if the sound recording has not been published, from the time of fixation of the sound recording until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year of the fixation.

**24.** *(Deleted by Act A775).*

### **Moral rights**

**25.** (1) For the purposes of this section, the word "name" includes initials or monograms.

(2) Subject to this section, where copyright subsists in a work, no person may, without the consent of the author, or, after the author's

death, of his personal representative, do or authorize the doing of any of the following acts:

- (a) the presentation of the work, by any means whatsoever, without identifying the author or under a name other than that of the author; and
- (b) the distortion, mutilation or other modification of the work if the distortion, mutilation or modification—
  - (i) significantly alters the work; and
  - (ii) is such that it might reasonably be regarded as adversely affecting the author's honour or reputation.

(3) Where a person is authorized, whether by virtue of an assignment, a licence or otherwise, to publish, reproduce, perform in public or communicate to the public a work, that person may make modifications to the work if it would be reasonable to expect that the authorized publication, reproduction, public performance or communication to the public, as the case may be, could not take place without the modifications; but nothing in this subsection shall authorize a modification to a work which would constitute a contravention of subsection (2).

(4) The author or, after his death, his personal representative, may exercise the rights conferred by this section notwithstanding that the copyright in the work is not at the time of the act complained of, vested in the author or personal representative, as the case may be.

(5) Any contravention or threatened contravention of this section in respect of a work shall be actionable at the suit of the author of the work or, if he is dead, at the suit of his personal representative, as a breach of statutory duty.

(6) Any damages recovered under this section by a personal representative in respect of a contravention committed in relation to a work after the death of the author of the work shall devolve as part of the author's estate, as if the right of action had subsisted and had been vested in him immediately before his death.

(7) Where in an action brought under this section a contravention of the restrictions imposed by this section is proved or admitted, the court may order the offender to publish such correction in such manner as the court may direct.

(8) Nothing in this section shall derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than by virtue of this section; but this subsection shall not be construed as requiring any damages recovered by virtue of this section to be disregarded in assessing damages in any proceedings instituted otherwise than by virtue of this section and arising out of the same transaction.

### **Moral rights of a performer**

**25A.** (1) A performer shall, as regards his performance or performance fixed in phonogram, have the right—

- (a) to claim to be identified as the performer of his performance, except where omission is dictated by the manner of the use of the performance; and
- (b) to object to any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.

(2) The rights granted to a performer under subsection (1) shall, after his death, be maintained and shall be exercisable by the persons or institutions authorized by the performer.

(3) For the purpose of this section, “phonogram” means the fixation of the sounds of a performance or of other sounds or of a representation of the sounds, other than in the form of a fixation incorporated in a film or other audiovisual work.

PART IV

OWNERSHIP AND ASSIGNMENT OF COPYRIGHT

**First ownership of copyright**

**26.** (1) Copyright conferred by section 10 shall vest initially in the author.

(2) Notwithstanding subsection 27(6), where a work—

(a) is commissioned by a person who is not the author's employer under a contract of service or apprenticeship; or

(b) not having been so commissioned, is made in the course of the author's employment,

the copyright shall be deemed to be transferred to the person who commissioned the work or the author's employer, subject to any agreement between the parties excluding or limiting such transfer.

(3) Copyright conferred by section 11 shall vest initially in the Government, Government organization or international body and not in the author.

(4) Subject to subsection (3)—

(a) the name on a work purporting to be the name of its author shall be considered as such, unless the contrary is proved;

(b) in the case of an anonymous or pseudonymous work, the publisher whose name is indicated in the work as such shall be deemed to be, unless the contrary is proved, the legal representative of the anonymous or pseudonymous author and shall be entitled to exercise and protect the rights belonging to the author under this Act;

(c) in the case of unpublished work where the identity of the author is unknown, but where there is every reason to presume that he is a citizen of Malaysia, the copyright conferred by this Act shall be deemed to vest in the Minister charged with the responsibility for culture.

(5) Paragraphs (4)(b) and (c) shall cease to apply when the identity of the author becomes known.

### **Voluntary notification of copyright**

**26A.** (1) A notification of copyright in any work may be made to the Controller by or on behalf of the author of the work, the owner of the copyright in the work, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence.

(2) A notification of copyright shall not be entertained unless the prescribed fee has been paid to the Controller.

(3) A notification of copyright shall contain the following particulars:

- (a) the name, address and nationality of the owner of the copyright;
- (b) a statutory declaration that the applicant is the author of the work, or the owner of the copyright in the work, or an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence;
- (c) the category of the work;
- (d) the title of the work;
- (e) the name of the author and, if the author is dead, the date of the author's death, if known;
- (f) in the case of a published work, the date and place of the first publication; and
- (g) any other information as the Minister may determine.

### **Register of Copyright**

**26B.** (1) The Controller shall keep and maintain a register called the Register of Copyright.

(2) The Register of Copyright shall contain all such particulars relating to a copyright in a work as notified to the Controller under section 26A.

(3) The Register of Copyright shall be kept in such form and on such medium as the Minister may determine.

(4) Any person may examine the Register of Copyright at such times and upon such conditions as may be determined by the Minister, and may obtain certified extracts from the Register on payment of the prescribed fee.

(5) The Controller or Deputy Controller may certify true extracts from the Register of Copyright which shall be *prima facie* evidence of the particulars entered therein and such certified extracts of the Register of Copyright shall be admissible in all courts.

### **Amendments to the Register of Copyright**

**26c.** (1) The Controller may correct any clerical error in any entry made in the Register of Copyright.

(2) Any interested person may apply to the court for an order to—

(a) correct any error in an entry in the Register; or

(b) expunge or amend any entry wrongly made in or remaining in the Register,

and any correction, expungement or amendment made under this section shall be effective from such date as the court may order.

(3) For the purpose of this section, “court” means the appropriate High Court in Malaysia.

### **Assignment, licences and testamentary disposition**

**27.** (1) Subject to this section, copyright shall be transferable by assignment, testamentary disposition, or by operation of law, as movable property.

(2) An assignment or testamentary disposition of copyright may be limited so as to apply only to some of the acts which the owner of the copyright has the exclusive right to control, or to only part of the period of the copyright, or to a specified country or other geographical area.

(3) No assignment of copyright and no licence to do an act the doing of which is controlled by copyright shall have effect unless it is in writing.

(4) An assignment or licence granted by one copyright owner shall have effect as if the assignment or licence is also granted by his co-owner or co-owners, and subject to any agreement between the co-owners, fees received by any of the owners shall be divided equally between all the co-owners.

(5) For the purposes of this section, persons shall be deemed to be co-owners if they share a joint interest in the whole or any part of a copyright.

(6) An assignment, licence or testamentary disposition may be effectively granted or made in respect of a future work, or an existing work in which copyright does not yet subsist, and the future copyright in any such work shall be transferable by operation of law as movable property.

(7) Where under a testamentary disposition, whether specific or general, a person is entitled beneficially or otherwise, to the manuscript of a literary or musical work, or to an artistic work, and the work has not been published before the death of the testator, the testamentary disposition shall, unless a contrary intention is indicated in the testator's will or a codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

PART IVA

COPYRIGHT LICENSING

**Licensing body**

**27A.** (1) A society or an organization which intends to operate as a licensing body for copyright owners or for a specified class of copyright owners shall apply to the Controller to be declared as a licensing body.

(2) An application for a declaration shall be made in such form and on such medium as the Controller may determine which shall contain the following information:

- (a) the applicant's constituent document, which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects also include the granting of licences covering works of more than one author; and
- (b) the list of copyright owners or their agents who are members of the applicant.

(3) Upon receipt of an application, the Controller may declare an applicant to be a licensing body and issue a declaration in writing to that effect to the said applicant.

(4) Notwithstanding subsection (3), the Controller shall refuse an application if the information provided by the applicant pursuant to subsection (2) is insufficient or unsatisfactory to show that the applicant is fit and proper to be a licensing body.

(5) The licensing body shall provide the Controller with a copy of its profit and loss account, balance sheet and auditor's report which are tabled at the licensing body's annual general meeting not later than one month after the date of the annual general meeting.

(6) The Controller may revoke a declaration given to a licensing body if he is satisfied that the licensing body—

- (a) is not functioning adequately as a licensing body;

- (b) no longer has the authority to act on behalf of all its members;
- (c) is not acting in accordance with its rules or in the best interests of its members, or their agents;
- (d) has altered its rules so that it no longer complies with any provision of this Act;
- (e) has refused, or failed, without reasonable excuse, to comply with the provisions of this Act; or
- (f) has been dissolved.

(7) A licensing body which is aggrieved by the decision of the Controller under subsection (6) may appeal to the Tribunal within one month from the date of the decision.

(8) Any society or organization which operates as a licensing body without obtaining a declaration under subsection (1) or any licensing body which does not comply with the provisions of subsection (5) commits an offence and shall upon conviction be liable to a fine not exceeding five hundred thousand ringgit.

### **Licensing schemes to which sections 27B to 27G apply**

**27AA.** (1) Sections 27B to 27G shall apply to licensing schemes operated by licensing bodies in relation to the copyright in any work, so far as they relate to licences for—

- (a) reproducing the work;
- (b) performing, showing or playing the work in public;
- (c) communicating the work to the public;
- (d) rebroadcasting the work;
- (e) the commercial rental of the work to the public; or
- (f) making adaptation of the work.

(2) For the purposes of sections 27B to 27G, “licensing scheme” means any of the licensing schemes described in subsection (1).

**Reference of proposed licensing scheme to Tribunal**

**27B.** (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Tribunal by any organization claiming to be representative of persons claiming that they require licences in cases of a description to which the licensing scheme would apply, either generally or in relation to any description of case.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference, it shall consider the matter referred and make such order, either confirming or varying the proposed licensing scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(4) An order under subsection (3) may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

**Reference of licensing scheme to Tribunal**

**27C.** (1) If while a licensing scheme is in operation a dispute arises between the operator of the licensing scheme and—

- (a) a person claiming that he requires a licence in a case of a description to which the licensing scheme applies;
- (b) an organization claiming to be representative of such persons; or
- (c) a person who has been granted a licence to which the licensing scheme applies,

that operator, person or organization may refer the licensing scheme to the Tribunal in so far as it relates to cases of that description.

(2) A licensing scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

(3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the licensing scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(4) An order under subsection (3) may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

### **Further reference of licensing scheme to Tribunal**

**27D.** (1) Subject to subsection (2), where the Tribunal has on a previous reference of a licensing scheme under section 27B or 27C or under this section made an order with respect to the licensing scheme, then, while the order remains in force —

- (a) the operator of the licensing scheme;
- (b) a person claiming that he requires a licence in a case of the description to which the order applies;
- (c) an organization claiming to be representative of such persons; or
- (d) a person who has been granted a licence to which the licensing scheme applies,

may again refer the licensing scheme to the Tribunal so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Tribunal, be again referred to the Tribunal in respect of the same description of cases—

- (a) within twelve months from the date of the order on the previous reference; or
- (b) if the order was made so as to be in force for fifteen months or less, until the last three months before the expiry of the order.

(3) A licensing scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

(4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the licensing scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(5) An order under subsection (4) may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

### **Application for grant of licence in connection with licensing scheme**

**27E.** (1) A person who claims, in a case covered by a licensing scheme, that the operator of the licensing scheme —

(a) has refused to grant him or procure the grant to him of a licence in accordance with the licensing scheme; or

(b) has failed to grant him or procure the grant to him of a licence in accordance with the licensing scheme within a reasonable time after being asked,

may apply to the Tribunal for an order under subsection (4).

(2) A person who claims, in a case excluded from a licensing scheme, that the operator of the licensing scheme either —

(a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted; or

(b) proposes terms for a licence which are unreasonable,

may apply to the Tribunal for an order under subsection (4).

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of subsection (2) if —

- (a) the licensing scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or
- (b) the case is so similar to those in which licences are granted under the licensing scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the licensing scheme or, as the case may be, to be reasonable in the circumstances.

(5) An order under subsection (4) may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

### **Application for review of order as to entitlement to licence**

**27F.** (1) Where the Tribunal has made an order under section 27E that a person is entitled to a licence under a licensing scheme, the operator of the licensing scheme or the original applicant may apply to the Tribunal to review its order.

(2) An application shall not be made, except with the special leave of the Tribunal,—

- (a) within twelve months from the date of the order, or of the decision on a previous application under this section; or
- (b) if the order was made so as to be in force for fifteen months or less, or as a result of the decision on a previous application under this section which is due to expire within fifteen months of that decision, until the last three months before the expiry of the order.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

**Effect of order of Tribunal as to licensing scheme**

**27G.** (1) A licensing scheme which has been confirmed or varied by the Tribunal under section 27B, 27C or 27D shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

(2) While the order is in force a person, who in a case of a class to which the order applies, shall —

- (a) pay to the operator of the licensing scheme any charges payable under the licensing scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, give an undertaking to the operator to pay the charges when ascertained; and
- (b) comply with the other terms applicable to such a licence under the licensing scheme; and
- (c) be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the licensing scheme.

(3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the licensing scheme came into operation.

(4) Where a direction is made under subsection (3) —

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid or payable; and
- (b) the reference in paragraph (2)(a) to the charges payable under the licensing scheme shall be construed as a reference to the charges so payable by virtue of the order.

(5) Where the Tribunal has made an order under section 27E and the order remains in force, the person in whose favour the order is made shall, if he—

(a) pays to the operator of the licensing scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained; and

(b) complies with the other terms specified in the order,

be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

### **Licences to which sections 27I to 27L apply**

**27H.** Sections 27I to 27L shall apply to the following descriptions of licence granted by a licensing body otherwise than in pursuance of a licensing scheme:

(a) licences relating to the copyright in literary or musical works which cover works of more than one author, so far as they authorize—

- (i) reproducing the work;
- (ii) performing, showing or playing the work in public;
- (iii) communicating the work to the public; or
- (iv) distributing the work to the public; and

(b) licences relating to the copyright in any other works, so far as they authorize—

- (i) making copies of the work;
- (ii) performing, showing or playing the work in public;
- (iii) communicating the work to the public; or
- (iv) causing the work to be publicly performed, shown or played,

and in those sections, a “licence” means a licence of any of those descriptions.

### **Reference to Tribunal of terms of proposed licence**

**27I.** (1) The terms on which a licensing body proposes to grant a licence may be referred to the Tribunal by the prospective licensee.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference, it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as the Tribunal may determine to be reasonable in the circumstances.

(4) An order under subsection (3) may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

### **Reference to Tribunal of expiring licence**

**27J.** (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) Such an application may not be made until the last three months before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

(4) If the Tribunal finds the application to be well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.

(5) An order under subsection (4) may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

**Application for review of order as to licence**

**27K.** (1) Where the Tribunal has made an order under section 27I or 27J, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.

(2) An application shall not be made, except with the special leave of the Tribunal,—

(a) within twelve months from the date of the order, or of the decision on a previous application under this section; or

(b) if the order was made so as to be in force for fifteen months or less, or as a result of the decision on a previous application under this section which is due to expire within fifteen months of that decision, until the last three months before the expiry of the order.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

**Effect of order of Tribunal as to licence**

**27L.** (1) Where the Tribunal has made an order under section 27I or 27J and the order remains in force, the person entitled to the benefit of the order shall, if he —

(a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained; and

(c) complies with the other terms specified in the order,

be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

(2) The benefit of the order may be assigned —

- (a) in the case of an order under section 27i, if assignment is not prohibited under the terms of the Tribunal's order; and
- (b) in the case of an order under section 27j, if assignment is not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order under section 27i or 27j, or an order under section 27k varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

(4) Where a direction is made under subsection (3) —

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid or payable; and
- (b) the reference in paragraph (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

## PART V

### COPYRIGHT TRIBUNAL

#### **Establishment and powers of Copyright Tribunal**

**28.** (1) There shall be established a tribunal to be known as the Copyright Tribunal.

(2) The Tribunal shall have the power to decide on the following matters:

- (a) an application by a performer under section 16b;
- (b) any reference by an operator, a person or an organization referred to in Part IVa;

- (c) an appeal by a licensing body under subsection 27A(8);  
and
- (d) the exercise of the power under section 31.

### **Appointment of Chairman and members of Tribunal**

**29.** (1) The Tribunal shall consist of the following persons who shall be appointed by the Minister:

- (a) a Chairman;
- (b) five Deputy Chairmen; and
- (c) twelve persons whom the Minister considers fit and proper to be members of the Tribunal.

(2) The Chairman, Deputy Chairmen, and members of the Tribunal shall hold office for a period not exceeding three years, after which they shall be eligible to be reappointed.

(3) The Minister shall determine the remuneration and other terms and conditions of the appointment of the Chairman, Deputy Chairmen, and members of the Tribunal.

(4) The Minister may declare the office of any member of the Tribunal vacant on the ground that he is found to be unfit to continue in office or unable to perform the duties thereof.

(5) The Chairman, Deputy Chairmen, or any member of the Tribunal may at any time resign from his office by giving notice in writing to the Minister.

(6) The Chairman, Deputy Chairmen, and members of the Tribunal shall be deemed to be public servants within the meaning of the Penal Code.

(7) There shall be a Secretary to the Tribunal and such other officers as may be necessary to assist the Tribunal, who shall be appointed by the Minister.

### **Proceedings before the Tribunal**

**30.** (1) Every proceedings before the Tribunal shall be heard and disposed of by the Chairman or Deputy Chairman and two other members selected by the Chairman from among the members appointed under section 29.

(2) No member of the Tribunal shall take part in any proceedings before the Tribunal if he has a pecuniary interest in any matter which is to be determined by the Tribunal.

(3) Where the Chairman has been disqualified under subsection (2), the Minister shall appoint a Deputy Chairman to act as chairman for the purposes of that proceedings.

(4) A person is deemed to have a pecuniary interest if he, his partner, employer or any member of his family or if a body whether statutory or not of which he is a member has a pecuniary interest in any matter which is to be determined by the Tribunal.

(5) If, on any matter to be determined by the Tribunal there is an equality of votes, the chairman of the proceedings shall have a casting vote in addition to his deliberative vote.

(6) If, in the course of any proceedings, any member of the Tribunal is unable through illness or any other cause to continue, the proceedings shall continue before the remaining members of the Tribunal, not being less than two, and the Tribunal shall, for the purposes of the proceedings, be deemed to be duly constituted.

(7) In any such case as is mentioned in subsection (6) where the member who is unable to continue is the chairman of the proceedings, then the Minister shall —

- (a) appoint from amongst the remaining members a new chairman for the purpose of the continued proceedings; and
- (b) where appropriate, appoint a Deputy Chairman to attend the proceedings to advise the members of the proceedings on any issue that may arise during the proceedings.

**Reference of questions of law to High Court**

**30A.** (1) The Tribunal may of its own motion, or shall at the request of a party, refer a question of law arising in proceedings concluded before it for determination by the High Court.

(2) A request under subsection (1) shall be made in writing within fourteen days of the date on which the decision was made.

(3) Where a question has been referred to the High Court under this section, the Tribunal shall forward the record of its proceedings to the Registrar of the High Court who shall thereupon appoint and notify the parties to the proceedings of the time and place for its hearing.

(4) At the hearing of the reference in the High Court, every party to the proceedings before the Tribunal shall be entitled to appear and to be heard.

(5) The High Court shall hear and determine the question referred to it under this section as if the reference were an appeal to the High Court against the decision of the Tribunal, and may consequently confirm, vary, substitute or quash the decision, or make such other order as it considers just or necessary.

(6) A decision of the High Court under subsection (5) shall be final and conclusive, and no such decision shall be challenged, appealed against, reviewed, quashed or called in question in any other court or before any other authority, judicial or otherwise, whatsoever.

(7) For the purposes of this section, a question of law shall not include a question whether there is sufficient evidence to justify a finding of fact by the Tribunal.

**Licence to produce and publish translation**

**31.** (1) Any person may apply to the Tribunal for a licence to produce and publish in the national language or other vernacular languages in Malaysia a translation of a literary work written in any other language.

(2) The Tribunal after holding such inquiry as it thinks necessary may, subject to this section, grant to the applicant a licence (not being an exclusive licence) to produce and publish a translation of the work in the national language or other vernacular languages, on condition that the applicant shall pay to the owner of the right of translation in the work in respect of copies sold to the public, royalties at a rate to be determined by the Tribunal in the prescribed manner.

(3) A licence may be granted on an application made under subsection (1) in respect of a work only where —

- (a) a translation of the work in the national language or other vernacular languages has not been published by the owner of the copyright (or by any person authorized by him) within one year after the first publication of the work or, if such translation has been so published, it is out of print;
- (b) (i) the applicant has requested and been denied authorization by the owner of the right to produce and publish the translation; or  
(ii) the applicant, after due diligence on his part, is unable to trace or ascertain the owner;
- (c) the applicant, if the nationality of the owner of the right of translation is known, has sent a copy of his request for the translation to the diplomatic or consular representative of the state of which that owner is a national, or to the organization which may have been designated by the government of that state;
- (d) the Tribunal is satisfied that —
  - (i) the applicant is able to produce and publish a correct translation of the work and possesses the means to pay to the owner of the right of translation the royalties payable under this section; and
  - (ii) the applicant undertakes to have the original title and the name of the author of the work printed on all copies of the published translation;

- (e) the author of the work has not withdrawn it from circulation;
- (f) an opportunity of being heard is first given, wherever practicable, to the owner of the right of translation in the work;
- (g) a further period of nine months has elapsed from the fulfilment of the formalities mentioned in paragraphs (b) and (c) and during this period no translation in the national language or other vernacular languages has been published by the owner of the right of translation or with his authorization; and
- (h) the translation is for the purpose of teaching, scholarship or research.

(4) The licence granted under this section shall not be transferable and shall not extend to the export of copies:

Provided that the sending of copies to another country by the Government or any Government organization shall not constitute export if all of the following conditions are met:

- (a) the recipients are individuals who are nationals of Malaysia or organizations grouping such individuals;
- (b) the copies are to be used only for the purpose of teaching, scholarship or research;
- (c) the sending of the copies and their subsequent distribution to recipients is without any commercial purpose; and
- (d) the country to which the copies have been sent has agreed with Malaysia to allow the receipt, or distribution, or both.

(5) The licence shall be valid only for publication of the translation in Malaysia and all copies published under the licence shall bear a notice in the national language or other vernacular languages stating that the copies are available for distribution only in Malaysia.

(6) Any licence granted under this section shall terminate if a translation in the national language or other vernacular languages and with substantially the same content as that for which a licence has been granted has been published by the owner of the right of translation or with his authorization at a price reasonably related to that charged in Malaysia for comparable works:

Provided that any copies already made before the licence terminates may, however, continue to be distributed until their stock is exhausted.

(7) If the work to be translated consists mainly of illustrations, no licence under this section shall be granted.

**32.** *(Deleted by Act A952).*

### **Tribunal may request for information**

**33.** (1) The Tribunal may request for such information as it may deem necessary for the purpose of exercising any of its powers and functions under this Act and any subsidiary legislation made thereunder.

(2) Any person who refuses to comply with such request by the Tribunal shall be guilty of an offence under this Act.

### **No action to lie against Tribunal**

**34.** No action or other legal proceedings shall lie against any member of the Tribunal for anything done or omitted to be done in good faith in connection with the exercise of the powers and functions of the Tribunal under this Act.

### **Regulations relating to Tribunal**

**35.** The Minister may make regulations in respect of the Tribunal and in particular and without prejudice to the generality of the foregoing, in respect of the following matters:

- (a) prescribing the manner in which any matter may be referred to the Tribunal;
- (b) prescribing the procedure to be adopted by the Tribunal in dealing with any matter referred to it under this Act and the records to be kept by the Tribunal;
- (c) prescribing the manner in which the Tribunal shall be convened and the place where the Tribunal shall hold its sittings;
- (d) prescribing a scale of costs and fees payable in respect of any inquiry or proceedings before the Tribunal; and
- (e) generally for the better carrying out of the functions assigned to the Tribunal by this Act.

## PART VI

### REMEDIES FOR INFRINGEMENTS AND OFFENCES

#### **Infringements**

**36.** (1) Copyright is infringed by any person who does, or causes any other person to do, without the licence of the owner of the copyright, an act the doing of which is controlled by copyright under this Act.

(2) Copyright is infringed by any person who, without the consent or licence of the owner of the copyright, imports an article into Malaysia for the purpose of —

- (a) selling, letting for hire, or by way of trade, offering or exposing for sale or hire, the article;
- (b) distributing the article —
  - (i) for the purpose of trade; or
  - (ii) for any other purpose to an extent that it will affect prejudicially the owner of the copyright;  
or

(c) by way of trade, exhibiting the article in public,

where he knows or ought reasonably to know that the making of the article was carried out without the consent or licence of the owner of the copyright.

(3) *(Deleted by Act A1420).*

(4) *(Deleted by Act A1420).*

(5) *(Deleted by Act A1420).*

### **Circumvention of technological protection measure**

**36A.** (1) If a technological protection measure is applied to a copy of a work by or with the authorization of the owner of the copyright in the work, no person shall circumvent, or cause or authorize any other person to circumvent, the technological protection measure —

(a) that is used by the owner of the copyright in connection with the exercise of his rights under this Act; and

(b) that restricts acts in respect of his works which are not authorized by the owner concerned or permitted by law.

(2) Subsection (1) does not apply if the circumvention of technological protection measure is —

(a) for the sole purpose of achieving interoperability of an independently created computer program with the original program or any other programs;

(b) for the sole purpose of identifying and analyzing flaws and vulnerabilities of encryption technology;

(c) for the sole purpose of testing, investigating or correcting the security of a computer, computer system or computer network;

(d) for the sole purpose of identifying and disabling an undisclosed capability to collect or disseminate personally identifying information about the online activities of a natural person;

- (e) in relation to anything lawfully done for the sole purpose of—
- (i) law enforcement;
  - (ii) national security; or
  - (iii) performing a statutory function; or
- (f) done by a library, an archive or an educational institution for the sole purpose of making an acquisition decision in relation to a work in which copyright subsists.

(3) No person shall —

- (a) manufacture for sale or hire;
- (b) import otherwise than for his private and domestic use; or
- (c) in the course of a business —
  - (i) sell or let for hire;
  - (ii) offer or expose for sale or hire;
  - (iii) advertise for sale or hire;
  - (iv) possess; or
  - (v) distribute;
- (d) distribute for purposes other than in the course of a business to such an extent as to affect prejudicially the owner of the copyright; or
- (e) offer to the public or provide any service in relation to,

any technology, device or component which —

- (A) is promoted, advertised or marketed for the purpose of the circumvention of technological protection measure;
- (B) has only a limited commercially significant purpose or use other than to circumvent technological protection measure; or
- (C) is primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of technological protection measure.

(4) The Minister may prescribe any technology, device or component which may operate as a technological protection measure to be exempted from the application of this section.

### **Rights management information**

**36B.** (1) No person shall —

- (a) remove or alter any electronic rights management information without authority; or
- (b) distribute, import for distribution or communicate to the public, without authority, of works or copies of works knowing that electronic rights management information has been removed or altered without authority,

and knowing or having reasonable grounds to know that such act will induce, enable, facilitate or conceal an infringement of any rights under this Act.

(2) Subsection (1) does not apply if the removal or alteration of any electronic rights management information without authority is—

- (a) in relation to anything lawfully done for the sole purpose of —
  - (i) law enforcement;
  - (ii) national security; or
  - (iii) performing a statutory function; or
- (b) done by a library, an archive or an educational institution for the sole purpose of making an acquisition decision in relation to a work in which copyright subsists.

(3) For the purposes of this section and section 41, “rights management information” means information which identifies the work, the author of the work, the owner of any right in the work, the performer or the terms and conditions of use of the work, any number or codes that represent such information, when any of these items is attached to a copy of a work or appears in connection with the communication of a work to the public.

**Action by owner of copyright and relief**

**37.** (1) Infringements of copyrights and the prohibited acts under sections 36A and 36B shall be actionable at the suit of the owner of the copyright and, in any action for such an infringement or prohibited act, the court may grant the following types of relief:

- (a) an order for injunction;
- (b) damages;
- (c) an account of profits;
- (d) statutory damages of not more than twenty-five thousand ringgit for each work, but not more than five hundred thousand ringgit in the aggregate; or
- (e) any other order as the court deems fit.

(2) Notwithstanding subsection (1), all such relief shall be available to the plaintiff in an action under subsection 36A(3) except for statutory damages.

(3) In making an award under paragraph (1)(b), the court may also make an order under paragraph (1)(c) for an account of any profits attributable to the infringement or prohibited act that have not been taken into account in computing the damages.

(4) Except as provided in subsection (3), the types of relief referred to in paragraphs (1)(b), (c) and (d) are mutually exclusive.

(5) For the purpose of paragraph (1)(d), all parts of a collective work shall constitute one work.

(6) Where in an action under this section it is established that an infringement or a prohibited act under section 36A or 36B was committed but it is also established that at the time of the infringement or commission of the prohibited act the defendant was not aware, and had no reasonable grounds for suspecting, that the act was an infringement of the copyright or prohibited under section 36A or 36B, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement or commission of the prohibited act, but shall be entitled to an account of profits or statutory damages whether or not any other relief is granted under this section.

(7) Where in an action under this section an infringement of copyright or the commission of a prohibited act under section 36A or 36B is established, the court may, in assessing damages for the infringement or commission of the prohibited act, award such additional damages as it may consider appropriate in the circumstances if it is satisfied that it is proper to do so having regard to —

- (a) the flagrancy of the infringement or prohibited act;
- (b) any benefit shown to have accrued to the defendant by reason of the infringement or prohibited act; and
- (c) all other relevant matters.

(8) In awarding statutory damages under paragraph (1)(d), the court shall have regard to—

- (a) the nature and purpose of the infringing act or prohibited act, including whether the infringing act or prohibited act was of a commercial nature or otherwise;
- (b) the flagrancy of the infringement or prohibited act;
- (c) whether the defendant acted in bad faith;
- (d) any loss that the plaintiff has suffered or is likely to suffer by reason of the infringement or prohibited act;
- (e) any benefit shown to have accrued to the defendant by reason of the infringement or prohibited act;
- (f) the conduct of the parties before and during the proceedings;
- (g) the need to deter other similar infringement or prohibited act; and
- (h) all other relevant matters.

(9) An injunction shall not be issued in any proceedings under this section if it requires a completed or partly built building to be demolished or prevents the completion of a partly built building.

(10) For the purposes of this section and section 38—

- (a) “action” includes a counterclaim, and reference to the plaintiff and to the defendant in an action shall be construed accordingly;
- (b) “collective work” means a work in which relevant materials, constituting separate and independent works in themselves, are assembled into a collective whole; and
- (c) “court” means the appropriate High Court in Malaysia.

(11) For the purpose of this section, “owner of the copyright” means the first owner or an assignee of the relevant part of the copyright.

### **Proceedings in case of copyright subject to exclusive licence**

**38.** (1) This section shall have effect as to proceedings in the case of any copyright in respect of which an exclusive licence has been granted and is in force at the time of the events to which the proceedings relate.

(2) Subject to this section, the exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, under section 37 as if the licence had been an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under that section.

(3) Where an action is brought either by the owner of the copyright or by the exclusive licensee, and the action, in so far as it is brought under section 37, relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action under that section, the owner or licensee, as the case may be, shall not be entitled, except with the leave of the court, to proceed with the action, in so far as it is brought under that section and relates to that infringement, unless the other party is either joined as a plaintiff in the action or added as a defendant: but this subsection shall not affect the granting of an interlocutory injunction on the application of either of them.

(4) In any action brought by the exclusive licensee by virtue of this section, any defence which would have been available to a defendant in the action, if this section had not been enacted and the action have been brought by the owner of the copyright, shall be available to that defendant as against the exclusive licensee.

(5) Where an action is brought in the circumstances mentioned in subsection (3) and the owner of the copyright and the exclusive licensee are not plaintiffs in the action, the court, in assessing damages in respect of any infringement as is mentioned in that subsection—

- (a) if the plaintiff is the exclusive licensee, shall take into account any liabilities (in respect of royalties or otherwise) to which the licence is subject; and
- (b) whether the plaintiff is the owner of the copyright or the exclusive licensee, shall take into account any pecuniary remedy awarded to the other party under section 37 in respect of that infringement, or, as the case may require, any right of action exercisable to the other party under that section in respect thereof.

(6) Where an action, in so far as it is brought under section 37, relates (wholly or partly) to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action under that section, and in that section (whether they are both parties to it or not) an account of profits is directed to be taken in respect of that infringement, then subject to any agreement of which the court is aware whereby the application of those profits is determined as between the owner of the copyright and the exclusive licensee, the court shall apportion the profits between them as the court may consider just and shall give such directions as the court may consider appropriate for giving effect to the apportionment.

(7) In an action brought either by the owner of the copyright or by the exclusive licensee—

- (a) no judgment or order for the payment of damages or statutory damages in respect of an infringement of copyright shall be given or made under section 37, if a final judgment or order has been given or made awarding

an account of profits to the other party under that section in respect of the same infringement; and

- (b) no judgment or order for an account of profit in respect of an infringement of copyright shall be given or made under that section, if a final judgment or order has been given or made awarding either damages, statutory damages or an account of profits to the other party under that section in respect of the same infringement.

(8) Where, in an action brought in the circumstances mentioned in subsection (3), whether by the owner of the copyright or by the exclusive licensee, the other party is not joined as a plaintiff (either at the commencement of the action or subsequently) but is added as a defendant, he shall not be liable for any costs in the action unless he enters an appearance and takes part in the proceedings.

(9) For the purposes of this section, the expression—

“exclusive licence” means a licence signed by or on behalf of an owner or a prospective owner of copyright authorizing the licensee to the exclusion of all other persons, to exercise a right which by virtue of this Act would (apart from the licence) be exercisable exclusively by the owner of the copyright; and “exclusive licensee” shall be construed accordingly;

“if the licence had been an assignment” means if, instead of the licence, there had been granted (subject to terms and conditions corresponding as nearly as may be with those subject to which the licence was granted) an assignment of the copyright in respect of its or their application to the doing, at the place and time authorized by the licence, of the acts so authorized;

“the other party”, in relation to the owner of the copyright, means the exclusive licensee, and in relation to the exclusive licensee, means the owner of the copyright.

### **Restriction on importation of infringing copies**

**39.** (1) The owner of copyright in any work, or any person authorized by him, may make an application to the Controller to request that

during a period specified in the application copies of the work to which this section applies be treated as infringing copies.

(1A) The application under subsection (1) —

- (a) shall be in such form as may be prescribed;
- (b) shall state that the person named in it is the owner of the copyright; and
- (c) shall be supported by such documents and information, and accompanied by such fee, as may be prescribed.

(2) This section shall apply to any copy of a work made outside Malaysia the making of which was carried out without the consent or licence of the owner of the copyright in the work.

(2A) Upon receipt of the application under subsection (1), the Controller shall determine the application and the Controller shall within a reasonable period inform the applicant by a written notice whether the application has been approved and specify the period during which the copies shall be treated as infringing copies.

(3) Where the application is approved by the Controller in respect of a work and the application is not withdrawn, the importation of any infringing copies into Malaysia for the duration of the period specified in the Controller's notice shall be prohibited:

Provided that this subsection shall not apply to the importation of any copy by a person for his private and domestic use.

(4) *(Deleted by Act A1082).*

(5) The Controller shall require any person making an application under subsection (1) —

- (a) to deposit a security which in the Controller's opinion is sufficient to reimburse the Government for any liability or expenses which may be incurred in consequence of the detention at any time within the period specified in the Controller's notice of any infringing copies or in consequence of anything done in relation to a copy so detained; and

(b) whether or not a security is given, to keep the Controller indemnified against any liability or expenses referred to in paragraph (a).

(6) Any Assistant Controller, police officer not below the rank of Inspector or any officer of Customs may search for and seize any infringing copies which are prohibited from being imported into Malaysia under subsection (3).

(7) Whenever any infringing copies are seized under this section, the seizing officer shall forthwith give notice in writing of such seizure and the grounds thereof to the owner of the infringing copies if known, either by delivering such notice to him personally or by post at his residence, if known:

Provided that such notice shall not be required to be given where such seizure is made on the person, or in the presence of the offender or the owner or his agent, or in the case of a vessel or aircraft, in the presence of the master or pilot, as the case may be.

(8) Infringing copies shall be liable to forfeiture as if they were prohibited goods under the law relating to Customs.

(9) The Minister may make such regulations as he thinks necessary or expedient for the purpose of this section.

### **Application of sections 36, 37, 38 and 39 to performers' right**

**39A.** Sections 36, 37, 38 and 39 shall apply *mutatis mutandis* to performers' right.

### **Back-up copy of computer program**

**40.** (1) Notwithstanding any express contract condition to the contrary, the copyright in a literary work in the form of a computer program is not infringed by the making of a reproduction of the work or of a computer program being an adaptation of the work, if—

- (a) the reproduction is made by, or on behalf of, the owner of the copy (in this section referred to as “the original copy”) from which the reproduction is made; and
- (b) the reproduction is made for the purpose only of being used, by or on behalf of the owner of the original copy, in lieu of the original copy in the event that the original copy is lost, destroyed or rendered unusable.

(2) Subsection (1) does not apply to the making of a reproduction of a computer program, or of an adaptation of a computer program—

- (a) from an infringing copy of the computer program; or
- (b) contrary to an express direction by or on behalf of the owner of the copyright in the computer program given to the owner of the original copy not later than the time when the owner of the original copy acquired the original copy.

(3) For the purposes of this section—

- (a) a reference to a copy of a computer program or of an adaptation of a computer program is a reference to any article in which the computer program or adaptation is reproduced in a material form; and
- (b) a reference to an express direction, in relation to a copy of a computer program, or of an adaptation of a computer program, includes a reference to a clearly legible direction printed on the copy or on a package in which the copy is supplied.

## **Offences**

**41.** (1) Any person who during the subsistence of copyright in a work or performers’ right—

- (a) makes for sale or hire any infringing copy;

- (b) sells, lets for hire or by way of trade, exposes or offers for sale or hire any infringing copy;
- (c) distributes infringing copies;
- (d) has in his possession, custody or control, otherwise than for his private and domestic use, any infringing copy;
- (e) by way of trade, exhibits in public any infringing copy;
- (f) imports into Malaysia, otherwise than for his private and domestic use, an infringing copy;
- (g) makes or has in his possession any contrivance used or intended to be used for the purposes of making infringing copies;
- (h) circumvents or causes or authorizes the circumvention of any effective technological measures referred to in subsection 36A(1);
- (ha) manufactures, imports or sells any technology or device for the purpose of the circumvention of technological protection measure referred to in subsection 36A(3);
- (i) removes or alters any electronic rights management information referred to in section 36B without authority; or
- (j) distributes, imports for distribution or communicates to the public, without authority, works or copies of works in respect of which electronic rights management information has been removed or altered without authority,

shall, unless he is able to prove that he had acted in good faith and had no reasonable grounds for supposing that copyright or performers' right would or might thereby be infringed, be guilty of an offence and shall on conviction be liable—

- (i) in the case of an offence under paragraphs (a) to (f), to \*a fine of not less than two thousand ringgit and not more than twenty thousand ringgit for each infringing copy, or to imprisonment for a term not exceeding five years or to both and for any subsequent offence, to \*\*a fine of not less than four thousand ringgit and not more than forty thousand ringgit for each infringing copy or to imprisonment for a term not exceeding ten years or to both;
- (ii) in the case of an offence under paragraphs (g) and (ha), to \*\*\*a fine of not less than four thousand ringgit and not more than forty thousand ringgit for each contrivance in respect of which the offence was committed or to imprisonment for a term not exceeding ten years or to both and for any subsequent offence to †a fine of not less than eight thousand ringgit and not more than eighty thousand ringgit for each contrivance in respect of which the offence was committed or to imprisonment for a term not exceeding twenty years or to both;
- (iii) in the case of an offence under paragraphs (h), (i) and (j), to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding ††five years or to both and for any subsequent offence, to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding †††ten years or to both.

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\*NOTE—Previously “a fine not exceeding ten thousand ringgit”—see the Copyright (Amendment) Act 2003 [Act A1195].

\*\*NOTE—Previously “a fine not exceeding twenty thousand ringgit”—see the Copyright (Amendment) Act 2003 [Act A1195].

\*\*\*NOTE—Previously “a fine not exceeding twenty thousand ringgit”—see the Copyright (Amendment) Act 2003 [Act A1195].

†NOTE—Previously “a fine not exceeding forty thousand ringgit”—see the Copyright (Amendment) Act 2003 [Act A1195].

††NOTE—Previously “three years”—see the Copyright (Amendment) Act 2003 [Act A1195].

†††NOTE—Previously “five years”—see the Copyright (Amendment) Act 2003 [Act A1195].

(2) For the purposes of paragraphs (1)(a) to (f), any person who has in his possession, custody or control three or more infringing copies of a work or recording in the same form shall, unless the contrary is proved, be presumed to be in possession of or to import such copies otherwise than for private or domestic use.

(3) Any person who causes a literary or musical work, sound recording or film to be performed in public shall be guilty of an offence under this subsection unless he is able to prove that he had acted in good faith and had no reasonable grounds for supposing that copyright would or might thereby be infringed.

(4) Where an offence under this section is committed by a body corporate or by a person who is a partner in a firm, every director, chief executive officer, chief operating officer, secretary, manager or other similar officer of the body corporate or every other partner in the firm or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of the affairs of the body corporate or firm or was assisting in such management, as the case may be, shall be deemed to be guilty of the offence and may be charged severally or jointly in the same proceedings with the body corporate or firm unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence.

### **Compounding of offences**

**41A.** (1) The Controller or a Deputy Controller or any person authorized in writing by the Controller may with the written consent of the Public Prosecutor compound any subsidiary legislation made under this Act which is prescribed to be a compoundable offence by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding such amount as may be prescribed.

(2) Upon receipt of the payment under subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any goods, such goods may be released, subject to such conditions as may be imposed in accordance with the conditions of the compound.

(3) *(Deleted by Act A1139).*

**Affidavit admissible in evidence**

**42.** (1) An affidavit, certified extracts of the Register of Copyright referred to in section 26B or statutory declaration made before any person having authority to administer oath by or on behalf of any person claiming to be—

(a) the owner of the copyright in any works eligible for copyright under this Act stating that—

- (i) at the time specified herein copyright subsisted in such work;
- (ii) he or the person named therein is the owner of the copyright; and
- (iii) a copy of the work annexed thereto is the true copy thereof; or

(b) the performer in a performance eligible for performers' right under this Act stating that—

- (i) at the time specified therein performers' right subsisted in such performance;
- (ii) he or the person named therein is the performer; and
- (iii) a copy of the document annexed thereto is the document which proves that he or the person named therein performed in the performance,

shall be admissible in evidence any proceedings under this Act and shall be *prima facie* evidence of the facts contained therein.

(2) Any person who is authorized to act on behalf of the owner of the copyright or performer for the purposes of subsection (1) shall be required to produce such authorization in writing.

(3) (*Deleted by Act A1082*).

**Penalty**

**43.** Any person who is guilty of an offence under this Act or any regulations made thereunder for which no special penalty is provided, shall on conviction be liable to \*a fine of not less than ten thousand ringgit and not more than fifty thousand ringgit or to imprisonment for a term not exceeding \*\*five years or to both.

## PART VIA

## ANTI-CAMCORDING

**Offences relating to anti-camcording**

**43A.** (1) Any person who operates an audiovisual recording device in a screening room to record any film in whole or in part shall be guilty of an offence and shall on conviction be liable to a fine of not less than ten thousand ringgit and not more than one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Any person who is guilty of an attempt to commit an offence under subsection (1) shall on conviction be liable to a fine of not less than five thousand ringgit and not more than fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(3) For the purpose of this section—

“audiovisual recording device” means any device which is capable of recording or transmitting a motion picture or any part thereof;

“motion picture” means film;

“screening room” means any venue which is utilized for the exhibition or screening of a motion picture, including a motion picture theatre.

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\*NOTE—Previously “a fine not exceeding twenty-five thousand ringgit”—see the Copyright (Amendment) Act 2003 [Act A1195].

\*\*NOTE—Previously “three years”—see the Copyright (Amendment) Act 2003 [Act A1195].

PART VI<sub>B</sub>

## LIMITATION OF LIABILITIES OF THE SERVICE PROVIDER

**Interpretation**

**43B.** For the purpose of this Part—

“another network” means any type of network that is able to connect with the primary network;

“court” means the appropriate High Court in Malaysia;

“electronic copy”, in relation to any work, means a copy of the work in an electronic form and includes the original version of the work in that form on a network;

“originating network” means another network from which an electronic copy originates;

“primary network”, in relation to a service provider, means a network controlled or operated by or for the service provider;

“routing” means directing or choosing the means or routes for the transmission of data;

“service provider”—

(a) for the purpose of section 43c, means a person who provides services relating to, or provides connections for, the access, transmission or routing of data; and

(b) for the purpose of this Part other than section 43c, means a person who provides, or operates facilities for, online services or network access and includes a person referred to in paragraph (a).

**Transmission, routing and provision of connections**

**43c.** (1) A service provider shall not be held liable for infringement of copyright in any work if the infringement occurs by reason of—

- (a) the transmission or routing, or the provision of connections, by the service provider of an electronic copy of the work through its primary network; or
- (b) any transient storage by the service provider of an electronic copy of the work in the course of such transmission, routing or provision of connections:

Provided that—

- (A) the transmission of the electronic copy of the work was initiated by or at the direction of a person other than the service provider;
- (B) the transmission, routing, provision of connections or storage is carried out through an automatic technical process without any selection of the electronic copy of the work by the service provider;
- (C) the service provider does not select the recipient of the electronic copy of the work except as an automatic response to the request of another person; or
- (D) the service provider does not make any modification, other than a modification made as part of a technical process, to the content of the electronic copy of the work during its transmission through the primary network.

(2) Where infringing material has been identified to come from an online location outside Malaysia or from a specified account and if the court is satisfied that subsection (1) applies to the service provider, the court may order the service provider—

- (a) to take reasonable steps to disable access to an online location that is physically situated outside Malaysia; or
- (b) to terminate the specified account.

**System caching**

**43D.** (1) A service provider shall not be held liable for infringement of copyright for the making of any electronic copy of the work on its primary network if it is—

- (a) from an electronic copy of the work made available on an originating network;
- (b) through an automatic process;
- (c) in response to an action by a user of its primary network;  
or
- (d) in order to facilitate efficient access to the work by a user:

Provided that—

- (A) the service provider does not make any substantive modification, other than a modification made as part of a technical process, to the content of the electronic copy during the transmission of such copy to users of its primary network or another network; and
- (B) the service provider satisfies such other conditions as the Minister may determine in relation to—
  - (i) access to the electronic copy by users of its primary network or another network;
  - (ii) the refreshing, reloading or updating of the electronic copy; and
  - (iii) non-interference with the technology used at the originating network to obtain information about the use of any work on the originating network, being technology that is consistent with industry standards in Malaysia.

(2) A service provider shall not be held liable under this section if the copyright owner or his agent has not given any notification under section 43H.

**Storage and information location tools**

**43E.** (1) A service provider shall not be held liable for infringement of copyright in any work where such infringement occurs by reason of—

- (a) the electronic copy of the work being stored at the direction of a user of its primary network;
- (b) the service provider referring or linking a user to an online location on an originating network at which an electronic copy of the work is made available by the use of an information location tool such as a hyperlink or directory, or an information location service such as a search engine, if—
  - (i) the service provider—
    - (A) does not have actual knowledge that the electronic copy of the work or activity is infringing; or
    - (B) in the absence of such actual knowledge, is not aware of the facts or circumstances from which the infringing activity is apparent;
  - (ii) the service provider does not receive any financial benefit directly attributable to the infringement of the copyright in the work that occurs in, or in the course of, making available the electronic copy on its primary network or on another network, and that the service provider does not have the right and ability to control the infringing activity; and
  - (iii) upon receipt of a notification of any infringement under section 43H, the service provider responds within the time specified to remove or disable access to the material that is claimed to be infringing or to be the subject of the infringing activity.

(2) In determining whether a financial benefit is directly attributable to the infringement of copyright in the work, the court shall have regard to—

- (a) the industry practice in relation to the charging of services by a service provider;
- (b) whether the financial benefit was greater than the benefit that would usually result from charging in accordance with accepted industry practices; and
- (c) any other matter that the court considers relevant.

(3) A service provider shall not be held liable under this section if the copyright owner or his agent has not given any notification under section 43H.

**Exemption of service provider from liability for removal of copy or other activities from network**

**43F.** (1) A service provider acting in compliance with subsection 43H(1) and in accordance with this Part shall not be subject to any liability in respect of an action taken in good faith in relation to—

- (a) the removal of an electronic copy of a work from its primary network; or
- (b) the disabling of access to an electronic copy of a work on its primary network or another network.

(2) Upon removing or disabling access to an electronic copy of a work under subsection (1), the service provider shall notify, as far as may be practicable, the person who made available the electronic copy of the action taken by the service provider and enclosing therewith a copy of the notification received by it pursuant to subsection 43H(1).

(3) Notwithstanding anything to the contrary, if—

- (a) as a result of a settlement between the copyright owner of the work and the person who made available the electronic copy of the work, the service provider receives a written notification from either party to restore the electronic copy to the network or to restore access to that copy; or
- (b) the person who made available the electronic copy of the work was adjudicated by any court or tribunal as the rightful copyright owner of the work,

the service provider shall, as far as practicable—

- (A) restore the electronic copy of the work to its primary network; or
- (B) restore access to the electronic copy of the work on its primary network or another network:

Provided that the service provider is furnished with the proper documentation relating to the settlement between the parties or judgment or decision of the court or tribunal.

(4) A service provider shall not be treated as having authorized the doing of any act which is an infringement of copyright under this Act solely by reason of the service provider having provided a facility which was used by a person to perform the infringing act.

### **Information on service provider**

**43G.** (1) In providing its service to the users, a service provider shall make available the following information in a manner which is accessible to any person using the service:

- (a) the name and address of the service provider; and
- (b) the details and particulars of a designated agent to receive any complaint or notice regarding an allegation of infringement of copyright.

(2) Failure by a service provider to comply with subsection (1) shall not entitle the service provider to rely on the protection provided under this Part.

### **Notification by copyright owner and its effect**

**43H.** (1) If an electronic copy of any work accessible in a network infringes the copyright of a work, the owner of the copyright which has been infringed may notify the service provider of the network of such infringement by issuing to the service provider a notification in the manner as determined by the Minister, requiring the service

provider to remove or disable any access to the electronic copy on the service provider's network:

Provided that the owner of the copyright shall undertake to compensate the service provider or any other person against any damages, loss or liability arising from the compliance by the service provider of such notification.

(2) A service provider who has received a notification under subsection (1) shall remove or disable any access to the infringing electronic copy on its network not later than forty-eight hours from the time the notification was received.

(3) The person whose electronic copy of the work was removed or to which access has been disabled pursuant to subsection (2) may issue to the service provider a counter notification in the manner as may be determined by the Minister, requiring the service provider to restore the electronic copy or access to it on the service provider's primary network:

Provided that the person shall undertake to compensate the service provider or any other person against any damages, loss or liability arising from the compliance by the service provider of such counter notification.

(4) A service provider shall—

- (a) upon receipt of a counter notification, promptly provide the issuer of the notification under subsection (1) with a copy of the counter notification and inform such issuer that the removed material or access to the said material will be restored in ten business days; and
- (b) restore the removed material or access to it not less than ten business days following receipt of the counter notification, unless the service provider has received another notification from the issuer of the notification under subsection (1) that he has filed an action seeking a court order to restrain the issuer of the counter notification under subsection (3) from engaging in any infringing activity relating to the material on the service provider's network.

(5) A counter notification shall be issued to the service provider's designated agent containing the following information:

- (a) a physical or electronic signature of the subscriber;
- (b) identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
- (c) a statement under penalty of perjury that the issuer has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; and
- (d) the issuer's name, address, telephone number and a statement that the issuer consents to the jurisdiction of the court in which the address is located, or if the issuer's address is outside Malaysia, in which the service provider may be found, and that the subscriber will accept service of process from the person who provided the notification under subsection (1) or an agent of such person.

### **Maker of false notice guilty of offence and liable in damages**

**43i.** (1) If a person making a notification in accordance with section 43H makes any statement which is false, which he knows to be false or does not believe to be true, and which touches on any point material to the object of the notice—

- (a) he shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both; and
- (b) he shall be liable to compensate any person who suffers any loss or damages as a result of making the notification.

(2) Subsection (1) shall apply whether or not the statement is made in Malaysia, and if a person makes the statement outside Malaysia, he may be dealt with under paragraph (1)(a) as if the offence was committed in Malaysia.

## PART VII

## ENFORCEMENT

**Entry by warrant or otherwise**

**44.** (1) In every case where information is given on oath to any magistrate that there is reasonable cause for suspecting that there is in any house or premises any infringing copy or any contrivance used or intended to be used for making infringing copies or capable of being used for the purpose of making infringing copies, or any other article or vehicle, book or document by means of or in relation to which any offence under section 41 has been committed, he shall issue a warrant under his hand by virtue of which any Assistant Controller or police officer not below the rank of Inspector named or referred to in the warrant may enter the house or premises at any reasonable time by day or night and search for and seize any such copy, contrivance, article, vehicle, book or document:

Provided that if an Assistant Controller or a police officer not below the rank of Inspector is satisfied upon information received that he has reasonable grounds for believing that by reason of delay in obtaining a search warrant, any copy, contrivance, article or vehicle, book or document used to commit or to be used to commit an offence under this Act is likely to be removed or destroyed, he may enter such house or premises without a warrant and seize any such copy, contrivance, article, vehicle, book or document from therein.

(1A) An Assistant Controller or a police officer not below the rank of Inspector entering any house or premises by virtue of subsection (1) may take with him such other persons and such equipment as may appear to him necessary; and on leaving any house or premises which he has entered he shall, if the house or premises is unoccupied or the occupier is temporarily absent, leave it as effectively secured against trespassers as he found it.

(2) An Assistant Controller or a police officer not below the rank of Inspector making the search may seize any infringing copy, copy suspected to be an infringing copy, contrivance used or intended to be used for making infringing copies or capable of being used for the purpose of making infringing copies, or any other article, vehicle, book or document and if any such copy, contrivance, article, vehicle,

book or document is seized, he shall produce the same before the magistrate, and upon such production the magistrate shall direct the same to be kept in the custody of the Controller or Assistant Controller or the police for the purpose of any investigation or prosecution under this Act:

Provided that where, upon any such seizure, any such copies, contrivances, articles, vehicles, books or documents are kept in the custody of the Controller or Assistant Controller or the police and where it is found, by reason of their nature, size or amount, that it is not practical to produce the same before the magistrate, it shall be sufficient for the purposes of this subsection for the seizure to be reported to the magistrate.

(3) If it is found, by reason of their nature, size or amount, that it is not practical to remove from where they are found such things or documents seized by an Assistant Controller or a police officer not below the rank of Inspector and the Assistant Controller or the police officer has sealed the same in the premises or container in which they are found pursuant to section 47, it shall be sufficient for the purpose of producing the same before the magistrate under subsection (2) for the seizure to be reported to the magistrate or for the magistrate to view the same in such premises or container.

### **Effecting entry, removal and detention**

**45.** Any Assistant Controller or police officer not below the rank of Inspector may in the exercise of his powers under section 44, if it is necessary so to do—

- (a) break open any outer or inner door of the dwelling house or any other premises and enter therein;
- (b) forcibly enter the place and every part thereof;
- (c) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect; and
- (d) detain every person found in the place until the place has been searched.

**Access to computerized or digitalized data**

**45A.** (1) Any Assistant Controller or a police officer not below the rank of Inspector shall, in the exercise of his powers under section 44, if it is necessary, be given access to computerized or digitalized data whether stored in a computer or any other medium.

(2) For the purpose of this section, “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of the computerized data.

**List of things seized**

**46.** (1) The Assistant Controller or police officer not below the rank of Inspector seizing any infringing copy, any copy suspected to be an infringing copy, contrivance, article, vehicle, book or document under this Part shall prepare a list of the things seized and forthwith deliver a copy signed by him to the occupier, or his agents or servants present in the premises.

(2) If the premises are unoccupied, the Assistant Controller or police officer not below the rank of Inspector shall wherever possible post a list of the things seized on the premises.

**Sealing of things**

**47.** Where it appears to an Assistant Controller or a police officer not below the rank of Inspector that it is not practical to remove from where they are found, any thing or document seized by him in the exercise of his powers under this Act, by reason of their nature, size or amount, he may by any means seal such things or documents in the premises or container in which they are found and it shall be an offence for any person without lawful authority to break, tamper with or damage such seal or remove such things or documents or to attempt to do so.

**Obstruction to search, etc.**

**48.** Any person who—

- (a) refuses any Assistant Controller or police officer not below the rank of Inspector access to any place;
- (b) assaults, obstructs, hinders or delays any Assistant Controller or police officer not below the rank of Inspector in effecting any entry which he is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act;
- (c) refuses to give to any Assistant Controller or police officer not below the rank of Inspector any information relating to an offence or suspected offence under this Act or any other information which may reasonably be required of him and which he has in his knowledge or power to give;
- (d) with a view to deceiving any public officer in the execution of the provisions of this Act, or with a view to procuring or influencing the doing or omission of anything in relation to this Act, knowingly gives any false information or makes any statement which is false and which he either knows or believes to be false or does not believe to be true; or
- (e) in the affidavit or statutory declaration referred to in subsection 42(1), makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the affidavit or declaration is made or used under subsection 42(1),

shall be guilty of an offence.

**Warrant admissible notwithstanding defects, etc.**

**49.** A warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the warrant or in the application for such warrant and any copy, contrivance, article,

vehicle, book or document seized under such warrant shall be admissible in evidence in any proceedings under this Act.

### **Powers of investigation**

**50.** (1) Any Assistant Controller or police officer not below the rank of Inspector shall have the power to investigate the commission of any offence under this Act or subsidiary legislation made thereunder.

(2) Any Assistant Controller or police officer not below the rank of Inspector may, in relation to any investigation in respect of any offence under this Act or subsidiary legislation made thereunder, exercise the special powers in relation to police investigation in seizable cases given by the Criminal Procedure Code [Act 593].

### **Power of arrest**

**50A.** (1) Any Assistant Controller may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit seizable offence under this Act or any regulations made thereunder.

(2) Any Assistant Controller making an arrest under subsection (1) shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person shall be dealt with as is provided for by the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

### **Power to intercept communications**

**50B.** (1) Notwithstanding the provisions of any other written law, the Public Prosecutor, if he considers that any communications is likely to contain any information which is relevant for the purpose of any investigation into an offence under this Act or its subsidiary legislation, may, on the application of an Assistant Controller or a police officer not below the rank of Inspector, authorize the officer to intercept or to listen to any communications transmitted or received by any communications.

(2) When any person is charged with an offence under this Act or its subsidiary legislation, any information obtained by an Assistant Controller or a police officer under subsection (1), whether before or after the person is charged, shall be admissible at his trial in evidence.

(3) An authorization by the Public Prosecutor under subsection (1) may be given either orally or in writing; but if an oral authorization is given, the Public Prosecutor shall, as soon as practicable, reduce the authorization into writing.

(4) A certificate by the Public Prosecutor stating that the action taken by an Assistant Controller or a police officer under subsection (1) had been authorized by him under that subsection shall be conclusive evidence that it had been so authorized, and the certificate shall be admissible in evidence without proof of his signature there.

(5) No person shall be under any duty, obligation or liability, or be in any manner compelled, to disclose in any proceedings the procedure, method, manner or means, or any matter related to it, of anything done under subsection (1).

### **Admissibility of statement**

**51.** (1) Notwithstanding the provisions of any written law to the contrary, where a person is charged with an offence under this Act any statement, whether the statement amounts to a confession or not or whether it is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of investigations under this Act or not and whether or not wholly or partly in answer to questions, by the person to or in the hearing of an Assistant Controller or a police officer not below the rank of Inspector and whether or not interpreted to him by an Assistant Controller, a police officer not below the rank of Inspector, or any other person concerned or not in the case shall be admissible at his trial in evidence and, if the person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit:

Provided that—

(a) no such statement shall be admissible or used as aforesaid—

- (i) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person proceeding from the person in authority and sufficient in the opinion of the court to give a person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him; or
- (ii) in the case of a statement made by the person after his arrest, unless the court is satisfied that he was cautioned in the following words or words to the like effect:

“It is my duty to warn you that you are not obliged to say anything or to answer any question but anything you say, whether in answer to a question or not, may be given in evidence.”; and

- (b) a statement made by any person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of his not having been cautioned if he is cautioned as soon as possible.

(2) Notwithstanding the provisions of any written law to the contrary, a person accused of an offence to which subsection (1) applies shall not be bound to answer any question relating to the case after he has been cautioned.

### **Evidence of *agent provocateur* is admissible**

**51A.** (1) Notwithstanding any written law or rule of law to the contrary, no *agent provocateur* shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under this Act if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

(2) Notwithstanding any written law or rule of law to the contrary, any statement, whether oral or in writing made to the *agent provocateur* by any person who subsequently is charged with an offence under this Act shall be admissible as evidence at his trial.

### **Disclosure of information**

**52.** Where a person discloses to any other person any information obtained by him in pursuance of this Act, he shall be guilty of an offence, unless the disclosure was made in or for the purposes of the performance of the functions and duties under this Act.

### **Tipping-off**

**52A.** (1) Any person who—

- (a) knows or has reason to suspect that an Assistant Controller or a police officer not below the rank of Inspector is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
- (b) knows or has reason to suspect that a disclosure has been made to an Assistant Controller or a police officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

commits an offence under this Act.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter—

- (a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or

(b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

### **Institution of prosecution**

**53.** No prosecution for any offence under this Act shall be instituted except by or with the consent in writing of the Public Prosecutor.

### **Forfeiture of articles**

**54.** (1) Any article, vehicle, book, document, copy or contrivance seized pursuant to this Act shall be liable to forfeiture.

(2) The court trying any person accused of an offence under this Act may at the conclusion of the trial, whether he is convicted or not, order that article, vehicle, book, document, copy or contrivance seized from that person be disposed of or in the case of infringing copies, be delivered up to the first owner of the copyright in question, his assignee or exclusive licensee, as the case may be.

(3) Where there is no prosecution with regard to any article, vehicle, book, document, copy or contrivance seized in exercise of any powers conferred under this Act, the same shall be taken and deemed to be forfeited at the expiration of one calendar month from the date it was seized unless a claim thereto is made before that date in the manner hereinafter set forth.

(4) Any person asserting that he is the owner of any article, vehicle, book, document, copy or contrivance seized under this Act and that the same are not liable to forfeiture may personally or by his agent authorized in writing by him give written notice to an Assistant Controller of his claim.

(5) On receipt of a notice under subsection (4), the Assistant Controller shall refer the notice to the Controller who may, after such enquiry as may be necessary, direct that such article, vehicle, book, document, copy or contrivance be released or forfeited or refer the matter to the court for decision.

(6) The court to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the article,

vehicle, book, document, copy or contrivance and the person from whom they were seized to appear before it and upon his appearance or default to appear, due service of the summons being proved, the court shall proceed to the examination of the matter and on proof that an offence under this Act or subsidiary legislation made thereunder has been committed and that such article, vehicle, book, document, copy or contrivance was the subject matter or was used in the commission of such offence, shall order the same to be forfeited or may, in the absence of such proof, order the release of such article, vehicle, book, document, copy or contrivance to the person entitled to it.

(7) Any article, vehicle, book, document, copy or contrivance forfeited or deemed to be forfeited shall be delivered to the Controller who shall dispose of it in a manner he deems fit or deliver it up to the first owner of copyright in question, his assignee or exclusive licensee, as the case may be.

### **Proportional examination of articles seized to be accepted**

**55.** (1) Where packages or receptacles containing copies suspected to be infringing copies or otherwise liable to seizure have been seized, it shall be sufficient only to open and examine one per centum or any five copies, whichever is the lesser, of the contents of each package or receptacle seized.

(2) The court shall presume that the remaining copies contained in the package or receptacle are of the same nature as those copies examined.

### **Protection of informers from discovery**

**56.** (1) Except as hereinafter provided, no witness in any civil or criminal proceedings shall be obliged or permitted to disclose the name or address of an informer or the substance and nature of the information received from him or to state any matter which may lead to his discovery.

(2) If any books, documents or papers which are in evidence or are liable to inspection in civil or criminal proceedings whatsoever contain any entry in which any informer is named or described or

which might lead to his discovery, the court shall cause all such passages to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery.

(3) If on the trial for any offence against this Act or any subsidiary legislation made thereunder the court after full enquiry into the case believes the informer unlawfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit enquiry, and receive full disclosure concerning the informer.

### **Protection of Assistant Controllers and police officers**

**57.** No action or prosecution shall be brought, instituted or maintained in any court against any Assistant Controller or police officer not below the rank of Inspector for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Act, and no suit or prosecution shall lie in any court against any other person for or on account of or in respect of any act done or purporting to have been done by him under order, direction or instruction of any Assistant Controller or police officer not below the rank of Inspector given for any such purpose as aforesaid:

Provided that the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby.

## **PART VIII**

### **MISCELLANEOUS**

**58.** (*Deleted by Act A952*).

### **Regulations**

**59.** The Minister may make regulations for the carrying out of the provisions of this Act.

**Extension of application of Act**

**59A.** (1) The Minister may make regulations applying any of the provisions of this Act specified in the regulations, in relation to a country so specified in the regulations (which in this section is referred to as the “specified country”), which may or may not be a party to a treaty or a member of any Convention or Union relating to copyright or performers’ right to which Malaysia is also a party or a member, so as to secure that those provisions—

- (a) apply in relation to literary, musical or artistic works, or films or sound recordings, or published editions of literary, musical or artistic works first published in that specified country as they apply in relation to literary, musical or artistic works, or films or sound recordings, or published editions of literary, musical or artistic works first published in Malaysia;
- (b) apply in relation to persons who, at the material time specified in the regulations, are citizens of, or residents in, that specified country as they apply in relation to persons who, at such a time, are citizens of, or permanent residents in, Malaysia;
- (c) apply in relation to bodies corporate incorporated under the laws of that specified country as they apply in relation to bodies corporate established in Malaysia and constituted or vested with legal personality under the laws of Malaysia;
- (d) apply in relation to broadcasts transmitted from that specified country as they apply in relation to broadcasts transmitted from Malaysia;
- (e) apply in relation to works of architecture erected in that specified country or any other artistic works incorporated in buildings located in that specified country as they apply in relation to works of architecture erected in Malaysia or any other artistic works incorporated in buildings located in Malaysia;
- (f) apply in relation to every work eligible for copyright if the work is made in that specified country as they apply in

relation to every work eligible for copyright if the work is made in Malaysia;

(g) apply in relation to derivative works in that specified country as they apply in relation to derivative works in Malaysia; and

(h) apply in relation to a performance taking place in that specified country as they apply in relation to a performance in Malaysia.

(2) Reference in paragraph (1)(a) to works first published in a specified country shall include works which were first published elsewhere but published in that specified country within thirty days of such publication elsewhere.

(3) Regulations made under subsection (1) may apply the provisions of this Act—

(a) in relation to a specified country other than Malaysia subject to such exceptions or modifications as may be specified in those regulations;

(b) either generally or in relation to such classes of works or other subject matter as may be specified in those regulations.

(4) The regulations made under subsection (1) may provide for the application of the regulations in relation to works made or performances performed, as the case may be, before the date Malaysia becomes a party to such a treaty or a member of such a Convention or Union relating to copyright or performers' right as they apply in relation to works made or performances performed, as the case may be, after that date.

(5) The regulations made under subsection (1) shall not be construed as reviving any copyrights or performers' rights which had expired under the laws of the specified country before the date Malaysia becomes a party to such a treaty or a member of such a Convention or Union relating to copyright or performers' right.

(6) The Minister shall not make regulations under this section applying any of the provisions of this Act in respect of a specified

country, other than a specified country which is a party to a treaty or a member of any Convention or Union relating to copyright or performers' rights to which Malaysia is also a party or a member, unless the Minister is satisfied that, in respect of the class of works or other subject matter to which those provisions relate, provision has been or will be made under the laws of that specified country whereby adequate protection will be given to owners of copyright or performers under this Act.

(7) Where only by virtue of the regulations made under subsection (1), copyrights subsist in works that were made, or performers' rights subsist in performances performed before the commencement of such regulations, nothing done before the commencement of such regulations shall be taken to constitute an infringement of those copyrights or performers' rights, as the case may be.

#### **Power of Minister to exclude from definition of "broadcast"**

**59B.** (1) The Minister may, by order, exclude from the definition of "broadcast" in relation to a transmission by wire any of the following services:

- (a) an interactive service;
- (b) an internal business service;
- (c) an individual domestic service;
- (d) a service on single-occupier premises otherwise than by way of business amenity;
- (e) a service run for persons providing broadcasting services through means of wire or providing programmes for such services.

(2) The Minister may, by order, amend subsection (1) so as to add to or remove from the exclusion referred to in that subsection.

**Savings**

**60.** (1) Nothing in this Act shall affect any right or privilege of any person, including the Government, under any written law, except in so far as that law is expressly repealed, amended or modified by or is inconsistent with this Act.

(2) Nothing in this Act shall affect the rights of the Government of Malaysia, or any person deriving title from the Government to sell, use or otherwise deal with articles forfeited under the laws relating to Customs, including articles so forfeited by virtue of this Act or any written law repealed by this Act.

**Repeal**

**61.** The Copyright Act 1969 [*Act 10*] is repealed:

Provided that—

- (a) nothing contained in this Act shall affect any person's liability to be prosecuted or punished for offences committed under the repealed Act before the coming into operation of this Act, or any proceedings brought or sentence imposed before that day in respect of such offence;
  - (b) any proceedings, whether civil or criminal, or cause of action pending or existing immediately before the coming into operation of this Act shall be continued or instituted under the repealed law as if this Act had not been made;
  - (c) any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act and any legal proceedings (civil or criminal) or remedy in respect of such right, privilege, obligation or liability shall not be affected and any such legal proceedings or remedy may be instituted or enforced under the relevant provisions of this Act.
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**LAWS OF MALAYSIA****Act 332****COPYRIGHT ACT 1987**

## LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A775	Copyright (Amendment) Act 1990	01-10-1990; except s. 2, para 3(a), 3(c), 3(e), s. 4, para 5(a), 10(a), s 15, 17, 18, 20, 21 and 22:01-12-1987
Act A952	Copyright (Amendment) Act 1996	01-09-1999
Act A994	Copyright (Amendment) Act 1997	01-04-1999
Act A1082	Copyright (Amendment) Act 2000	15-08-2000
Act A1139	Copyright (Amendment) Act 2002	03-03-2003
P.U. (A) 277/2003	Revision of Laws (Rectification of Copyright Act 1987) Order 2003	25-07-2003
Act A1195	Copyright (Amendment) Act 2003	01-10-2003
P.U. (B)508/2010	Copyright Act 1987-Corrigendum	18-11-2010
Act A1420	Copyright (Amendment) Act 2012	01-03-2012

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## LAWS OF MALAYSIA

### Act 332

### COPYRIGHT ACT 1987

#### LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	Act A775	01-12-1987
3	Act A775	01-12-1987
		01-10-1990
	Act A952	01-09-1999
	Act A994	01-04-1999
	Act A1082	15-08-2000
	Act A1139	03-03-2003
	Act A1195	01-10-2003
	Act A1420	01-03-2012
4	Act A1082	15-08-2000
	Act A1420	01-03-2012
5	Act A1139	03-03-2003
	Act A1420	01-03-2012
7	Act A952	01-09-1999
	Act A994	01-04-1999
	Act A1420	01-03-2012
8	Act A775	01-12-1987
	Act A1082	15-08-2000
	Act A1420	01-03-2012
9	Act A775	01-12-1987
		01-10-1990
	Act A1420	01-03-2012
10A	Act A1082	15-08-2000
13	Act A775	01-10-1990
	Act A994	01-04-1999
	Act A1082	15-08-2000
	Act A1420	01-03-2012
13A	Act A952	01-09-1999
13B	Act A952	01-09-1999
	Act A1420	01-03-2012

Section	Amending authority	In force from
13C	Act A952 Act A1420	01-09-1999 01-03-2012
15	Act A775 Act A994	01-10-1987 01-04-1999
16A	Act A1082 Act A1420	15-08-2000 01-03-2012
16B	Act A1082 Act A1420	15-08-2000 01-03-2012
17	Act A994 Act A1082	01-04-1999 15-08-2000
18	Act A1082	15-08-2000
19	Act A1082	15-08-2000
20	Act A1082	15-08-2000
21	Act A994	01-04-1999
22	Act A1082 Act A1139	15-08-2000 03-03-2003
23	Act A1082	15-08-2000
23A	Act A1082 Act A1420	15-08-2000 01-03-2012
23B	Act A1082	15-08-2000
24	Act A775	01-10-1990
25	Act A994	01-04-1999
25A	Act A1082 Act A1420	15-08-2000 01-03-2012
26A-26C	Act A1420	01-03-2012
27A	Act A952 Act A1082 Act A1420	01-09-1999 15-08-2000 01-03-2012
27AA	Act A1420	01-03-2012
27B	Act A952	01-09-1999

Section	Amending authority	In force from
27C	Act A952 Act A1420	01-09-1999 01-03-2012
27D	Act A952 Act A1420	01-09-1999 01-03-2012
27E	Act A952	01-09-1999
27F	Act A952	01-09-1999
27G	Act A952	01-09-1999
27H	Act A952 Act A1082	01-09-1999 15-08-2000
27I-27L	Act A952	01-09-1999
28	Act A1420	01-03-2012
29	Act A952 Act A1420	01-09-1999 01-03-2012
30	Act A952 Act A1420	01-09-1999 01-03-2012
30A	Act A952	01-09-1999
31	Act A1420	01-03-2012
32	Act A952	01-09-1999
36	Act A775 Act A994 Act A1420	01-10-1990 01-04-1999 01-03-2012
36A-36B	Act A1420	01-03-2012
37-38	Act A1420	01-03-2012
39	Act A775 Act A1082	01-12-1987 01-10-1990 15-08-2000
39A	Act A1082	15-08-2000
40	Act A1420	01-03-2012

Section	Amending authority	In force from
41	Act A775 Act A994 Act A1082 Act A1195 Act A1420	01-10-1990 01-04-1999 15-08-2000 01-10-2003 01-03-2012
41A	Act A952 Act A1139 Act A1195	01-09-1999 03-03-2003 01-10-2003
42	Act A1082 Act A1420	15-08-2000 01-03-2012
43	Act A1195	01-10-2003
PART VIA	Act A1420	01-03-2012
43A	Act A1420	01-03-2012
PART VIB	Act A1420	01-03-2012
43B-43I	Act A1420	01-03-2012
44	Act A775	01-10-1990
45A	Act A1420	01-03-2012
46	Act A775	01-10-1990
48	Act A775	01-10-1990
49	Act A775	01-12-1987
50	Act A1195 Act A1420	01-10-2003 01-03-2012
50A	Act A1195	01-10-2003
50B	Act A1420	01-03-2012
51A	Act A1420	01-03-2012
52A	Act A1420	01-03-2012
53	Act A1139	03-03-2003
54	Act A775 Act A1195	01-10-1990 01-10-2003

*Copyright*

Section	Amending authority	In force from
55	Act A775	01-12-1987
56	Act A775	01-12-1987
58	Act A775	01-10-1990
	Act A952	01-09-1999
	Act A994	01-04-1999
59	Act A775	01-12-1987
59A	Act A775	01-12-1987
	Act A1082	15-08-2000
59B	Act A994	01-04-1999
61	Act A775	01-12-1987
Throughout the Act	Act A1420	01-03-2012

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