

# **COPYRIGHT ACT 1987**

**(Act 332)**

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# **COPYRIGHT ACT 1987**

## **(Act 332)**

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

[ 1.12.1987 ]

BE IT ENACTED by the Duli Yang Maha Muiia 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**

#### **1. Short title, application and commencement.**

(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.

#### **2. Extent of application.**

(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.

#### **3. Interpretation.**

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;

"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;

"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 photographs 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;
- if 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 the transmitting, 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 by cable" - *(Deleted)*.

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

"communication to the public" - *(Deleted)*.

"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", "Deputy Controller" and "Assistant Controller" means respectively the Controller of Copyright, the Deputy Controller of Copyright and an Assistant Controller of Copyright appointed under section 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;

"derivative works" means the works mentioned in paragraphs

(a) and (b) of subsection (1) of section 8;

"educational institution" shall have the same meaning as assigned to it in the Education Act 1961;

"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 sound-track 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;

"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 live 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 other organization 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 include the granting of licences covering works of more than one author;

"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) encyclopaedias, 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;

"live 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 live performance of a sporting activity; or

(iii) a participation in a live 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, unless otherwise stated, the Minister charged with the responsibility for copyright matters;



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

"performer" means a person who performs a live performance under this Act; .

"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, and includes any such place in the open air, 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 (3) or section 16A;

"relevant day" means Merdeka Day in respect of West 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 work in any form or version, and in relation to an artistic work includes the making of a copy in three dimensions of a twodimensional 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 sound-track associated with a film;

"Tribunal" means the Copyright Tribunal established under section 28; and

"work of joint authorship" means a work produced by the colla-boration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors.

#### **4. Publication.**

(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 live performance shall be deemed to have been published only if a copy or copies of the fixed live 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 live performance was first published in Malaysia and not elsewhere; or
- (b) the work or live 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 live performance is published, that part shall be treated for the purposes of this Act as a separate work or live performance, as the case may be,

## **5. Appointment and powers of Controller, Deputy Controllers, etc.**

(1) The Minister may appoint a Controller of Copyright and such number of Deputy Controllers of Copyright, Assistant Controllers of Copyright and other officers as may be necessary for the purposes of this Act.

(2) The Controller shall, subject to the general direction and control of the Minister, have supervision of all matters relating to copyright under this Act.

(3) The powers and functions of the Controller and the duties required to be discharged by him may be exercised and discharged by any Deputy Controller.

(4) The Controller or Deputy Controllers may perform such duties and exercise such powers and functions conferred upon an Assistant Controller by this Act.

(5) The Controller, Deputy Controllers and Assistant Controllers shall be deemed to be public servants within the meaning of the Penal Code.

## PART II GENERAL PROVISIONS

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

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

### **7. Works eligible for copyright.**

(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) Copyright in any design which is capable of being registered under any written law relating to industrial design, but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his licence, by any other person.

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

- (a) the United Kingdom Designs (Protection) Act 1949;
- (b) the United Kingdom Designs (Protection) Ordinance of Sabah; and
- (c) the Designs (United Kingdom) Ordinance of Sarawak.

### **8. Derivative works.**

(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 or collections of mere data, whether in machine readable or other form, eligible for copyright which, by reason of the selection and arrangement of their contents, constitute intellectual creation.

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

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

(1) Copyright shall subsist, subject to the provisions of this Act, in every published edition of anyone 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 the purposes of research, private study, criticism, review or the reporting of 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.

#### **10. Qualification for protection.**

(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.

#### **IOA. Qualification for protection of performer.**

Performers' right shall subsist in every live 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.

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

(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.

#### **12. Administration of Government copyright.**

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**

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

- (1) Copyright in a literary, musical or artistic work, a film, a sound recording or a derivative work shall be the exclusive right to control in Malaysia
- (a) the reproduction in any material form provided that, without prejudice to paragraph (e), 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;

- (aa) the communication to the public;
- (b) the performance, showing or playing to the public;
- (c) *(Deleted)*;
- (d) *(Deleted)*;
- (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.

(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 for purposes of non-profit research, private study, criticism, review or the reporting of current events, subject to the condition that if such use is public, it is accompanied by an acknowledgement of the title of the work and its authorship, except where the work is in connection with the doing of any of such acts for the purposes of non-profit research, private study and the reporting of 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 repro graphic copy of a musical work shall not be made for use by an examination candidate in performing the work;
- (g) the recording 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 of copies of television broadcasts which are subtitled or otherwise modified for people who are deaf or hard of hearing, or physically or mentally handicapped in other ways and the issuing of such copies to the public by non-profit making bodies or institutions which the Minister may, by order, prescribe;

(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 wholly-owned by the Government 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 nonprofit making club or institution where such performance, showing or playing is for charitable or educational purposes 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; and
- (P) the commercial rental of computer programs, where the program is not the essential object of the rental.

(3) For the purposes of subsection (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.

### **13A. Design documents and models.**

(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.

### **13B. Effect of exploitation of design derived from artistic work.**

(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 section and sections 13A and 13e as copies of the work; and

(b) marketing such articles in Malaysia or elsewhere.

(2) Without prejudice to the provisions of subsection (6) of section 7, 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.

### **13.C. Things done in reliance on registration of design.**

(1) The copyright in an artistic work is not infringed by anything done

(a) in pursuance of an assignment or licence made or granted

by a person registered under the Registered Designs Act 1949 of the United Kingdom or under any written law enforced in Malaysia at the material time as the proprietor or owner of a corresponding design; and

(b) in good faith in reliance on the registration and without notice of any proceedings for the cancellation of the registration or for rectifying the relevant entry in the register of designs, notwithstanding any defect that may afterwards be discovered in the registration.

(2) In subsection (1) a "corresponding design", in relation to an artistic work, means a design or an industrial design, as the case may be, within the meaning of the Registered Designs Act 1949 of the United Kingdom or any written law enforced in Malaysia at the material time which if applied to an article would produce something which would be treated for the purposes of this section and sections 13A and 13B as a copy of the artistic work.

(3) For the purpose of this section, "any written law enforced in Malaysia at the material time" includes:

- (a) the United Kingdom Designs (Protection) Act 1949;
- (b) the United Kingdom Designs (Protection) Ordinance of Sabah; and
- (c) the Designs (United Kingdom) Ordinance of Sarawak.

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

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.

#### **15. Nature of copyright in broadcasts.**

(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 (a), (g), (gg), (ggg), (gggg), (h) and (l) of subsection (2) of section 13 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.

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

(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.

#### **16A. Nature of performers' right.**

(1) Performers' right shall be the exclusive right to control in Malaysia

(a) the communication to the public of a live performance, except where the live 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 live performance if

(i) the fixation itself was done without the performer's consent;

(ii) the reproduction is made for purposes different from those for which the performer gave consent; or

(iii) the fixation was made in accordance with the provisions of subsection (3), and the reproduction is made for purposes different from those referred to in those provisions;

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

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

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

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

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

(iii) made solely for the purpose of a judicial proceeding or the giving of professional advice by a legal practitioner;

(c) an indirect sound recording or film of a live 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 live performance made by a broadcaster who has the consent of the performer to broadcast the live performance, being a recording made solely for the purpose of making that broadcast provided that it is destroyed before the end of the period of twelve months beginning on the day on which any of those copies is first used for broadcasting the live performance;

(e) a direct or an indirect sound recording or an indirect film of a live performance made by a person who reasonably believes, due to a fraudulent or innocent misrepresentation made to the person, that the performer has authorised the making of the recording by the person;

(j) 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 live performance, means made directly from a live performance;

"indirect" in relation to a sound recording or film of a live performance, means made from a broadcast or rebroadcast of the live performance.

#### **.16B. Equitable remuneration.**

(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 a single payment or at the time of the transfer of the rental right.

(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 live performance.

(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;

"rental right" means the right under subsection (1)(e) of section 16A.

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

(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 fifty years 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.

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

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.

#### **19. Duration of copyright in sound recordings.**

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.

#### **20. Duration of copyright in broadcasts.**

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*).**

#### **22. Duration of copyright in films.**

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 or first made available to the public or made, whichever is the latest.

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

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.

#### **23A. Duration of performers' Rights.**

Rights in a live 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 live performance was given.

**23B. Duration of an equitable remuneration.**

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*).**

**25. Moral rights.**

(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.

**25A. Moral right of a performer.**

(1) A performer shall, as regards his live performance or live performance fixed in phonogram, have the right

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

(3) For the purpose of this section, "phonogram" means the fixation of the sound of a live 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.

**26. First ownership of copyright.**

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

- (2) Notwithstanding subsection (6) of section 27, 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 (b) and (c) of subsection (4) shall cease to apply when the identity of the author becomes known.

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

(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**

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

Sections 27B to 27G shall apply to



(a) licensing schemes operated by licensing bodies in relation to the copyright in literary or musical works, so far as they relate to licences for

- (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) licensing schemes operated by licensing bodies in relation to the copyright in any other works, so far as they relate to licences for

- (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, "licensing scheme" means a licensing scheme of any of those descriptions.

#### **27B. Reference of proposed licensing scheme to Tribunal.**

(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.

#### **27 c. Reference of licensing scheme to Tribunal.**

(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; or
- (b) ,an organization claiming to be representative of such persons,

that person or organization may refer the licensing scheme to the Tribunal in so far as it relates case 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.

#### **27D. Further reference of licensing scheme to Tribunal.**

(1) 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; or
- (c) an organization claiming to be representative of such persons,

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.

#### **27E. Application for grant of licence in connection with licensing scheme.**

(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.

#### **27F. Application for review of order as to entitlement to licence.**

(1) Where the Tribunal has made an order under section 27F 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

#### **27G. Effect of order of Tribunal as to licensing scheme.**

(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 (a) of subsection (2) 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.

#### **27H. Licences to which sections 271 to 27L apply.**

Sections 271 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.

**27i. Reference to Tribunal of terms of proposed licence.**

(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.

**27J. Reference to Tribunal of expiring licence.**

(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.

**27K. Application for review of order as to licence.**

(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.

**27L. Effect of order of Tribunal as to licence.**

(1) Where the Tribunal has made an order under section 271 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
- (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.

(2) The benefit of the order may be assigned

- (a) in the case of an order under section 271, 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 271 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 (a) of subsection (1) 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

**28. Establishment of Copyright Tribunal.**

There shall be established a tribunal to be known as the Copyright Tribunal.

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

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

- (a) a Chairman;
- (b) a Deputy Chairman; and
- (c) not more than twenty persons as the Minister considers fit and proper to be members of the Tribunal.

(2) The Chairman, Deputy Chairman 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 Chairman 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 Chairman 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 Chairman 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.

## **30. Proceedings before the Tribunal.**

(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 another member of the Tribunal 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 or the member presiding 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 appoint from amongst the remaining members a new chairman for the purposes of the continued proceedings.

### **30A. Reference of questions of law to High Court.**

(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.

### **31. Licence to produce and publish translation.**

(1) Any person may apply to the Tribunal for a licence to produce and publish in the national language 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*, 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* 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 find 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 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 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 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).***

**33. Tribunal may request for information.**

(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.

**34. No action to lie against Tribunal.**

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.

**35. Regulations relating to Tribunal.**

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

**36. Infringements.**

(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) Copyright is infringed by any person who circumvents or causes any other person to circumvent any effective technological measures that are used by authors in connection with the exercise of their rights under this Act and that restrict acts, in respect Of their works, which are not authorized by the authors concerned or permitted by law.

(4) Copyright is infringed by any person who knowingly performs any of the following acts knowing or having reasonable grounds to know that it will induce, enable, facilitate or conceal an infringement of any right under this Act:

(a) the removal or alteration *of* any electronic rights management information without authority;

(b) the distribution, importation for distribution or communication to the public, without authority, *of* works or copies *of* works knowing that electronic rights management information has been removed or altered without authority.

(5) For the purpose *of* subsection (4) and section 41, "rights management information" means information which identifies the works, the author *of* the work, the owner *of* any right in the work, or information about the terms and conditions *of* use *of* the work, any numbers or codes that represent such information, when any *of* these items *of* information is attached to a copy *of* a work or appears in connection with the communication *of* a work to the public.

### 37. Action by owner of copyright and relief.

(1) Subject *to* this Act, infringements *of* copyright shall be action-able at the suit *of* the owner *of* the copyright and in any action for such an infringement, all such relief by way *of* damages, injunction, accounts or otherwise, shall be available to the plaintiff as are available in any corresponding proceedings in respect *of* infringement *of* other proprietary rights.

(2) Where in an action under this section, an infringement *of* copyright is proved or admitted, and the court, having regard, in addition to all other material considerations to

(a) the flagrancy *of* the infringement; and

(b) any benefit shown to have accrued to the defendant by reason *of* the infringement,

is satisfied that effective relief would not otherwise be available to the plaintiff, the court in assessing damages for the infringement, shall have power to award such additional damages by virtue of this subsection as the court may consider appropriate in the circumstances.

(3) No injunction shall be issued in proceedings for infringement of copyright which requires a completed or partly built building to be demolished or which prevents the completion of a partly built building.

(4) For the purposes of this section and section 38

(a) "action" includes a counter-claim, and reference to the plaintiff and to the defendant in an action shall be construed accordingly; and

(b) "court" means the appropriate High Court in Malaysia.

(5) For the purposes of this section, owner of the copyright means the first owner or an assignee, as the case may be, of the relevant part of the copyright.

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

(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 judgement or order for the payment of damages in respect of an infringement of copyright shall be given *or* made under section 37, if a final judgement *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 judgement *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 judgement *or* order has been given *or* made awarding either 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.

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

(1) The owner of copyright in any work, or any person authorised 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 will 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)*.

(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.

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

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

**40. Back-up copy of computer program.**

(1) Subject to subsection

(2), 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,

**41. Offences.**

(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) possesses, 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 the circumvention of any effective technological measures referred to in subsection (3) of section 36;

(i) removes or alters any electronic rights management information 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 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 (j), to a fine not exceeding ten 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 not exceeding twenty 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 paragraph (g), to a fine not exceeding twenty 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 not exceeding forty 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 three 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 five years or to both.

(2) For the purposes of paragraphs (a) to (j) of subsection (1), 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 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, secretary or manager of the body corporate or, as the case may be, every other partner in the firm shall be deemed to be guilty of the offence 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.

#### **41A. Compounding of offences.**

(1) The Controller or a Deputy Controller may compound any offence under this Act 'Or subsidiary legislation made thereunder 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) The power to compound offences under subsection (1) shall be exercised by the Controller or the Deputy Controller personally,

#### **42. Affidavit admissible in evidence.**

(1) An affidavit 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 therein 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 live performance eligible *for* performers' right under this Act stating that

(i) at the time specified therein performers' right subsisted in such live 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 live performance,

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

(2) Any person who *for* the purposes of subsection (1) shall

(3) *(Deleted)*.

#### **43. Penalty.**

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 not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

## **PART VII ENFORCEMENT**

#### **44. Entry by warrant or otherwise.**

(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, 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, 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 the provisions of 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.

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

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 thereinto;

- (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.

#### **46. List of things seized.**

(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.

#### **47. Sealing of things.**

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.

#### **48. Obstruction to search, etc.**

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 (1) of section 42, 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 (1) of section 42,

shall be guilty of an offence.

#### **49. Warrant admissible notwithstanding defects, etc.**

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.

#### **50. Powers of investigation.**

(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 except that the power to arrest without warrant given by the Criminal Procedure Code in any seizable offence may not be exercised by any Assistant Controller.

#### **51. Admissibility of statement.**

(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.

## **52. Disclosure of information.**

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.

## **53. Conduct of prosecution in court.**

Any criminal prosecution before the Sessions Court for an offence under this Act or subsidiary legislation made thereunder may be conducted by an Assistant Controller or a police officer not below the rank of Inspector.

## **54. Forfeiture of articles.**

(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 destroyed 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.

**55. Proportional examination of articles seized to be accepted.**

(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.

**56. Protection of informers from discovery.**

(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.

**57. Protection of Assistant Controllers and police officers.**

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).**

### **59. Regulations.**

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

#### **59A. Extension of application of Act.**

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

(2) Reference in subsection (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 live 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 as they apply in relation to works made or live 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.

(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 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 subjectmatter 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 live 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.

#### **59B. Power of Minister to exclude from definition of "broadcast"**

(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.

#### **60. SAVINGS**

(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.

## **61. Repeal.**

The Copyright Act 1969 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.

**Note:** Section 12 of the amending Act A952 providing for the *Transitional and savings* clause reads as follows:

"Nothing in this Act shall affect

- (a) proceedings commenced under section 58 of the principal Act before the date of coming into force of this Act and still pending immediately prior to the date of coming into force of this Act; and
- (b) works in which copyright subsisted immediately prior to the date of coming into force of this Act,

and the provisions of the principal Act and any regulations made thereunder shall continue to apply to such proceedings or works, as the case may be, as if the principal Act had not been amended by this Act."

## **COPYRIGHT ACT 1987**

**(Act 332)**

### **LIST OF AMENDMENTS**

<i>Amending law</i>	<i>Short title/Sections affected</i>	<i>In force from</i>
Act A775	Copyright (Amendment) Act 1990 s. 2 3, 8, 9, 39, 49, 55, 56, 59, 59A 61 s. 3,9, 13, 15,24,36,39,41,44,46,48, 54,58	1.12.1987 1.10.1990
Act A952	Copyright (Amendment) Act 1996 s. 3, 7, 13A, 13B, 13C, 27 A, 27B, 27C 27D, 27E, 27F, 27G, 27H, 27I, 27J, 27K, 27L, 29, 30, 30A, 32, 41A, 58	1.9.1999
Act A994	Copyright (Amendment) Act 1997 s. 3, 7,13,15, 17,21,25,36,41,58, 59B	1.4.1999
Act A1082	Copyright (Amendment) Act 2000 s. 3, 4, 8, 10A (new), 13, 16A (new), 16B (new), 17, 18, 19,20,22,23, 23A (new), 23B (new), 25A (new), 27A, 27H, 39, 39A (new), 41, 42, 59A	15.8.2000