

A BILL

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An Act to amend the Copyright Act 1987.

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BE IT ENACTED by the Duli Yang Maha Mulia 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:

1. (1) This Act may be cited as the Copyright (Amendment) Act 1990, Short title and commencement.

(2) Except for sections 2, 3 (a), 3 (c), 3 (e), 4, 5 (a), 10 (a), 15, 17, 18, 20, 21 and 22, this Act shall come into force on the 1st October 1990.

(3) Sections 2, 3 (a), 3 (c), 3 (e), 4, 5 (a), 10 (a), 15, 17, 18, 20, 21 and 22 of this Act shall be deemed to have come into force on the 1st December 1987.

2. The Copyright Act 1987, which in this Act is referred to as the "principal Act", is amended by substituting for section 2 the following: Substitution of section 2. Act332.

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

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

(2) Where only by virtue of subsection (1) copyrights subsist in works that were made before the commencement of this Act, nothing done before

the commencement of this Act shall be taken to constitute an infringement of those copyrights.

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

Amendment
of section 3.

3. Section 3 of the principal Act is amended—

- (a) by inserting, immediately after the words "or models" appearing in paragraph (d) of the definition of "artistic work", the words "of buildings";
- (b) by deleting the definition of "communication to the public";
- (c) by inserting, immediately after the definition of the word "copyright", the following new definition:
 - ' "derivative works" means the works mentioned in paragraphs (a) and (b) of subsection (1) of section 8; '
- (d) by inserting, immediately after the words "copyright in the work" appearing in the definition of "infringing copy", the words "or, in the case of any article imported into Malaysia without the consent or licence of the owner of the copyright, the making of which was carried out without the consent of the owner of the copyright"; and
- (e) by substituting for paragraph (h) of the definition of "literary work" the following:
 - "(h) computer programs or compilations of computer programs,
 - but does not include official texts of the Government or statutory bodies of a legislative or regulatory nature, or judicial decisions;"

Amendment
of section 8.

4. Subsection (1) of section 8 of the principal Act is amended by substituting for the words "literary, musical or artistic works" appearing in paragraphs (a) and (b) the words "works eligible for copyright".

5. Section 9 of the principal Act is amended—

Amendment
of section 9.

- (a) by deleting the words ", or in another country to which this section extends" appearing in paragraph (a) of subsection (1);
- (b) by substituting for the word "The" appearing in subsection (3) the words "Subject to the provisions of this Act, the"; and
- (c) by inserting, immediately after subsection (3), the following new subsections (4) and (5):

"(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 acknowledgment 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."

6. (1) Subsection (1) of section 13 of the principal Act is amended—

Amendment
of section 13.

- (a) by substituting for paragraph (b) the following:

"(b) the performance, showing or playing to the public;"

- (b) by substituting for paragraph (e) the following:
 - "(e) the distribution of copies of the work to the public by sale, rental, lease or lending,";
- (c) by substituting for the colon a fullstop; and
- (d) by deleting the proviso.

(2) Subsection (2) of section 13 of the principal Act is amended—

- (a) by inserting, immediately after the word "criticism" appearing in paragraph (a), the word ", review";
- (b) by substituting for the words "incidentally included in a broadcast" appearing in paragraph (a) the words "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";
- (c) by substituting for paragraph (e) the following:
 - "(e) the incidental inclusion of a work in an artistic work, sound recording, film or broadcast";
- (d) by substituting for the words "communication to the public" appearing in paragraph (f) the words "performance, showing or playing to the public";
- (e) by inserting, immediately after paragraph (f), the following new paragraph (ff):
 - "(ff) any use of a work for the purpose of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions:
 - Provided that a reprographic copy of a musical work shall not be made for use by an examination candidate in performing the work;"
- (f) by inserting, immediately after paragraph (g), the following new paragraphs (gg) and (ggg):
 - "(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;"

(g) by substituting for the word "communication" appearing in subparagraph (ii) of paragraph (i) the words "performance, showing or playing";

(h) by substituting for paragraph (f) the following:

"(k) the performance, showing or playing of a work by a non-profit making club or institution where such performance, showing or playing is for charitable or educational purpose and is in a place where no admission fee is charged in respect of such performance, showing or playing;"

(i) by substituting for paragraph (l) the following:

"(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 ;";

(j) by substituting for the word "communication" wherever it appears in paragraph (n) the word "showing"; and

(k) by substituting for the word "communication" appearing in paragraph (o) the words "performance, showing or playing".

(3) Section 13 of the principal Act is amended by inserting, immediately after subsection (2), the following new subsection (3):

"(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."

Amendment
of section 15.

7. Section 15 is amended—

- (a) by substituting for the word "communication" appearing in subsection (1) the words "performance, showing or playing"; and
- (b) by inserting, immediately after the letter "(g)," appearing in subsection (2), the letters "(gg), (ggg),".

Deletion of
section 24.

8. The principal Act is amended by deleting section 24.

Amendment
of section 36.

9. Section 36 of the principal Act is amended by substituting for subsection (2) the following subsection (2):

"(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."

10. Section 39 of the principal Act is amended— Amendment
of section 39.
- (a) by inserting, in the English language text of the principal Act, immediately after the words "under subsection (4) and shall" appearing in the proviso to subsection (1), the word "not";
- (b) by substituting for subsection (2) the following:
- "(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.";
- (c) by substituting for subsection (3) the following:
- "(3) Where a notice has been given under this section in respect of a work and has not been withdrawn, the importation of any infringing copies into Malaysia for the duration of the period specified in the 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."; and
- (d) by inserting, immediately after the word "prohibited" appearing in subsection (6), the words "from being imported into Malaysia".
11. Section 41 of the principal Act is amended by substituting for paragraph (f) of subsection (1) the following: Amendment
of section 41.
- "(f) imports into Malaysia, otherwise than for his private and domestic use, an infringing copy; or".
12. Section 44 of the principal Act is amended— Amendment
of section 44.
- (a) by inserting, immediately after the word "article," wherever it appears in subsections (1) and (2), the word "vehicle,";
- (b) by inserting, immediately after subsection (1), the following new subsection f(1A):
- "(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.";

(c) by substituting for subsection (2) the following:

"(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."; and

(d) by inserting, immediately after subsection (2), the following new subsection (3):

"(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."

13. Subsection (1) of section 46 of the principal Act is amended— Amendment
of section 46.

- (a) by inserting, immediately after the words "infringing copy,", the words "any copy suspected to be an infringing copy,"; and
- (b) by inserting, immediately after the word "article,", the word "vehicle,"

14. Section 48 of the principal Act is amended— Amendment
of section 48.

- (a) by inserting, immediately after the word "search" appearing in the marginal note, the word ", etc.";
- (b) by deleting the word "or" appearing immediately after the words "power to give;" in paragraph (c);
- (c) by substituting for paragraph (d) the following:
 - "(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"; and
- (d) by inserting, immediately after paragraph (d), the following new paragraph (e):
 - "(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,".

- Substitution of section 49. 15. The principal Act is amended by substituting for section 49 the following:
- "Warrant admissible notwithstanding defects, etc. 49. A warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the warrant or in the application for such warrant and any copy, contrivance, article, vehicle, book or document seized under such warrant shall be admissible in evidence in any proceedings under this Act."
- Amendment of section 54. 16. Section 54 of the principal Act is amended by inserting, immediately after the word "article," wherever it appears in that section, the word "vehicle,".
- Amendment of section 55. 17. Subsection (1) of section 55 of the principal Act is amended by substituting for the words "of infringing any copyright" the words "to be infringing copies".
- Amendment of section 56. 18. Section 56 of the principal Act is amended by substituting for the word "practical" appearing in subsection (3) the word "material".
- Amendment of section 58. 19. Subsection (2) of section 58 of the principal Act is amended by substituting for the words "communicate in public" appearing in paragraphs (a) and (b) the words "perform, show or play in public".
- Substitution of section 59. 20. The principal Act is amended by substituting for section 59 the following:
- "Regulations. 59. The Minister may make regulations for the carrying out of the provisions of this Act."
- New section 59A. 21. The principal Act is amended by inserting, immediately after section 59, the following new section 59A:
- "Extension of application of Act. 59A. (1) The Minister may make regulations applying any of the provisions of this Act specified in the regulations, in relation to a country so specified in the regulations (which in this section is referred to as the "specified country"), which may or may not be a party to a treaty or a member of any Convention or Union relating to copyright

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; and

(g) apply in relation to derivative works in that specified country as they apply in relation to derivative works 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 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 after that date.

(5) The regulations made under subsection (1) shall not be construed as reviving any copyrights 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 subject-matter

to which those provisions relate, provision has been or will be made under the laws of that specified country whereby adequate protection will be given to owners of copyright under this Act.

(7) Where only by virtue of the regulations made under subsection (1), copyrights subsist in works that were made before the commencement of such regulations, nothing done before the commencement of such regulations shall be taken to constitute an infringement of those copyrights."

22. Section 61 of the principal Act is amended by substituting for paragraph (c) of the proviso the following: Amendment of section 61.

"(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."

EXPLANATORY STATEMENT

This Bill seeks to amend the Copyright Act 1987.

2. In view of the Government's decision for Malaysia to become a party to the Berne Convention for the Protection of Literary and Artistic Works 1886 (including all acts, protocols and revisions thereto) (hereinafter referred to as "the Berne Convention"), the proposed Bill primarily seeks to make the provisions of the Act not only compatible with the provisions of the Berne Convention but also to enable Malaysia to fulfill her obligations, upon becoming a party to the Berne Convention, under the Berne Convention. *Clauses 2, 6, 7, 8, 19, 20 and 21* therefore seek to amend the Copyright Act 1987 towards these ends.

3. *Clause 2* seeks to amend section 2 of the Act so as to make it clear that though the Act is therein stated to apply to works made before the commencement of the Act as it applies to works made after the commencement of the Act, the Act's application to "foreign works" by virtue of the Berne Convention will have to be subjected to the provisions of the new section 59A, as introduced by *clause 21*, and regulations made under section 59A.

4. *Clause 6* seeks to amend section 13 of the Act to firstly, provide more specifically copyright in the activities described in paragraphs (b) and (e) of subsection (1) of section 13, Secondly, to delete the proviso to subsection (1) in view of the difficulties posed by having to comply with its provisions. Thirdly, to amend subsection (2) so as to provide in subsection (2) as many areas of activities as are permissible under the terms of the Berne Convention which are not subject to copyright control. Of particular note is the introduction of new paragraphs (ff), (gg) and (ggg) where 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; the making of a sound recording of a broadcast, a literary, dramatic or musical work, sound recording or a film included in a broadcast insofar as it consists of sounds if such sound recording is for the private and domestic use of the person by whom the sound recording is made; and 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, respectively, are exempted from copyright control. Paragraph (1) of subsection (2) of section 13 of the Act has been amended to provide further for the exclusion of copyright control over any use of a work for the purposes of the proceedings of a royal commission, a legislative body, a statutory or Governmental inquiry or for the purpose of reporting any such proceedings. Fourthly, to make consequential amendments to section 13.

5. *Clauses 7 and 19* seek to make consequential amendments to sections 15 and 58 (2) of the Act respectively in view of the amendments made to section 13.

6. *Clause 8* seeks to delete the whole of section 24 which has been generally viewed as being incompatible with the Berne Convention.

7. *Clause 20* seeks to amend section 59 of the Act by taking out the aspect of the Minister making regulations extending the application of the Act in respect of such works referred to in subsection (1) of section 7 to individuals in, bodies corporate established in or under the laws of, works first published in, works of architecture erected in a building located in, broadcasts transmitted from, a country which is a party to a treaty or a member of any Convention or Union to which Malaysia is also a party or a member and which treaty or Convention provides for protection of copyright in works. This aspect of section 59 is provided for by *clause 21* which seeks to introduce a new section 59A to the Act. The new section 59A essentially seeks to provide more clearly the powers of the Minister to make regulations in order to put into effect Malaysia's obligation to extend copyright protection under the Act to "foreign works" under a treaty or a Convention or Union relating to copyright should Malaysia become a party to such a treaty or a member of such a Convention or Union.

8. *Clauses 3, 4, 5, 10, 11, 15, 17, 18 and 22* generally seek to make consequential amendments to the Act as well as to clarify or provide more specifically certain provisions of the Act.

9. *Clause 9* seeks to amend subsection (2) of section 36 of the Act to make it an act of copyright infringement for a person to import any article into Malaysia for the purposes enumerated in that subsection if the importation is without the consent or licence of the copyright owner and the importer knows or ought reasonably to know that the making of the article was carried out without the consent or licence of the copyright owner.

10. *Clauses 12, 13, 14 and 16* seek to amend sections 44, 46 (1), 48 and 54 of the Act respectively in order to generally enhance the powers of enforcement under the Act.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

- [PN. (U²) 1095.]