

Act A1082
Copyright (Amendment) Act 2000

Long Title & Preamble

An Act to amend the Copyright Act 1987.

ENACTED by the Parliament of Malaysia as follows:

Section 1. Short title and commencement.

(1) This Act may be cited as the **Copyright (Amendment) Act 2000**.

(2) This Act shall come into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Section 2. Amendment of section 3

The Copyright Act 1987 [Act 332], which in this Act is referred to as the "principal Act", is amended in section 3-

(a) in the definition of "artistic work"-

(i) by substituting for the semicolon at the end of paragraph (c) a comma; and

(ii) by inserting below paragraph (c) the following words:

"but does not include a layout-design within the meaning of the Layout-
Designs of Integrated Circuits Act 2000 [Act 60];";

(b) in the definition of "communication to the public" by inserting after the word "work" wherever it appears the words "or live performance";

(c) by substituting for the definition of "infringing copy" the following definition:
' "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;';

(d) by inserting after the definition of "literary work" the following definition:

' "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;'

(e) by inserting after the definition of "musical work" the following definitions:

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

"performers' right" means the performers' right under this Act;';

(f) by inserting after the definition of "rebroadcast" the following definition:

' "recording" means a sound recording or film, other than a recording made under subsection (3) of section 16A;'; and

(g) in the definition of "sound recording" by inserting after the word "sounds" the words "or of a representation of sounds".

Section 3. Amendment of section 4

Section 4 of the principal Act is amended-

(a) in paragraph (1)(b), by deleting the word "and" at the end of the paragraph:

(b) in paragraph (1)(c), by substituting for the full stop the words "; and" and by inserting thereafter the following paragraph:

"(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.";

(c) in subsection (3), by inserting after the word "work" wherever it appears the words "or live performance"; and
(d) in subsection (4)-

(i) by inserting after the word "work" the words "or live performance"; and

(ii) by inserting after the words "separate work" the words "or live performance, as the case may be,".

Section 4. Amendment of section 8

Paragraph 8(1) (b) of the principal Act is amended by inserting after the word "works" the words "or collections of mere data, whether in machine readable or other form,".

Section 5. New section 10A

The principal Act is amended by inserting after section 10 the following section:

"Qualification for protection of performer.

10A. 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

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

Section 6. Amendment of section 13

Section 13 of the principal Act is amended-

(a) in subsection (1) , by inserting after the word "form" at the end of that subsection the words "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"; and

(b) in subsection (2) , in the national language text, by substituting for the word "pelajaran" wherever it appears the word "pendidikan".

Section 7. New sections 16A and 16B

The principal Act is amended by inserting after section 16 the following sections:

"Nature of performers' right.

- 16A. (1) Performers' right shall be the exclusive right to control in Malaysia-
- (a) the communication to the public of a live performance, except where the live performance used in such communication is itself a live broadcast performance;
 - (b) the fixation of an unfixated 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;

(f) a copy of a sound recording or film referred to in paragraphs (a) , (b) , (c) and (d) , being a copy made solely for a purpose referred to in any of those paragraphs;

(g) a copy of a sound recording or film referred to in paragraph (e) , being a copy made solely for the purpose referred to in that paragraph; and

(h) a copy of a sound recording or film referred to in paragraph (f) , being a copy made-

(i) by a person who believes, due to a fraudulent or innocent representation made to the person, that the performer has consented to the making of the copy; or

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

(4) For the purpose of this section-

"direct" in relation to a sound recording or film of a 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 re-broadcast of the live performance.

Equitable remuneration.

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

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

Section 8. Amendment of section 17

Section 17 of the principal Act is amended-

(a) in subsection (1) -

(i) by inserting after the word "work" the words "which subsists in such work under this Act"; and

(ii) by substituting for the words "and fifty years" the words "and shall continue to subsist until the expiry of a period of fifty years";

(b) in subsection (2) , by substituting for the words "shall subsist until fifty years" the words "which subsists in such work under this Act shall continue to subsist until the expiry of a period of fifty years computed"; and

(c) by substituting for subsection (3) the following subsection:

"(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) . "

Section 9. Amendment of section 18

Section 18 of the principal Act is amended by substituting for the words "in a published edition shall subsist until fifty years" the words "which subsists in a published edition under this Act shall continue to subsist until the expiry of a period of fifty years computed".

Section 10. Substitution of section 19

The principal Act is amended by substituting for section 19 the following section:

"Duration of copyright in sound recording.

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

Section 11. Amendment of section 20

Section 20 of the principal Act is amended by substituting for the words "in a broadcast shall

subsist until fifty years" the words "which subsists in a broadcast under this Act shall continue to subsist until the expiry of a period of fifty years computed".

Section 12. Substitution of section 22

The principal Act is amended by substituting for section 22 the following section:

"Duration of copyright in film.

22. Copyright which subsists in a film under this Act shall continue to subsist until the expiry of a period of fifty years computed from the beginning of the calendar year next following the year in which the film was first published or first made available to the public or made, whichever is the latest. "

Section 13. Amendment of section 23

Section 23 of the principal Act is amended-

(a) by inserting after the word "Copyright" the words "which subsists"; and

(b) by substituting for the words "shall subsist until fifty years" the words "under this Act shall continue to subsist until the expiry of a period of fifty years computed".

Section 14. New sections 23A and 23B

The principal Act is amended by inserting after section 23 the following sections:

"Duration of performers' rights.

23A. 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.

Duration of an equitable remuneration.

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

Section 15. New section 25A

The principal Act is amended by inserting after section 25 the following section:

"Moral right of a performer.

25A. (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 sounds 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. "

Section 16. Amendment of section 27A

Section 27A of the principal Act is amended-

(a) in subparagraph (a) (iii) , by substituting for the words "broadcasting or communicating the work by cable" the words "communicating the work to the public"; and

(b) in subparagraph (b) (iii) , by substituting for the words "broadcasting or communicating the work by cable" the words "communicating the work to the public".

Section 17. Amendment of section 27H

Section 27H of the principal Act is amended-

(a) in subparagraph (a) (iii) , by substituting for the words "broadcasting or communicating the work by cable" the words "communicating the work to the public"; and

(b) in subparagraph (b) (iii) , by substituting for the words "broadcasting or communicating the work by cable" the words "communicating the work to the public".

Section 18. Amendment of section 39

Section 39 of the principal Act is amended-

(a) by substituting for subsection (1) the following subsection:

"(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. ";

(b) by inserting after subsection (1) the following subsection:

"(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. ";

(c) by inserting after subsection (2) the following subsection:

"(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. ";

(d) by substituting for subsection (3) the following subsection:

"(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. ";

(e) by deleting subsection (4) ;

(f) by substituting for subsection (5) the following subsection:

"(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) . "; and

(g) by inserting after subsection (8) the following subsection:

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

Section 19. New section 39A

The principal Act is amended by inserting after section 39 the following section:

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

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

Section 20. Amendment of section 41

Section 41 of the principal Act is amended-

(a) in subsection (1) -

(i) by inserting after the words "in a work" the words "or performers' right"; and

(ii) by inserting after the words "that copyright" the words "or performers' right";
and

(b) in subsection (2) , by inserting after the word "work" the words "or recording".

Section 21. Amendment of section 42

Section 42 of the principal Act is amended-

(a) by substituting for subsection (1) the following subsection:

"(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. ";

(b) in subsection (2) , by substituting for the words "acts as an agent" the words "is authorised to act on behalf of the owner of the copyright or performer"; and

(c) by deleting subsection (3) .

Section 22. Amendment of section 59A

Section 59A of the principal Act is amended-

(a) by inserting after the words "relating to copyright" wherever they appear the words "or performers' right";

(b) in subsection (1) -

(i) by deleting the word "and" at the end of paragraph (f); and

(ii) by substituting for the full stop at the end of paragraph (g) the words "; and" and by inserting thereafter the following paragraph:

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

(c) in subsection (4) , by inserting after the words "works made" wherever they appear the words "or live performances performed, as the case may be,";

(d) in subsection (5) , by inserting after the word "copyrights" the words "or performers' rights";

(e) in subsection (6) , by inserting after the words "owners of copyright" the words "or performers"; and

(f) in subsection (7) -

(i) by inserting after the words "were made" the words ", or performers' rights subsist in live performances performed"; and

(ii) by inserting after the words "those copyrights" the words "or performers' rights, as the case may be,"