

**Act A952  
Copyright (Amendment) Act 1996**

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## **Long Title & Preamble**

An Act to amend the Copyright Act 1987.

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

### **Section 1. Short title and commencement.**

This Act may be cited as the Copyright (Amendment) Act 1996 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

### **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) by substituting for the definition of "artistic work" the following definition:

' "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;';

(b) by substituting for the definition of "building" the following definition:

' "building" includes any fixed structure, and a part of a building or fixed structure;';

(c) by inserting after the definition of "Government" the following definition:

' "graphic work" includes-

(a) any painting, drawing, diagram, map, chart or plan; and

(b) any engraving, etching, lithograph, woodcut or similar work;';

(d) by substituting for the definition of "licensing body" the following definition:

' "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;';

(e) by inserting after the definition of "licensing body" the following definition:

' "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;';

(f) by substituting for the definition of "photograph" the following definition:

' "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;';

(g) by substituting for the definition of "reproduction" the following definition:

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

(h) by inserting after the definition of "reproduction" the following definition:

' "sculpture" includes a cast or model made for the purposes of a sculpture;';

### **Section 3. Amendment of section 7.**

Section 7 of the principal Act is amended by inserting after subsection (4) the following subsections:

" (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 license, 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(Act 214);

(b) the United Kingdom Designs (Protection) Ordinance of Sabah(Sabah Cap.152.); and

(c) the Designs (United Kingdom) Ordinance of Sarawak(Sarawak Cap.59.).".

## **Section 4. New sections 13A,13B and 13C.**

The principal Act is amended by inserting after section 13 the following sections:

### **" 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 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 the design; or

(b) to issue to the public, or include in a film broadcast or cable program 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 means, articles falling to be treated for the purposes of this section and section 13A and 13C 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.

**13C. 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(12,13 & 14 Geo. VI c.88.) 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(Act 214);

(b) the United Kingdom Designs (Protection) Ordinance of Sabah(Sabah Cap. 152.); and

(c) the Designs (United Kingdom) Ordinance of Sarawak(Sarawak Cap. 59.) .".

**Section 5. New Part IVA.**

The principal Act is amended by inserting after Part IV the following Part:

PART IVA

COPYRIGHT LICENSING

**27A. Licensing schemes to which sections 27B to 27G 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) broadcasting or communicating the work by cable; 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) broadcasting or communicating the work by cable; 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.

#### **27C. 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 to cases of that description.

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

(3) The Tribunal shall consider the matter in dispute and make such order, either

confirming or varying the licensing scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

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

#### **27D. Further reference of licencing 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 licencing scheme.**

(1) A person who claims, in a case covered by a licensing scheme, that the operator of the licence 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 27E that a person is entitled to a licence under a licensing scheme, the operator of the licensing scheme or the original applicant may apply to the Tribunal to review its order.

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

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

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

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

#### **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 27I to 27L apply.**

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

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

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

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

- (i) making copies of the work;
- (ii) performing, showing or playing the work in public;
- (iii) broadcasting or communicating the work by cable; 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 27I or 27J and the order remains in force, the person entitled to the benefit of the order shall, if he-

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

(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 27I, if assignment is not prohibited under the terms of the Tribunal's order; and

(b) in the case of an order under section 27J, if assignment is not prohibited under the terms of the original licence.

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

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

(a) any necessary repayments, or further payments, shall be made in respect of charges already paid or payable; and

(b) the reference in paragraph (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."

## **Section 6. Amendment of section 29.**

Section 29 of the principal Act is amended-

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

" (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.";

(b) in subsections (2), (3), (5) and (6) by inserting after the word "Chairman" the words ", Deputy Chairman"; and

(c) by inserting after subsection (6) the following subsection:

" (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."

## **Section 7. Amendment of section 30.**

Section 30 of the principal Act is amended-

(a) in subsection (1)-

(i) by inserting after the words "disposed of by the Chairman" the words "or Deputy Chairman"; and

(ii) by substituting for the word "three" the word "two"; and

(b) by inserting after subsection (4) the following subsections:

" (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."

## **Section 8. New section 30A.**

The principal Act is amended by inserting after section 30 the following section:

### **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."

## **Section 9. Deletion of section 32.**

The principal Act is amended by deleting section 32.

## **Section 10. New section 41A.**

The principal Act is amended by inserting after section 41 the following section:

### **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."

## **Section 11. Deletion of section 58.**

The principal Act is amended by deleting section 58.

## **Section 12. Transitional and savings.**

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.