

# LHAG Insights

Intellectual Property, Sports & Gaming



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21 APRIL 2022

### Copyright (Amendment) Act 2022

The Copyright Act 1987 was recently amended via the Copyright (Amendment) Act 2022 to comply with international standards and practices in the Regional and Comprehensive Economic Partnership Agreement, the Marrakesh Treaty, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.<sup>1</sup> The Amendment Act came into force on 18 March 2022,<sup>2</sup> essentially tightening the law on offences relating to copyright and recognising streaming technologies. Here are 10 key amendments:

- (1) Author's Right to Make Voluntary Notification of Copyright Removed [Section 26A – Amendment]
  - The right of an author of a work to make a voluntary notification of copyright has been removed.
- (2) Personal Liability for Offence Relating to Streaming Technology [Section 43AA – New]
  - Any person who commits or facilitates copyright infringement by manufacturing, importing, selling, or letting for hire, distributing, or offering to the public a streaming technology commits an offence.
  - Where an offence is committed by a company, its director, chief executive officer, chief operating officer, or any person of a similar capacity, or any person responsible for the management of the

<sup>1</sup> Copyright (Amendment) Bill 2021, Explanatory Statement  
<sup>2</sup> See PU(B) 167/2022

affairs of the company (“**Officers**”), shall be deemed guilty of the offence.

- It shall be a defence for the Officers if they are able to prove the offence was committed without their consent or connivance, and that they exercised all due diligence to prevent the commission of the offence.
- The penalty upon conviction is a fine between RM10,000 and RM200,000, or imprisonment not exceeding 20 years, or both.

(3) Obstruction of Search [Section 48(f) – New Subsection]

- Any person who intentionally causes any evidence relating to the commission of an offence to disappear or who gives any information in respect of the offence which he knows or believes to be false, with the intention of screening the offender from legal punishment, commits an offence.

(4) Sharing Infringing Copies Online [Section 41(1)(k) – New Subsection]

- Any person who provides or shares access to an online location of any works or copies of works to any other person without authority commits an offence.
- Similar to —
  - offences under s 41(1)(a) to (j), it shall be a defence if the person is able to prove he acted in good faith and had no reasonable grounds for supposing that copyright would be infringed;
  - offences under s 41(1)(h), (i), and (j), the penalty upon conviction is a fine not exceeding RM250,000, or imprisonment not exceeding five years, or both and the penalty for any subsequent offence is a fine not exceeding RM500,000, or imprisonment not exceeding 10 years, or both.

(5) Powers of Assistant Controller, Police Officer, and Customs Officer [Section 39(6) – Amendment]

- Powers of search and seizure of infringing copies prohibited from being imported into Malaysia are conferred on any Assistant Controller, police officer not below the rank of Inspector, or any Customs

Officer, with or without an application made by the owner of copyright under s 39(1).

(6) Test Purchase [Section 51B – New]

- The Assistant Controller has the power to direct the copyright owner or any person authorised to act on behalf of the copyright owner to make test purchase of any goods as may appear expedient for the purpose of determining compliance of the Act.

(7) Provision of Information [Section 52B – New]

- The Assistant Controller has the power to direct any person to, *inter alia*, produce information and documents and appear before the Assistant Controller, if the Assistant Controller has reasons to believe the person:
  - has information or documents relevant to the performance of the Assistant Controller's powers; or
  - is capable of giving evidence which is relevant to the performance of the Assistant Controller's powers.
- Any person who refuses or fails to comply with the Assistant Controller's directions commits an offence.

(8) Collective Management Organization [Sections 27A and 27M – Amendment]

- Only companies limited by guarantee incorporated under the Companies Act 2016 (“**CLG**”) may apply to be declared as Collective Management Organisations for copyright owners, authors and performers.
- This declaration will last for two years and is renewable subject to a payment of surcharge.
- CLGs seeking to be declared as Collective Management Organisations are now required to additionally submit the constituent document relating to the collection and distribution of the licensing scheme to the Controller.
- The Controller is also now empowered to issue any guidelines on the declaration and operations of CMOs.

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- (9) Person with Print Disability [Section 16A(3)(c)(ii) – Amendment]
- An indirect sound recording, or a film of a performance made by a person with print disability himself, or any other person acting on his behalf including his caregiver, solely for the purpose of assisting people who are hearing impaired or persons with print disability, does not constitute copyright infringement.
- (10) Necessary Modification into Accessible Format Copy of a Work [Section 25(3A) – New Subsection]
- Where a work is modified into an accessible format copy by a person with print disability himself, or any other person acting on his behalf including his caregiver, that modification shall not amount to a contravention of the author’s moral rights if the modification is necessary to make the work in an accessible format copy.<sup>3</sup>

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