

**Council for Trade-Related Aspects
of Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

MALAYSIA

The present document reproduces the text¹ of the following laws and regulations, as notified by Malaysia under Article 63.2 of the Agreement (see document IP/N/1/MYS/1):

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**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA PROPRIÉTÉ
INTELLECTUELLE NOTIFIÉES AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD**

MALAISIE

Le présent document contient le texte¹ des lois et réglementations ci-après, notifiées par la Malaisie au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/MYS/1):

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**Consejo de los Aspectos de los Derechos de Propiedad
Intelectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA PROPIEDAD INTELECTUAL
NOTIFICADOS EN VIRTUD DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

MALASIA

En el presente documento se reproduce el texto¹ de las leyes y reglamentos notificados por Malasia en virtud de lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/MYS/1):

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¹ Distributed in English only. The texts of these laws in the original language are available for consultation by interested Delegations at the WTO Secretariat./En anglais seulement. Les délégations intéressées peuvent consulter les textes de ces lois, dans leur langue d'origine, au Secrétariat de l'OMC./Distribuido en inglés solamente. Las delegaciones interesadas podrán consultar en la Secretaría de la OMC los textos de estas leyes en su idioma original.

COPYRIGHT ACT 1987 (ACT 332) & REGULATIONS & ORDERS

(AS AT 5TH JANUARY 2001)

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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 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:

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; [Am. Act
A1082]

“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;
- (f) 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— [Subs. Act A994]

- (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;

[Act A994] “communication by cable” — (*Deleted*).

[Ins. Act A994;
Am. Act A1082] “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;

[Act A775] “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; [Am. Act
A994]

“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” —

[Subs. Act
A1082]

- (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 [Am. Act A994]

(h) computer programs, [Am. Act A994]

but does not include official texts of the Government or statutory bodies of a legislative or regulatory nature, or judicial decisions;

“live performance”—

[Ins. Act A1082]

(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;

[Ins. Act
A1082]

“performer” means a person who performs a live performance under this Act;

[Ins. Act
A1082]

“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;

[Ins. Act
A1082]

“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 two-dimensional 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; [Am. Act
A1082]

“Tribunal” means the Copyright Tribunal established under section 28; and

“work of joint authorship” means a work produced by the collaboration 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

[*Ins. Act*
A1082]

(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.

[*Am. Act*
A1082]

(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.

[*Am. Act*
A1082]

(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, pro-
cedure, method of operation or mathematical concept as such. [Ins. Act
A994]

(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.

[*Ins. Act*
A1082]

(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 any one 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.

[Ins. Act
A1082]

10A. 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. [Ins. Act
A1082]

(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— [Am. Act
A994]

- (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; [Am. Act
A1082]

- (aa) the communication to the public;

[Ins. Act
A994]

- (b) the performance, showing or playing to the public;
- (c) *(Deleted)*; [Act A994]
- (d) *(Deleted)*; [Act A994]
- (e) the distribution of copies to the public by sale or other transfer of ownership; and [Subs. Act A994]
- (f) the commercial rental to the public,

[Ins. Act
A994]

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 reprographic 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; [Ins. Act A994]
- (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 non-profit 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;

[Am. Act
A994]

- (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 informative purposes and has not been expressly reserved; and

[Am. Act
A994]

- (p) the commercial rental of computer programs, where the program is not the essential object of the rental.

[Ins. Act
A994]

(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 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 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.

[Am. Act
A994]

(2) Notwithstanding subsection (1), paragraphs (a), (g), (gg), (ggg), (gggg), (h) and (o) 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.

[*Ins. Act*
A1082]

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;

- (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 rebroadcast of the live performance.

16B. Equitable remuneration.

[Ins. Act
A1082]

(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.

[Am. Acts
A994, A1082] (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.

[Am. Acts
A994, A1082] (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.

[Subs. Act
A1082] (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.

[Am. Act
A1082] 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. [Subs. Act
A1082]

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. [Am. Act
A1082]

21. (Deleted).

[Act A994]

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. [Subs. Act
A1082]

23. Duration of copyright in works of Government, Government organizations and international bodies. [Am. Act
A1082]

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.

[Ins. Act
A1082]

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.

[Ins. Act
A1082]

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.

[Act A994]

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:

[Am. Act
A994] (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

[Am. Act
A994] (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.

[Am. Act
A994] (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.

[Ins. Act
A1082]

(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 a 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

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) 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,

[Am. Act
A1082]

[Am. Act
A1082]

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 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 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;
 - (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,

[Am. Act
A1082]

[Am. Act
A1082]

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.

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. [Ins. Act
A994]

(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: [Ins. Act A994]

- (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.

[Ins. Act
A994]

(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.

[Subs. Act
A1082]

(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.

[Ins. Act
A1082]

(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.

[Ins. Act
A1082]

(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.

[Ins. Act
A1082]

(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.

[Subs. Act
A1082]

(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.

[Act A994]

(4) (*Deleted*).

[Subs. Act
A1082]

(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. [Ins. Act
A1082]

39A. Application of sections 36, 37, 38 and 39 to performers' right. [Ins. Act
A1082]

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.

[Am. Act
A1082]

(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; [Am. Act A994]
- (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; [Ins. Act A994]
- (i) removes or alters any electronic rights management information without authority; or [Ins. Act A994]
- (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, [Ins. Act A994]

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— [Am. Act A1082]

- (i) in the case of an offence under paragraphs (a) to (f), 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; [Am. Act A994]

(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; [Am. Act
A994]

[Ins. Act
A994]

(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.

[Am. Act
A1082]

(2) For the purposes of paragraphs (a) to (f) 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— [Subs. Act A1082]

(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 be required to produce such authorization in writing. [Am. Act A1082]

(3) (*Deleted*).

[Act A1082]

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.

[Am. Act
A1082]

(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. [Ins. Act
A1082]

(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.

[Am. Act
A1082]

(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.

[Am. Act
A1082]

(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.

[Am. Act
A1082]

(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 or performers under this Act.

[Am. Act
A1082]

(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”. *[Ins. Act
A994]*

(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	1.12.1987
	s. 3, 9, 13, 15, 24, 36, 39, 41, 44, 46, 48, 54, 58	1.10.1990
Act A952	Copyright (Amendment) Act 1996	
	s. 3, 7, 13A, 13B, 13C, 27A, 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

**COPYRIGHT (LICENCE TO PRODUCE AND PUBLISH
IN THE NATIONAL LANGUAGE A TRANSLATION
OF A LITERARY WORK) REGULATIONS 1987**

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SCHEDULE.

COPYRIGHT (LICENCE TO PRODUCE AND PUBLISH IN THE NATIONAL LANGUAGE A TRANSLATION OF A LITERARY WORK) REGULATIONS 1987*

IN exercise of the powers conferred by section 35 of the Copyright Act 1987, the Minister makes the following regulations:

PART I PRELIMINARY

1. Citation and commencement.

These Regulations may be cited as the **Copyright (Licence To Produce And Publish In The National Language A Translation Of A Literary Work) Regulations 1987** and shall come into force on the 2nd December 1987.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“Act” means the Copyright Act 1987;

“Chairman” means the chairman of the Copyright Tribunal appointed under section 29 of the Act;

“export” means to send or cause to be sent out of Malaysia by whatever means;

“member” means any member of the Tribunal appointed under section 29 of the Act;

“national language” means the national language of Malaysia;

“produce”, in relation to a translation in the national language of a literary work written in any other language, means the making of one or more copies of the translated work in any form or version; and “reproduce” shall be construed accordingly;

“publish”, in relation to a translation in the national language of a literary work written in any other language, means the making of one or more copies of the translated work available to the public, whether by sale or otherwise.

PART II SECRETARIAT

3. Secretariat to the Tribunal.

(1) There shall be a Secretariat to the Tribunal which shall be the Ministry of Trade and Industry.

(2) The Secretariat shall assist the Tribunal in any matter relating to the functions of the Tribunal.

**Published as P.U. (A) 379/1987.*

PART III
APPLICATION FOR LICENCE

4. Procedure for application.

(1) An application for a licence under section 31 (1) of the Act shall be in the form set out in Part I of the Schedule.

(2) A separate application shall be made in respect of each literary work.

(3) Each application shall be in triplicate and shall be served by delivering it in person or by sending it by registered post to the Secretariat.

(4) A fee of one hundred ringgit in respect of each application shall be paid to the Secretariat at the time the application is made.

(5) Upon receipt of the application, the Secretariat shall—

- (a) inform the Chairman immediately of such receipt;
- (b) process the application; and
- (c) upon being instructed by the Chairman, call for a meeting of the Tribunal.

5. Notice to the owner.

(1) When any application has been made under regulation 4, the Chairman shall, as soon as possible, serve or cause to be served a notice of the application on the owner of the copyright in the work to which the application relates, wherever practicable.

(2) Where it is not practicable to serve a notice on the owner, the Chairman shall give or cause to be given a notice of the application in the *Government Gazette* or in at least two local daily newspapers as he thinks fit.

(3) The notice to the owner or the notification in the *Government Gazette* or in the newspapers shall be in the form set out in Part II or Part III of the Schedule, as the case may be.

PART IV
INQUIRY

6. Tribunal to hold inquiry.

(1) The Tribunal may hold as many inquiries as it thinks necessary in respect of each application:

Provided that the Tribunal shall not hold any inquiry in respect of any application before the expiry of at least three months from the date of the service of notice to the owner or in the case where notice to the owner is made by way of notification in the *Government Gazette* or in the newspapers, or both, before the expiry of at least three months from the date the notification is published.

(2) Notwithstanding sub-regulation (1), if after an application has been received in respect of a work, other applications are received in respect of the same work and such applications are received before the expiry of three months from the date of the service of the notice or the notification in the *Government Gazette* or newspapers, as the case may be, in respect of the application first received, all the applications shall be considered together.

7. Time and place of inquiries.

The Tribunal shall hold its inquiries at such time and place as the Chairman shall direct.

8. Procedure at meetings of the Tribunal.

(1) The Tribunal shall keep records of its proceedings in the form of minutes.

(2) If there is an equality of votes on any question to be determined by the Tribunal the Chairman shall have the casting vote in addition to his deliberative vote.

(3) Subject to the Act and these Regulations, the Tribunal shall regulate its own procedure at meetings.

9. Powers of the Tribunal at inquiries.

Without prejudice to section 33 of the Act, the Tribunal shall have the following powers in the exercise of its functions at inquiries:

- (a) to require any person to attend any meeting of the Tribunal to give evidence or produce any document or any other thing in his possession and to examine him as a witness;
- (b) to require the evidence of any witness to be made on statutory declaration or in any other manner as the Chairman thinks fit;
- (c) subject to regulation 6, to hear and determine any application referred to it in such manner as may be determined by the Chairman, notwithstanding the failure of any person to submit any written statement, information or any other evidence required by the Tribunal within such time as may be prescribed by the Chairman or the absence of any party to the dispute who has been served with a notice to appear.

10. Applicant to pay cost.

The applicant shall pay the cost of any inquiry or proceedings before the Tribunal as the Tribunal may determine.

**PART V
LICENCES**

11. Licences.

The licence granted by the Tribunal shall be in the form set out in Part IV of the Schedule.

12. Applicant to produce and publish within period specified.

The applicant to whom the licence is granted shall produce and publish the translation within such period specified in the licence.

13. Extension of period.

The Tribunal may, on the application of the licensee and after giving notice to the owner, if it is satisfied that the licensee may for sufficient reasons be unable to produce and publish the translation within the period specified in the licence, extend such period.

14. Cancellation of licence.

The Tribunal may, after giving the licensee an opportunity to be heard, cancel the licence on any of the following grounds:

- (a) that the licensee has failed to produce and publish the translation within the time specified in the licence or within the extended time;
- (b) that the licence was obtained by fraud or misrepresentation as to any essential fact; or
- (c) that the licensee has contravened any of the terms and conditions of the licence.

15. Maintenance of records.

The Tribunal shall maintain records of the licences issued in a Register.

**PART VI
ROYALTIES**

16. Determination of royalties.

In determining the rate of royalties payable to the owner, the Tribunal shall take into consideration the following:

- (a) the proposed retail price of a copy of the translation of the work;
- (b) prevailing standards of royalties with regard to translation of works;
- (c) the duration of the licence; and
- (d) such other matters as may be considered relevant by the Tribunal.

17. Overdue payments.

Any overdue payment in respect of royalties may be recovered as a debt due to the owner.

SCHEDULE

**PART I
(Regulation 4(1))**

(Application Form for A Licence To Produce and Publish in The
National Language A Translation of A Literary Work)

The Chairman,
Copyright Tribunal,
Secretariat of the Copyright Tribunal,
Ministry Of Trade And Industry

.....

*I/We.....

**Delete whichever is not applicable.*

of.....
 hereby apply to the Copyright Tribunal for a licence to produce and publish a translation in the national language of the literary work specified in the Appendix hereto.

2. *I/We hereby undertake to abide strictly by the terms and conditions of the licence, if granted.

Dated this.....day of.....19.....

.....
 (Signature)

Name.....

PARTICULARS OF APPLICATION

1. Name and address of the applicant.....

2. Nationality of the applicant.....
3. Qualification of the applicant to produce and publish the translation

4. Period to be licensed.....to
5. Number of copies proposed to be published.....
6. Estimated cost of production and publication.....
7. Proposed retail price per copy.....
8. Rate of royalty which the applicant considers reasonable to be paid to the owner.....
9. Means of the applicant for payment of royalty.....
10. Name, address and nationality of the person competent to translate the work.....

11. (a) Has the work been translated and published in the national

**Delete whichever is not applicable.*

language within one year after its first publication?
.....
.....

(b) If so, is it out of print?.....

12. Has the applicant been denied authorization by the owner?
.....

13. Steps taken by the applicant to obtain authorization? (Enclose certified true copies of correspondence, if any).....
.....
.....

14. Has the author of the work withdrawn from circulation copies of the work?.....

15. Has the author of the work published an earlier translation in the national language?.....

16. What is the purpose of the translation?.....
.....

STATUTORY DECLARATION

*I/We.....
do solemnly and sincerely declare that the contents of this notice are true,
and *I/We make this solemn declaration conscientiously believing the
same to be true, and by virtue of the provisions of the Statutory Declarations
Act 1960.

Subscribed and solemnly declared by _____
the above named.....
at.....
in the State of.....
this..... day of.....19.....

Before me, .

.....
(Signature of Commissioner for Oaths)

*Delete whichever is not applicable.

APPENDIX

Title of work.....

Description of work.....

Full name and address of author/authors.....
.....
.....
.....

Whether author/authors alive (if not, date of death).....

Country and date of first publication of work.....

Date of first publication in Malaysia.....

Nationality of author/authors.....

Name and address of owner/owners.....

PART II
(Regulation 5 (3))
(Notice to The Owner)

To.....
.....
.....
.....

Take notice that an application, a copy of which is enclosed herewith, for a licence to translate in the national language the work specified therein has been received by the Copyright Tribunal of Malaysia and that such licence shall be granted if all the requirements of section 31 of the Copyright Act 1987 have been satisfied and there is no objection received from you or any other interested party within a period of three months from the date of this notice.

Dated this.....day of.....19.....

.....
(Signature)
(The Chairman, Copyright Tribunal Malaysia)

PART III
(Regulation 5 (3))
(Notice To The Owner)

Take notice that an application for a licence to produce and publish in the national language the work specified herein has been received by the Copyright Tribunal of Malaysia and that such licence shall be granted if all the requirements of section 31 of the Copyright Act 1987 have been satisfied and there is no objection received from the owner or any other interested party within a period of three months from the date of this notice.

2. Objection to the approval for such licence may be made in writing to the Secretariat to the Tribunal.

Title of Work.....

Description of Work.....

Name of Author.....

Dated this.....day of.....19.....

.....
(Signature)
(The Chairman, Copyright Tribunal Malaysia)

PART IV
(Regulation 11)
COPYRIGHT ACT 1987

Licence No.

Name.....

Address.....

.....

is hereby licensed by the Copyright Tribunal to produce and publish the translation in the national language of the literary work written in

.....

.....

namely,

2. This licence is valid with effect from.....
until..... (both dates inclusive).

3. The licensee shall pay to the owner of the copyright in the work royalty
at a rate of..... for every copy sold to the
public.

.....
(Signature)
(The Chairman, Copyright Tribunal Malaysia)

Dated this..... day of..... 19.....

Made the 5th November 1987.

DATIN PADUKA RAFIDAH BTE ABDUL AZIZ,
Minister of Trade and Industry

**COPYRIGHT (NOTICE OF PROHIBITION OF IMPORT)
REGULATIONS 1987**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement.
2. Interpretation.
3. Notice.
4. Further notice.
5. Service of notice.
6. Fee on the service of notice.
7. Change of ownership.
8. Security or further security.
9. Owner of copyright to furnish evidence, etc.
10. Owner of copyright to keep the Controller indemnified against all actions, proceedings, claims and demands.

SCHEDULE.

COPYRIGHT (NOTICE OF PROHIBITION OF IMPORT) REGULATIONS 1987*

IN exercise of the powers conferred by subsection (4) of section 39 of the Copyright Act 1987, the Minister makes the following regulations:

1. Citation and commencement.

These Regulations may be cited as the **Copyright (Notice of Prohibition of Import) Regulations 1987** and shall come into force on the 2nd December 1987.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“import” means to bring or cause to be brought into Malaysia by whatever means;

“notice” means notice under subsection (1) of section 39 of the Act.

3. Notice.

(1) The notice shall be in the form set out in Part I of the Schedule and shall be deemed to have been served on the Minister if the owner of the copyright in the work has served such notice on the Controller in the manner prescribed under these Regulations.

(2) A separate notice shall be given in respect of each work.

4. Further notice.

(1) The owner of the copyright in the work may give another notice in the form set out in Part II of the Schedule where he knows or has reason to believe that the prohibited copies are about to be imported into Malaysia.

(2) Such notice shall be deemed to have been served on the Minister if the owner of the copyright in the work has served such notice on the Controller in the manner prescribed under these Regulations.

(3) A separate notice shall be given in respect of each importation, whether of one or more works.

5. Service of notice.

(1) Every notice shall be duly completed in quadruplicate and shall be served by delivering it in person or by sending it by registered post to the Controller.

(2) Every notice shall be accompanied by satisfactory proof of ownership of the copyright to the work.

6. Fee on the service of notice.

A fee of one hundred ringgit in respect of each notice shall be paid to the Controller at the time the notice is given.

**Published as P.U. (A) 380/1987.*

7. Change of ownership.

(1) The owner of the copyright in any work who has given a notice shall notify the Controller in writing of any change in the ownership of the work or of any other change affecting the notice within twenty eight days of such change.

(2) The notice shall be deemed to be withdrawn as from the expiry of twenty eight days from such change.

8. Security or further security.

(1) The owner of the copyright in any work, who has given a notice shall give to the Controller such security or further security, whether by bond, deposit of a sum of money or otherwise, as the Controller may require, against all actions, proceedings, claims and demands whatsoever which may be taken or made against the Controller and shall pay to the Controller all costs and expenses which may be incurred by the Controller in consequence of the detention of, or anything done in relation to, any copy of a work to which the notice relates.

(2) The security or further security shall be given at such time and in such manner as the Controller may require. If such security or further security is not given within the time or in the manner required by the Controller, the notice shall be deemed to have been withdrawn as from the expiry of the time the security or further security is required to be given.

9. Owner of copyright to furnish evidence, etc.

The owner of the copyright in any work, or his agent, who has given a notice shall, either at the time of giving the notice or at the time of giving further notice, or at both such times, furnish to the Controller such evidence and information within such time and in such form as the Controller may require, and shall produce within such time as the Controller may specify such books or other documents as the Controller may require. If such evidence and information are not furnished and if such books or other documents are not produced as required by the Controller, the notice shall be deemed to have been withdrawn as from such time as the Controller shall specify.

10. Owner of copyright to keep the Controller indemnified against all actions, proceedings, claims and demands.

Where—

- (a) the notice is withdrawn or deemed to have been withdrawn; or
- (b) security has not been required by the Controller,

the owner of the copyright in any work shall keep the Controller indemnified against all actions, proceedings, claims and demands whatsoever which may be taken or made against the Controller and shall repay to the Controller all costs and expenses which may be incurred by the Controller in consequence of the detention of, or anything done in relation to, any copy of a work to which the notice relates. Any such costs and expenses may be recovered as a debt due to the Government.

SCHEDULE

PART I

(Regulation 3(1))

COPYRIGHT ACT 1987

(Notice Relating to Copyright In.....)

To The Controller of Copyright Malaysia,
.....

*I/We.....
of.....
hereby give notice that copyright in the original work specified in the
Appendix hereto subsists in Malaysia under the Copyright Act 1987 and that
*I am/We are the *owner/owners of the copyright in the said work and *I/We
request that copies of the said work made outside Malaysia shall be treated as
prohibited goods and shall not be imported into Malaysia for a period
of.....

Dated this..... day of..... 19.....

.....
(Signature)

Name.....

STATUTORY DECLARATION

*I/We.....
do solemnly and sincerely declare that the contents of this notice are true,
and *I/We make this solemn declaration conscientiously believing the
same to be true, and by virtue of the provisions of the Statutory Declarations
Act 1960.

Subscribed and solemnly declared by
the above named.....
at.....
in the State of.....
this..... day of.....19.....

Before me,

.....
(Signature of Commissioner for Oaths)

*Delete whichever is not applicable.

APPENDIX

Title of work.....
Description of work.....
Full name of author/authors.....
.....
.....
Whether author/authors alive (if not, date of death).....
Country and date of first publication of work.....
.....
Date of first publication in Malaysia.....
Nationality of author/authors.....

PART II
(Regulation 4 (1))
COPYRIGHT ACT 1987
(Notice Relating to a Particular Importation)

To The Controller of Copyright Malaysia,
.....

*I/We.....
of.....

hereby give notice that copyright in the original work specified in the
Appendix hereto subsists in Malaysia under the Copyright Act 1987 and that
*I am/We are the *owner/owners of the copyright in the said work and that the
following copies of the said work made outside Malaysia, that is to
say,.....

.....
are about to be imported into the *port/airport of.....
on or about..... day of.....from
..... and request that the said copies be treated as
prohibited goods and dealt with accordingly.

Dated this.....day of.....19.....

.....
(Signature)

Name.....

**Delete whichever is not applicable.*

STATUTORY DECLARATION

*I/We.....
do solemnly and sincerely declare that the contents of this notice are true,
and *I/We make this solemn declaration conscientiously believing the
same to be true, and by virtue of the provisions of the Statutory Declarations
Act 1960.

Subscribed and solemnly declared by
the above named.....
at.....
in the State of.....
this..... day of.....19.....

Before me,

.....
(Signature of Commissioner for Oaths)

APPENDIX

Title of work.....
Description of work.....
Full name of author/authors
.....
Whether author/authors alive (if not, date of death).....
.....
Country and date of first publication of work.....
.....
Date of first publication in Malaysia.....
Nationality of author/authors.....

Made the 5th November 1987.

DATIN PADUKA RAFIDAH BTE ABDUL AZIZ,
Minister of Trade and Industry

**Delete whichever is not applicable.*

COPYRIGHT (GOVERNMENT ORGANIZATIONS AND INTERNATIONAL BODIES) ORDER 1987*

IN exercise of the powers conferred by subsection (1) of section 11 of the Copyright Act 1987, the Minister makes the following order:

1. Citation and commencement.

This Order may be cited as the **Copyright (Government Organizations and International Bodies) Order 1987** and shall come into force on 2nd December 1987.

2. Government organizations and international bodies for the purposes of the Act.

The Government organizations and international bodies specified in the Schedule are declared to be Government organizations and international bodies for the purpose of subsection (1) of section 11 of the Act.

SCHEDULE

United Nations and its specialised agencies.
Association Of South-East Asian Nations (ASEAN).
Asian Development Bank (ADB).
Organization Of The Islamic Conference (OIC).
Islamic Educational, Scientific And Cultural Organization (ISESCO).
Asian And Pacific Development Centre (APDC).
Economic And Social Commission For Asia And The Pacific (ESCAP).
Southeast Asian Ministers of Education Organisation (SEAMEO).
The Commonwealth.
The Colombo Plan.
US-Asean Centre For Technology Exchange (USACTE).
Australian Centre For International Agriculture Research (ACIAR).
Asia Foundation.
Japan Atomic Energy Research Institute.
The Southeast Asia Central Banks Research and Training Centre.
Association of Tin Producing Countries (ATPC).

Made the 5th November 1987.

DATIN PADUKA RAFIDAH BTE ABDUL AZIZ,
Minister of Trade and Industry

**Published as P.U. (A) 381/1987.*

COPYRIGHT (PUBLIC LIBRARIES AND EDUCATIONAL, SCIENTIFIC OR PROFESSIONAL INSTITUTIONS) ORDER 1987*

IN exercise of the powers conferred by subsection (2) (i) of section 13 of the Copyright Act 1987, the Minister makes the following order:

1. Citation and commencement.

This Order may be cited as the **Copyright (Public Libraries and Educational, Scientific or Professional Institutions) Order 1987** and shall come into force on 2nd December 1987.

2. Public libraries and educational, scientific or professional institutions for the purposes of the Act.

The public libraries and educational, scientific or professional institutions specified in the Schedule are declared to be public libraries and educational, scientific or professional institutions for the purposes of subsection (2) (i) of section 13 of the Act.

SCHEDULE

Alliance Francaise Library including the branches thereof.
British Council Library including the branches thereof.
Goethe Institute Library.
Japan Information Service Library.
Lincoln Resource Centre Library.
New Zealand High Commission Library.
Soviet Cultural Centre Library.
Libyan Arab Cultural Centre Library.
India High Commission Library.
Braille MAB Library (Braille Publishing and Library Unit).
Malaysian Agricultural Research and Development Institute (MARDI) Library.
Telecom Training Centre Library.
National Productivity Centre Library.
Muslim Pilgrim Saving and Management Authority Library.
The South East Asia Central Banks (SEACEN) Library.
Public Libraries administered by Local Authorities.
University Malaya including University Hospital.
Universiti Kebangsaan Malaysia.
Universiti Sains Malaysia.
Universiti Teknologi Malaysia.
Universiti Pertanian Malaysia.

**Published as P.U. (A) 382/1987 and amended by P.U. (A) 295/94, 154/96.*

Universiti Utara Malaysia.

International Islamic University of Malaysia.

Mara Institute of Technology.

Polytechnics, Vocational, Trade or Commercial Schools or Institutions established or funded either wholly or substantially by the Government or Statutory Bodies.

Teachers Training Colleges or Institutions.

Agriculture Colleges or Institutes established or funded either wholly or substantially by the Government or Statutory Bodies.

Schools established or funded either wholly or substantially by the Government or Statutory Bodies.

Private Schools, Colleges or Training Institutions which complies with the curriculum set out by the Ministry of Education.

Standard and Industrial Research Institute of Malaysia (SIRIM).

Rubber Research Institute of Malaysia (RRI).

Veterinary Research Institute.

Malaysian Agricultural Research and Development Institute (MARDI).

Forest Research Institute of Malaysia (FRIM).

Palm Oil Research Institute of Malaysia (PORIM).

Tin Research and Industrial Development Board.

National Development and Family Board.

National Productivity Centre.

[P.U. (A)
295/94]

World Wide Fund for Nature Malaysia Resource Centre (WWF Malaysia Resource Centre).

Bank Negara Malaysia.

COPYRIGHT (APPLICATION TO OTHER COUNTRIES) REGULATIONS 1990

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation, commencement and application.
2. Interpretation.
3. Literary, musical, artistic works, films.
4. Sound recordings, broadcasts, published editions.
5. Duration of copyright.

SCHEDULE 1.

SCHEDULE 2.

SCHEDULE 3.

COPYRIGHT (APPLICATION TO OTHER COUNTRIES) REGULATIONS 1990*

IN exercise of the powers conferred by section 59A of the Copyright Act 1987, the Minister makes the following regulations:

1. Citation, commencement and application.

(1) These Regulations may be cited as the **Copyright (Application to Other Countries) Regulations 1990** and shall come into force on the 1st October 1990.

(2) These Regulations shall, unless otherwise provided, apply in relation to works made before the commencement of these Regulations as they apply in relation to works made thereafter.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“at the material time” means—

- (a) in relation to, or in relation to the application of the Act in respect of, an unpublished work, at the time when the work was made; and
- (b) in relation to, or in relation to the application of the Act in respect of, a published work, at the time when the work was first published;

“Berne Convention” means the Berne Convention for the Protection of Literary and Artistic Works 1886 and shall include all acts, protocols and revisions thereto;

“country of origin” means—

- (a) in the case of a published work, if the country of first publication is one of the specified countries, that country;
- (b) in the case of a work first published in one of the specified countries and a country which is not a member of the Berne Convention, the former country;
- (c) in the case of a work which is first published in several of the specified countries, the country whose laws give the shortest term of protection in such a work;
- (d) in the case of a work which is unpublished or which is first published only in a country which is not a member of the Berne Convention, any of the specified countries of which the author is a citizen or resident at the material time; and

“specified countries” means the countries which are members of the Berne Convention.

**Published as P.U. (A) 314/90 and corrected by P.U. (A) 340/90, and P.U. (A) 18/93 and amended by P.U. (A) 243/94.*

3. Literary, musical, artistic works, films.

Subject to these Regulations, the provisions of the Act shall apply in relation to—

- (a) literary, musical or artistic works, or films first published in the respective specified countries as they apply in relation to literary, musical or artistic works, or films first published in Malaysia;
- (b) works of architecture erected in the respective specified countries or any other artistic works incorporated in buildings located in the respective specified countries as they apply in relation to works of architecture erected in Malaysia or any other artistic works incorporated in buildings located in Malaysia;
- (c) every work, other than sound recordings, broadcasts and published editions of literary, musical or artistic works, eligible for copyright if the work is made in the respective specified countries as they apply in relation to every work eligible for copyright if the work is made in Malaysia;
- (d) derivative works, other than derivative works of sound recordings, broadcasts and published editions of literary, musical or artistic works, in the respective specified countries as they apply in relation to derivative works in Malaysia;
- (e) persons who, at the material time, are citizens of, or residents in, the respective specified countries as they apply in relation to persons who, at such a time, are citizens of, or permanent residents in, Malaysia; and
- (f) bodies corporate incorporated under the laws of the respective specified countries as they apply in relation to bodies corporate established in Malaysia and constituted or vested with legal personality under the laws of Malaysia.

4. Sound recordings, broadcasts, published editions.

(1) Subject to these Regulations, the provisions of the Act shall apply in relation to—

- (a) sound recordings made or first published in a country specified in Schedule 1 as they apply in relation to sound recordings made or first published in Malaysia;
- (b) broadcasts transmitted from a country specified in Schedule 2 as they apply in relation to broadcasts transmitted from Malaysia;
- (c) published editions of literary, musical or artistic works first published in a country specified in Schedule 3 as they apply in relation to published editions of literary, musical or artistic works first published in Malaysia;
- (d) derivative works of such sound recordings, broadcasts or published editions in a country specified in Schedule 1, 2 or 3, as the case may be, as they apply in relation to derivative works of sound recordings, broadcasts or published editions in Malaysia;
- (e) persons who, at the material time, are citizens of, or residents in, a country specified in Schedule 1, 2 or 3, as the case may be, as they apply in relation to persons who, at such a time, are citizens of, or permanent residents in, Malaysia; and

- (f) bodies corporate incorporated under the laws of a country specified in Schedule 1, 2 or 3, as the case may be, as they apply in relation to bodies corporate established in Malaysia and constituted or vested with legal personality under the laws of Malaysia.

5. Duration of copyright.

(1) Subject to subregulation (2), copyright subsisting in a work by reason only of the commencement of these Regulations ceases to subsist upon the expiration of the duration of the protection in the nature of copyright that subsists in relation to such a work under the laws of the country of origin of the work or the respective country specified in Schedule 1, 2 or 3, as the case may be.

(2) In any case where copyright in a work subsists by reason only of the commencement of these Regulations, the duration of the protection in the nature of copyright referred to in subregulation (1) shall not exceed the duration of the protection in the nature of copyright as provided under the Act in respect of such a work.

SCHEDULE 1
(Regulation 4 (1) (a))

COUNTRIES ENJOYING PROTECTION FOR
SOUND RECORDINGS

1. United States of America (including Puerto Rico, Guam and the Virgin Islands of the United States of America).
2. United Kingdom.

[P.U. (A)
243/94].

SCHEDULE 2
(Regulation 4 (1) (b))

COUNTRIES ENJOYING PROTECTION FOR BROADCASTS

1. United Kingdom.

SCHEDULE 3
(Regulation 4 (1) (c))

COUNTRIES ENJOYING PROTECTION FOR
PUBLISHED EDITIONS

1. United Kingdom.

Made the 21st September 1990.

DATO' SERI RAFIDAH AZIZ,
Minister of Trade and Industry

COPYRIGHT (LICENSING) REGULATIONS 2000

ARRANGEMENT OF REGULATIONS

PART I

PRELIMINARY

Regulation

1. Citation and commencement.
2. Interpretation.
3. Prescribed fees.
4. Forms.
5. Time and place of proceedings.

PART II

REFERENCES AND APPLICATIONS WITH RESPECT TO LICENSING SCHEMES

6. Commencement of proceedings.
7. Proceedings under section 27B of the Act.
8. Reference or application under section 27D or 27F of the Act.
9. Answer by Respondent.
10. Amendment of statement of case or answer.
11. Chairman's directions.
12. Application for directions.
13. Consolidation of proceedings.
14. Procedure and evidence at hearing.
15. Representation and right of audience.
16. Withdrawal of reference or application.
17. Final decision of the Tribunal.
18. Publication of decision.
19. Effective date.

PART III

REFERENCES AND APPLICATIONS WITH RESPECT TO LICENSING BY LICENSING BODIES

Regulation

20. Commencement of proceedings.
21. Proceedings under section 27l of the Act.
22. Application under section 27k of the Act.
23. Answer by Respondent.
24. Regulations 10 to 16 to apply with necessary modifications.
25. Final decision of Tribunal.

PART IV

REFERENCE TO THE COURT FROM DECISION OF TRIBUNAL

26. Notice of reference to Court.
27. Application for suspension of order.
28. Effect of order.

PART V

MISCELLANEOUS AND GENERAL

29. Costs.
30. Service of documents.
31. Date of service.
32. Time.
33. Failure to comply with directions.
34. Procedure where no provision is made.

SCHEDULE.

First Schedule.

Table of Fees.

Second Schedule.

Forms.

COPYRIGHT (LICENSING) REGULATIONS 2000*

IN exercise of the powers conferred by sections 35 and 59 of the Copyright Act 1987 [Act 332], the Minister makes the following regulations:

PART I

PRELIMINARY

1. Citation and commencement.

(1) These regulations may be cited as the **Copyright (Licensing) Regulations 2000**.

(2) These Regulations shall come into operation on 1 July 2000.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“Act” means the Copyright Act 1987;

“Court” means the High Court;

“Applicant” means the person or organization or operator of a licensing scheme as identified under Part IVA of the Act who is authorized to make and has made a reference or application to the Tribunal under the respective provisions of the Act;

“Respondent” means any person who has been named by the Applicant as the other party to the proceedings;

“Chairman” means the Chairman of the Tribunal or the Deputy Chairman or any other member of the Tribunal who is the chairman presiding in any proceedings before the Tribunal;

“proceedings” means proceedings relating to a reference or an application before the Tribunal;

“Secretary” means the Secretary to the Tribunal;

“Tribunal” means the Copyright Tribunal.

3. Prescribed fees.

The fees to be paid under these Regulations shall be as prescribed in the First Schedule.

4. Forms.

The forms referred to in these Regulations are those contained in the Second Schedule.

5. Time and place of proceedings.

The Tribunal shall hold its proceedings at such time and place as the Chairman may direct.

PART II

REFERENCES AND APPLICATIONS WITH RESPECT TO LICENSING SCHEMES

6. Commencement of proceedings.

(1) Every reference or an application to the Tribunal with respect to a licensing scheme shall be commenced by the service on the Secretary by the party making the reference or application ("the Applicant") of a notice—

(a) in Form 1 in the case of a reference under section 27B or 27C or the Act; or

(b) in Form 2 in the case of an application under section 27E of the Act.

(2) The Applicant shall submit together with Form 1 or Form 2, whichever is applicable, a statement of the Applicant's case.

(3) Form 1 or Form 2 shall be submitted in two copies to the Secretary together with the prescribed fees.

(4) The Secretary shall within fourteen days after being served with Form 1 or Form 2 together with the statement of the Applicant's case and the prescribed fees, serve a copy of Form 1 or Form 2, whichever is applicable, and the statement of the Applicant's case to the other party named in the Form ("the Respondent").

7. Proceedings under section 27B of the Act.

(1) In the case of a reference under section 27B of the Act, the Tribunal shall within fourteen days after being served with Form 1 together with the statement of the Applicant's case and the prescribed fees, decide whether to entertain the reference and may for that purpose, at its discretion, allow representations in writing to be made by the parties and if, after considering the reference and representations (if any), the Tribunal—

(a) decides to entertain the reference, regulations 9 to 16 shall apply, and in making such decision, the Tribunal may also make any order as to costs as it thinks fit; or

(b) declines to entertain the reference, it shall direct that no further proceedings shall be taken by any party in connection with the reference, otherwise than in relation to any order for costs which the Tribunal may make under regulation 29.

(2) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall, within fourteen days of the decision of the Tribunal, serve a copy thereof on the parties.

8. Reference or application under section 27D or 27F of the Act.

(1) A reference or an application under subsection 27D(1) or 27F(1) of the Act not requiring special leave of the Tribunal under subsection 27D(2) or 27F(2) of the Act shall be commenced by the service on the Secretary by the party making the reference or the application ("the Applicant") of a notice—

(a) in Form 1 in the case of a reference under section 27D of the Act;
or

(b) in Form 2 in the case of an application under section 27F of the Act.

(2) After complying with subregulation (1), subregulations 6(2) to (4) shall apply.

(3) A reference or an application under subsection 27D(1) or 27F(1) of the Act requiring special leave of the Tribunal under subsection 27D(2) or 27F(2) of the Act shall be made by service on the Secretary by the party making the application ("the Applicant") of a notice in Form 3 and after this subregulation has been complied with, subregulations (4) to (7) shall apply.

(4) Form 3 shall be served on the Secretary in two copies with a statement of the grounds for the application for special leave and the prescribed fees.

(5) Within fourteen days after the service of Form 3 on the Secretary together with the statement of the grounds for the application for special leave and the prescribed fees, the Secretary shall serve on the party to the previous reference or application ("the Respondent") a copy of Form 3 and the statement of the grounds for the application for special leave.

(6) Within fourteen days of the service upon the Respondent of Form 3 together with the grounds for the application for special leave, the Respondent may make representations in writing to the Tribunal regarding the application for special leave, and the Respondent shall serve a copy of any such representations on the Applicant and inform the Secretary of the date of such service.

(7) The Tribunal, after considering the application for special leave and the representations made by the Respondent, if any, and if the Tribunal considers it necessary, after having given the parties an opportunity to be heard, shall grant or dismiss the application for special leave with such order as to costs as the Tribunal thinks fit.

(8) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall, within fourteen days of the decision of the Tribunal serve a copy of the decision on the parties.

(9) If the Tribunal grants the application for special leave, the Applicant shall commence the making of the reference or application by serving on the Secretary a notice—

- (a) in Form 1 in the case of a reference under subsection 27D(1) of the Act; and
- (b) in Form 2 in the case of an application under subsection 27F(1) of the Act,

and after complying with this subregulation, subregulations 6(2) to (4) shall apply.

9. Answer by Respondent.

. (1) After the service on the Respondent of—

- (a) Form 1 or Form 2 together with the statement of the Applicant's case under regulation 6 or 8; or
- (b) the decision of the Tribunal under subregulation 7(2) to entertain the reference under paragraph 7(1)(a),

the Respondent shall, within such time as is determined by the Chairman, serve on the Secretary two copies of the written answer to the statement of the Applicant's case.

(2) The Secretary shall serve a copy of the answer of the Respondent on the Applicant within fourteen days of the service of the answer of the Respondent on the Secretary.

10. Amendment of statement of case or answer.

(1) Subject to subregulation (3), a party may at any time amend his statement of case or answer by serving on the Secretary the amended statement or answer.

(2) On being served with an amended statement of case or answer, the Secretary shall, within fourteen days of the service, serve a copy thereof on the other party.

(3) No amended statement of case or answer shall, without the leave of the Chairman, be served after such other date as the Chairman may direct under paragraph 11(3)(c).

11. Chairman's directions.

(1) Upon the expiration of fourteen days of the service under subregulation 9(2), the Chairman shall appoint a date, time and place for the attendance of the parties for the purpose of the giving of directions by the Chairman as to the further conduct of the proceedings.

(2) The Secretary shall give notice of the appointed date, time and place to the parties not less than fourteen days before such appointed date.

(3) On the appointed day, the Chairman shall afford every party attending the appointment an opportunity of being heard and, after considering any representations made orally or in writing, give such directions as the Chairman thinks fit with a view to the just, expeditious and economical disposal of the proceedings and, without prejudice to the generality of the foregoing, may give directions as to—

- (a) the date, time and place of any oral hearing requested by any party or which the Chairman for any reason considers necessary, and the procedure (including the number of representative each party may appoint for the purpose of such hearing) and the timetable (including the allocation of time for the making of representations by each party) to be followed at the hearing;
- (b) the procedure to be followed with regard to the submission and exchange of written arguments;
- (c) the date after which no amended statement of the Applicant's case or answer may be served without leave;
- (d) the preparation and service by each party of a schedule setting out the issues to be determined by the Tribunal and brief particulars of the contentions of each party in relation thereto;
- (e) the admission of any facts or documents and the discovery and inspection of documents.
- (f) the giving of evidence on affidavit; or
- (g) any preliminary issues to be decided.

(4) The Chairman may postpone or adjourn to a later date to be appointed by the Chairman for the giving of any directions under this regulation and, within fourteen days after directions have been given under this regulation the Chairman may, whether or not any application on that behalf has been made under regulation 12, give such further directions as the Chairman thinks fit.

(5) If any party fails to comply with any directions given or order made under this regulation, the Chairman may, without prejudice to the making of any order under regulation 33, give such consequential directions as may be necessary and may order such a party to pay any costs occasioned by its default.

12. Application for directions.

(1) A party may, at any stage of the proceedings, apply to the Tribunal for directions with respect to any issue or other matter in the proceedings and every such application for directions shall be disposed of by the Tribunal.

(2) The application for directions shall be made by the service of a notice on the Secretary stating the grounds upon which it is made and unless the notice is accompanied by the written consent of the other party to the proceedings, the party making the application for directions shall serve a copy of the application for directions on the other party to the proceedings and inform the Secretary of the date of such service.

(3) If any party objects to the application for directions, that party may, within fourteen days after being served with the copy thereof, serve a notice of objection stating the grounds of objection on the Secretary and that party making the objection shall serve a copy of the same on the party making the application for directions and inform the Secretary of the date of such service.

(4) After considering the application for directions and any objection thereto and, if the Tribunal considers necessary, after having given all parties concerned an opportunity of being heard, the Tribunal may make such order in the matter as it thinks fit and give such consequential directions as may be necessary.

(5) If any party fails to comply with any directions given or order made under this regulation, the Tribunal may, without prejudice to the making of an order under regulation 33, give such consequential directions as may be necessary and may order such a party to pay any costs occasioned by its default.

13. Consolidation of proceedings.

Where there is pending before the Tribunal more than one reference under section 27B, 27C or 27D of the Act, or more than one application under section 27E or 27F of the Act relating to the same licensing scheme, the Tribunal may if it thinks fit, either on its own motion or on an application made under regulation 12, order that some or all of the references or applications, as the case may be, be considered together, and may give such consequential directions as may be necessary.

14. Procedure and evidence at hearing.

(1) Every party to a reference or application which is considered at an oral hearing before the Tribunal shall be entitled to attend the hearing, to address the Tribunal, to give evidence and call witnesses.

(2) Except where the Tribunal otherwise orders in the case of an application for directions under regulation 12, the hearing shall be in public.

(3) Evidence before the Tribunal shall be given orally or, if the parties so agree or if the Tribunal so orders, by affidavit, but the Tribunal may at any stage of the proceedings require the personal attendance of any deponent for examination and cross-examination.

(4) This regulation shall not apply to regulation 11.

15. Representation and right of audience.

(1) A party may at any stage of the proceedings appoint some other person to act as agent for him in the proceedings.

(2) An agent under subregulation (1) may be either an advocate and solicitor or any other person allowed by the Tribunal.

(3) The appointment of an agent shall be made in writing and shall not be effective until notice has been served on the Secretary, and a copy of the same has been served on the party and the Secretary being informed of the date of such service.

(4) Only one agent shall be appointed to act for a party at any one time.

(5) For the purpose of service on a party of any document, or the taking of any steps required by these Regulations, an agent appointed by a party shall continue to have authority to act for such a party until the Secretary and every other party in the proceedings have been served with the notice of termination of the agent's appointment.

16. Withdrawal of reference or application.

(1) An Applicant may withdraw his reference or application made under regulation 6, 7 or 8 at any time before it has been finally disposed of by serving a notice on the Secretary, but such withdrawal shall be without prejudice to the Tribunal's power to make an order as to the payment of costs incurred up to the time of service of the notice of withdrawal.

(2) The Applicant shall serve a copy of the notice of withdrawal on the other party to the proceedings and inform the Secretary of the date of such service.

(3) Any party to the proceedings upon whom a copy of the notice of withdrawal is served under this regulation may, within fourteen days of such service, apply to the Tribunal for an order that, notwithstanding such withdrawal, such reference or application should proceed to be determined by the Tribunal, and if the Tribunal decides, at its discretion, to proceed with such reference or application, it may for that purpose substitute such party as the Applicant to the proceedings, and give such consequential directions as may be necessary.

17. Final decision of the Tribunal.

(1) The final decision of the Tribunal on a reference or an application made under this Part shall be given in writing and shall include a statement of the Tribunal's reasons.

(2) Where the final decision of the Tribunal relates to a reference or application under section 27D or 27F of the Act and the final decision of the Tribunal has varied the licensing scheme, there shall be annexed to the final decision a copy of the scheme as so varied, and the Secretary shall within three days of the final decision of the Tribunal serve on the parties to the proceedings a copy of the final decision of the Tribunal.

18. Publication of decision.

The Secretary shall cause a copy of the final decision of the Tribunal to be made available at the office for public inspection during office hours and if the Chairman so directs, shall cause to be advertised, in such manner as the Chairman thinks fit, brief particulars of the final decision.

19. Effective date.

Except where the operation of the order is suspended under regulation 26 or 27, the order of the Tribunal shall take effect from such date and shall remain in force for such period specified in the order.

PART III

REFERENCES AND APPLICATIONS WITH RESPECT TO LICENSING BY LICENSING BODIES

20. Commencement of proceedings.

(1) Every reference or application to the Tribunal with respect to licensing shall be commenced by the service on the Secretary by the party making the application ("the Applicant") of a notice in Form 4 in the case of a reference under section 27i or 27j of the Act.

(2) The Applicant shall submit together with Form 4 a statement of the Applicant's case.

(3) Form 4 shall be submitted in two copies with the Secretary together with the prescribed fees.

(4) The Secretary shall within fourteen days after being served with Form 4 together with the statement of the Applicant's case and the prescribed fees, serve a copy of Form 4 and the statement of the Applicant's case to the other party named in the Form ("the Respondent").

21. Proceedings under section 27i of the Act.

(1) In the case of a reference under section 27i of the Act the Tribunal shall, within fourteen days after being served with Form 4 together with the statement of the Applicant's case and the prescribed fees, decide whether to entertain the reference and may for that purpose, at its discretion, allow representations in writing to be made by the parties and if, after considering the reference and representations (if any) the Tribunal—

- (a) decides to entertain the reference, regulations 9 to 16 shall apply with the necessary modifications and in making such decision, the Tribunal may also make any order as to costs as it thinks fit; or
- (b) declines to entertain the reference, it shall direct that no further proceedings shall be taken by any party in connection with the reference, otherwise than in relation to any order for costs which the Tribunal make under regulation 29.

(2) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall, within fourteen days of the decision of the Tribunal, serve a copy thereof on the parties.

22. Application under section 27k of the Act.

(1) An application under subsection 27k(1) of the Act not requiring special leave of the Tribunal under subsection 27k(2) of the Act shall be commenced by the service on the Secretary by the party making the application a notice in Form 5.

(2) After complying with subregulation (1), subregulations 20(2) to (4) shall apply with the necessary modifications.

(3) An application under subsection 27κ(1) of the Act requiring special leave of the Tribunal under subsection 27κ(2) of the Act shall be made by service on the Secretary by the party making the application (“the Applicant”) of a notice in Form 3 and after this subregulation has been complied with subregulations (4) to (7) shall apply.

(4) Form 3 shall be served on the Secretary in two copies with a statement of the grounds for the application for special leave and the prescribed fees.

(5) Within fourteen days after the service of Form 3 on the Secretary together with the statement of the grounds for the application for special leave and the prescribed fees, the Secretary shall serve on the party to the previous reference (“the Respondent”) a copy of Form 3 and the statement of the grounds for the application for special leave.

(6) Within fourteen days of the service upon the Respondent of Form 3 together with the grounds for the application for special leave, the Respondent may make representations in writing to the Tribunal regarding the application for special leave, and the Respondent shall serve a copy of any such representations on the Applicant and inform the Secretary of the date of such service.

(7) The Tribunal, after considering the application for special leave and the representations, if any, and if the Tribunal considers it necessary, after having given the parties an opportunity of being heard, shall grant or dismiss the application for special leave with such order as to costs as the Tribunal thinks fit.

(8) The decision of the Tribunal shall be in writing and shall include a statement of its reasons, and the Secretary shall, within fourteen days of the decision of the Tribunal serve a copy of the decision on the parties.

(9) If the Tribunal grants the application for special leave, the Applicant shall commence the making of the application under subsection 27κ(1) of the Act by serving on the Secretary a notice in Form 5, and after complying with this subregulation, subregulations 6(2) to (4) shall apply with the necessary modifications.

23. Answer by Respondent.

(1) After the service on the Respondent of—

- (a) Form 4 together with the statement of the Applicant’s case under regulation 20; or
- (b) the decision of the Tribunal under subregulation 21(2) to entertain the reference under paragraph 21(1)(a),

the Respondent shall within such time as is determined by the Chairman, serve on the Secretary two copies of the written answer to the statement of the Applicant’s case.

(2) The Secretary shall serve a copy of the answer of the Respondent on the Applicant within fourteen days of the service of the answer of the Respondent on the Secretary.

24. Regulations 10 to 16 to apply with necessary modifications.

After regulation 23 has been complied with, regulations 10 to 16 shall apply with the necessary modifications.

25. Final decision of Tribunal.

(1) The final decision of the Tribunal on a reference or an application under this Part shall be given in writing and shall include a statement of the Tribunal's reasons and there shall be annexed to the decision a copy of the order and, where the Tribunal has varied a previous order, a copy of that order as varied.

(2) The Secretary shall, within three days of the final decision of the Tribunal serve on the parties a copy of the final decision of the Tribunal.

(3) Regulations 18 and 19 shall apply to this Part.

PART IV

REFERENCE TO THE COURT FROM DECISION OF TRIBUNAL

26. Notice of reference to Court.

(1) The party making the reference to the Court on a question of law shall within fourteen days of the final decision of the Tribunal serve on the Secretary a notice in Form 6, together with the prescribed fees, and shall also serve a copy thereof on every party to the proceedings.

(2) On receipt of the reference by the Secretary, the Tribunal may on its own motion suspend the operation of any order contained in its decision and shall, if an order is so suspended, within fourteen days from its decision to suspend the order, cause notice of the same to be served on every person affected by the suspension.

27. Application for suspension of order.

(1) A party to the proceedings ("the Applicant") may, pending the determination of a reference under subregulation 26(1), apply to the Tribunal to suspend the operation of an order made by serving on the Secretary a notice in Form 7 with the prescribed fees.

(2) The Applicant shall within fourteen days of the service of Form 7 on the Secretary, serve a copy of Form 7 together with a statement of the grounds for suspension on the other party to the proceedings ("the Respondent") and inform the Secretary of the date of such service.

(3) Within fourteen days of the service of the notice under subregulation (2) together with the statement of the grounds for suspension, the Respondent shall serve on the Secretary a statement setting out the grounds of objection to the Applicant's case, and shall also serve a copy of the grounds of objection to the Applicant and inform the Secretary of the date of such service.

(4) The Tribunal, after considering the application and any representation, may refuse or allow the application for suspension.

(5) If the Tribunal, after consideration of the application and any representation, refuses the application to suspend the operation of its order, the Secretary shall within fourteen days of the decision to refuse the application, serve on the parties to the proceedings a copy of the Tribunal's decision together with a statement of the Tribunal's reasons for refusal.

(6) If the Tribunal allows the application, the Secretary shall serve a notice of the suspension on the parties, and if particulars of the order have been advertised, shall cause notice of the suspension to be advertised in the same manner, and regulation 18 shall apply with regard to the publication of the decision.

28. Effect of order.

If the operation of any order is suspended under regulation 26 or 27, then while the order remains suspended, sections 27G and 27L of the Act shall not have effect in relation to the order.

PART V

MISCELLANEOUS AND GENERAL

29. Costs.

(1) The Tribunal may, at its discretion, at any stage of the proceedings make any order it thinks fit in relation to the payment of costs by any party in respect of the whole or part of the proceedings.

(2) Any party against whom an order for costs is made shall, if the Tribunal so directs, pay to any other party a lump sum by way of costs, or such proportion of the costs as may be just.

30. Service of documents.

(1) Any notice or other document required by these Regulations to be served on any person may be sent to him by prepaid post at his last address for service, or, where no address for service has been given, at his registered office, principal place of business or last known address, and every notice or other document required to be served on the Secretary may be sent by pre-paid post to the Secretary's office.

(2) Any notice or other document required to be served on a licensing body or organization which is not a body corporate may be sent to the secretary, manager or other similar officer of the body or organization.

(3) The Tribunal or the Chairman may direct that service of any notice or other document be dispensed with or effected otherwise than in the manner provided by these Regulations.

(4) Service of any notice or document on a party's agent shall be deemed to be service on such party, and service on an agent acting for more than one party shall be deemed to be service on every party for whom such an agent acts.

31. Date of service.

The date on which any document has been left or tendered or posted in accordance with regulation 30 shall be the date of service of such document.

32. Time.

(1) Except in the case of the time limit imposed under subregulation 26(1), the time for doing any act may (whether it has already expired or not) be extended with the leave of the Chairman or the Tribunal.

(2) Where the last day for the doing of any act falls on a day on which the office is closed and by reason thereof the act cannot be done on that day, it may be done on the next day on which the office is open.

33. Failure to comply with directions.

If any party fails to comply with any directions given in accordance with these Regulations by the Tribunal or the Chairman, the Tribunal may, if it considers that the justice of the case so requires, order that such party be debarred from taking any further part in the proceedings without leave of the Tribunal.

34. Procedure where no provision is made.

Subject to the provisions of the Act and these Regulations, the Tribunal shall adopt such procedure as it thinks fit and proper.

FIRST SCHEDULE

FEES

(Regulation 3)

	<i>Proceedings</i>	<i>Forms</i>	<i>Fees (RM)</i>
1.	Filing of notice of reference in respect of licensing scheme under section 27B, 27C or 27D of the Act	1	300
2.	Filing of notice of application in respect of licensing scheme under section 27E or 27F of the Act	2	300

	<i>Proceedings</i>	<i>Forms</i>	<i>Fees (RM)</i>
3.	Filing of notice of application for special leave under subsection 27D(2), 27F(2) or 27K(2) of the Act	3	300
4.	Filing of notice of reference in respect of licence under section 27I or 27J of the Act	4	300
5.	Filing of notice of application for review under section 27K of the Act	5	300
6.	Filing of reference to Court under section 30A of the Act	6	300
7.	Filing of notice of application to suspend order of Tribunal	7	300
8.	Filing of application for directions	—	50

SECOND SCHEDULE
(Regulation 4)

FORMS

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FORM 1

NOTICE OF REFERENCE UNDER SECTION 27B, 27C or 27D
[Paragraphs 6(1)(a) and 8(1)(a) and (9)(a)]

To,

The Chairman,
Copyright Tribunal,

.....
.....

1. TAKE NOTICE that

*** Reference under section 27B**

Whereas
[state name and address of *organization*] (“the Applicant”), being representative of persons claiming that they require licences [describe case(s) for which licence is required] to which the licensing scheme proposed (specified below) would apply;

*** Reference under section 27C**

Whereas.....
*[state name and address of *person*] (“the Applicant”) claims that a licence [describe case for which licence is required] is required

*[state name and address of *organization*] (“the Applicant”), being representative of persons claiming that they require licences [describe case(s) for which licence is required] to which the licensing scheme (specified below) applies;

*** Reference under section 27D**

Whereas
 [*state name and address of *operator of scheme*] ("the Applicant"), is the operator of the scheme (specified below);

*[state name and address of *person*] ("the Applicant") claims that a licence [describe case for which licence is required] is required to which the licensing scheme (specified below) applies;

*[state name and address of *organization*] ("the Applicant"), being representative of persons claiming that they require licences [describe case(s) for which licence is required] to which the licensing scheme (specified below) applies;

the Applicant hereby refers to the Tribunal the licensing scheme, particulars of which are—

.....

 [state name and address of operator of scheme and the scheme]

*as confirmed/varied by the Tribunal by an Order dated
 and bearing the reference number

2. The Applicant is an organization representing [here give particulars of the persons whom the Applicant claims to represent and the grounds on which it claims to represent them].

3. There is delivered herewith a statement of the Applicant's case.

4. All communications about this reference should be addressed to

*[the Applicant at the address shown above]

*[name and address of Applicant's agent].

5. The name and address of the Respondent is

Date.....

.....
 (*Applicant/officer of Applicant/agent)

*Delete whichever is inappropriate.

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FORM 2

NOTICE OF APPLICATION UNDER SECTION 27E or 27F

[Paragraph 6(1)(b) and 8(1)(b) and (9)(b)]

To,

The Chairman,
Copyright Tribunal,

.....

.....

1. TAKE NOTICE that

*[name and address of person]

*[name and address of operator of licensing scheme]

("the Applicant") hereby applies to the Tribunal in connection with the licensing scheme (specified below)—

***Application under section 27E**

*being in a case covered by the scheme, for the grant of licence in connection with the scheme which the operator of the scheme has *refused/failed to grant or procure the grant/has refused/failed to grant or procure the grant within a reasonable time/has proposed terms for a licence which are unreasonable.

*being a case excluded from the scheme, the operator of the scheme has *refused to grant or procure the grant of a licence/has failed to do so within a reasonable time/has proposed terms for a licence which are unreasonable.

***Application for review under section 27F**

*for review of its Order dated.....and bearing the reference number.....

2. The particulars of the licensing scheme are [name and address of operator of scheme and the case covered or excluded by the scheme].

3. Description of the case for which a licence is required.....

4. There is delivered herewith a statement of the Applicant's case.

5. All communications about this reference should be addressed to

*[the Applicant at the address shown above]

*[name and address of Applicant's agent].

6. The name and address of the Respondent is.....

Date.....

.....
(*Applicant/officer of Applicant/agent)

*Delete whichever is inappropriate.

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FORM 3

APPLICATION FOR SPECIAL LEAVE UNDER SECTIONS 27D, 27F and 27K

[Subregulations 8(3) and 22(3)]

To,

The Chairman,
Copyright Tribunal,

.....

.....

1. TAKE NOTICE that [name and address of person, organization or operator of licensing scheme] ("the Applicant") hereby applies for the special leave of the Tribunal—

***Application under subsection 27D(2)**

*to refer again to the Tribunal the licensing scheme which was

*confirmed/varied by the Tribunal by an Order

***Application under subsection 27F(2)**

to review its Order as to entitlement to licence

***Application under subsection 27K(2)**

to review its order as to licence

dated.....and bearing reference number.....

2. There is delivered herewith a statement of the grounds for the application.

3. All communications about this application should be addressed to

*[the Applicant at the address shown above]

*[name and address of Applicant's agent].

4. The name and address of the Respondent is.....

Date.....

.....
(*Applicant/officer of Applicant/agent)

*Delete whichever is inappropriate.

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FORM 4

NOTICE OF REFERENCE UNDER SECTION 27I or 27J
[Subregulation 20(1)]

To,

The Chairman,
Copyright Tribunal,

.....

.....

1. TAKE NOTICE that [name and address of prospective licensee or licensee] ("the Applicant")

***Reference under section 27I**

*being the prospective licensee under the terms of a licence to be granted by [name and address of licensing body]

***Reference under section 27J**

*being a licensee under a licence granted by [name and address of licensing body], which licence is due to expire *by effluxion of time/as a result of a notice given by the licensing body on hereby—

*refer to the Tribunal the terms on which the licensing body proposes to grant the licence

*apply to the Tribunal on the ground that it is unreasonable that the licence should cease to be in force.

2. There is delivered herewith a statement of the Applicant's case.

3. All communications about this reference should be addressed to

*[the Applicant at the address shown above]

*[name and address of Applicant's agent].

4. The name and address of the Respondent is

Date.....

.....
(*Applicant/officer of Applicant/agent)

*Delete whichever is inappropriate.

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FORM 5
NOTICE OF APPLICATION FOR REVIEW UNDER SECTION 27k
[Subregulation 22(1)]

To,

The Chairman,
Copyright Tribunal,
.....
.....

1. TAKE NOTICE that [name and address of licensing body or person seeking review] ("the Applicant") hereby applies to the Tribunal for a review of its Order dated..... and bearing the reference number.....relating to the licence granted *to/by [name and address of licensee or licensing body].

2. There is delivered herewith a statement of the Applicant's case.

3. All communications about this reference should be addressed to

*[the Applicant at the address shown above]

*[name and address of Applicant's agent].

4. The name and address of the Respondent is.....

Date.....

.....
(*Applicant/officer of Applicant/agent)

*Delete whichever is inappropriate.

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FORM 6
NOTICE OF REFERENCE TO COURT ON QUESTION OF LAW UNDER SECTION 30A
[Regulation 26]

To,

The Chairman,
Copyright Tribunal,
.....
.....

1. TAKE NOTICE that [name and address of appellant] ("the Applicant"), being a party to the proceedings on the *reference/application intends to refer to the High Court against the decision of the Tribunal dated.....and bearing the reference number..... on the following question of law:

[state question(s) of law]

2. A copy of this Notice *has been/will be served on [date of service] on every person or organization who was a party to the proceedings, namely (specify names and addresses of parties).

3. All communications about this reference should be addressed to

*[the Applicant at the address shown above]

*[name and address of Applicant's agent].

Date.....

.....
(*Applicant/officer of Applicant/agent)

*Delete whichever is inappropriate.

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FORM 7

NOTICE OF APPLICATION TO SUSPEND ORDER OF TRIBUNAL

[Regulation 27]

To,

The Chairman,
Copyright Tribunal,

.....

.....

1. TAKE NOTICE that [name and address of applicant] ("the Applicant"), being a party to the proceedings on the *reference/application/appeal [specify the proceedings] hereby applies to the Tribunal for the suspension of the operation of the Order of the Tribunal dated and bearing the reference number

2. There is delivered herewith a statement setting out the grounds for suspension-

[state grounds for suspension]

3. A copy of this Notice, together with the statement of the grounds for suspension, *has been/will be served on [date of service] on every person or organization who was a party to the proceedings, namely [specify names and addresses of parties].

◦ 4. All communications about this application should be addressed to

*[the Applicant at the address shown above]

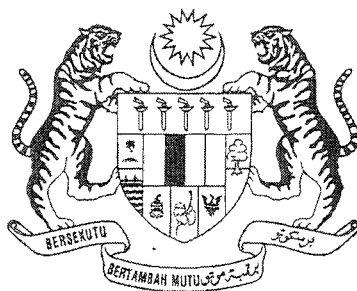
*[name and address of Applicant's agent].

Date.....

.....
(*Applicant/officer of Applicant/agent)

*Delete whichever is inappropriate.

Made 27 June 2000.



LAWS OF MALAYSIA

Act A1082

COPYRIGHT (AMENDMENT) ACT 2000

Date of Royal Assent. ... 30 May 2000

Date of publication in the
Gazette ... 15 June 2000

LAWS OF MALAYSIA

Act A1082

COPYRIGHT (AMENDMENT) ACT 2000

An Act to amend the Copyright Act 1987.

[]

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (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*.

Amendment of section 3

2. 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
Act 601. the meaning of the Layout-Designs of
Integrated Circuits Act 2000;”;

(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”.

Amendment of section 4

3. 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,”.

Amendment of section 8

4. 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,”.

New section 10A

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

- “Qualifica-
tion 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.”.

Amendment of section 13

6. 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”.

New sections 16A and 16B

7. 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 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;

- (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
remune-
ration.

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.”.

Amendment of section 17

8. 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).”.

Amendment of section 18

9. 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”.

Substitution of section 19

10. 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.”.

Amendment of section 20

11. 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”.

Substitution of section 22

12. 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.”.

Amendment of section 23

13. 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”.

New sections 23A and 23B

14. 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.”.

New section 25A

15. 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.”.

Amendment of section 27A

16. 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”.

Amendment of section 27H

17. 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”.

Amendment of section 39

18. 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.”.

New section 39A

19. 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.”.

Amendment of section 41

20. 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”.

Amendment of section 42

21. 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).

Amendment of section 59A

22. 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”;

(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,”
