

The Malaysian Copyright (Amendment) Act 2022: A Win for Copyright Owners and Accessibility Efforts

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The Copyright (Amendment) Act 2022 (**'the Amendment Act'**) was recently passed by the Malaysian House of Representatives on 15 December 2021 and the Dewan Negara (Senate) on 22 December 2021. The Amendment Act has received Royal Assent and will henceforth come into operation on a date to be determined by notification in the Gazette by the Minister of Domestic Trade and Consumer Affairs (**'Minister'**) after being gazetted.

The Amendment Act proposes a number of key amendments, among others, to the Copyright Act 1987 (**'the Act'**) which are discussed below.

Malaysia's Accession to the Marrakesh Treaty

Malaysia's accession to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled 2013 (**'Marrakesh Treaty'**) will be effected through the introduction of new provisions. As a part of the body of international copyright treaties administered by the World Intellectual Property Office (WIPO), the Marrakesh Treaty allows for copyright exceptions to facilitate the creation of accessible versions of books and other copyrighted works for visually impaired persons.

These new provisions under Clauses 3 to 6 of the Amendment Act mainly cover the introduction of various copyright infringement exemptions which cater for the making and distribution of an accessible format copy of any work for the exclusive use of a person with print disability. A "person with print disability" is defined to mean a person who is registered as a person with disability under the Persons with Disabilities Act 2008 who is (a) blind; (b) visually impaired or has a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person without such impairment or disability, and due to such impairment or disability is unable to read printed works to substantially the same degree as a person without such impairment or disability; or (c) unable to hold or manipulate a book or to focus or move the eyes, to the extent that would be normally acceptable to read due to physical disability.

Narrowing of the Voluntary Notification of Copyright system

The right of an author of a work to apply for a Voluntary Notification of Copyright under Section 26A of the Act will also be removed under Clause 7 of the Amendment Act. This means that only the copyright owner of a work, an assignee of the copyright or a person to whom an interest in the copyright has been granted by licence will be entitled to apply for a Voluntary Notification of Copyright.

Enhancements to the Collective Management Organisations system

The provisions in relation to "licensing bodies" (i.e., bodies which represent and administer the rights for groups of copyright owners, typically granting licences to third parties and collecting royalties on behalf of the copyright owners) was amended and enhanced. "Licensing bodies" will now be renamed as "collective management organisations" (**'CMO'**) under Clause 2 of the Amendment Act to be in line with international practice.

The amendments pertaining to CMOs are as follows:

- (a) In contrast to the previous position where any society or organisation could apply to be declared as a CMO, only companies limited by guarantee may now apply to be declared as a CMO;

- (b) Applicants for declaration as a CMO will be required to submit documents relating to the collection and distribution of the licensing scheme as part of the application process;
- (c) The previous indefinite time period of a declaration of a body as a CMO will now be limited to two years, subject to renewals; and
- (d) The Controller of Copyright will be empowered to issue guidelines relating to any matter on the declaration and operation of CMOs by way of a new Section 27M.

New offences to tackle online piracy

The Amendment Act introduces the following new offences which appear aimed at tackling the latest trends of piracy on the internet, namely:

- (a) providing or sharing access to an online location containing pirated works;
- (b) committing or facilitating copyright infringement by manufacturing, importing or selling or letting for hire any streaming technology; and
- (c) intentionally causing any evidence relating to the commission of an offence to disappear, or giving any information in respect of the offence which they know or believe to be false, with the intention of screening the offender from legal punishment.

Strengthening of enforcement powers

The Amendment Act confers new investigative powers and enforcement powers on the Assistant Controller, including the power to search for and seize any infringing copies of works which are prohibited from being imported into Malaysia without the copyright owner needing to make an application first, as well as the power to direct a copyright owner or any authorised person to make test purchases for the purpose of determining compliance with the Act.

Comments

The much-welcomed amendments under the Amendment Act see Malaysia's timely accession to the Marrakesh Treaty and finally empowers the blind and visually impaired as called for over the years by interest groups for the Intellectual Property Corporation of Malaysia ('MyIPO').

Further, the improved CMO system in Malaysia is a step in the right direction. It is hoped that MyIPO will make use of the new Section 27M sooner rather than later to issue guidelines on the operations of CMOs to provide greater and much-needed clarity on how CMOs work not only to the copyright owners which the CMOs may represent but to members of the public who may wish to seek licences from CMOs as well.

Lastly, the introduction of new streaming and linking related offences will certainly be lauded by copyright owners as it brings Malaysia's copyright enforcement regime up-to-date with the scourge of online piracy in our new digital world where most content (infringing or otherwise) is often communicated and consumed via streaming.

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