

A BILL

*i n t i t u l e d*

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 2021.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

**General amendment**

2. The Copyright Act 1987 [*Act 332*], which is referred to as the “principal Act” in this Act, except for subsections 27A(3) and (4), is amended by substituting for the words “licensing body” wherever appearing including in the shoulder note the words “collective management organization”.

**Amendment of section 3****3. Section 3 of the principal Act is amended—**

- (a) by deleting the definition of “licensing body”;
- (b) by inserting after the definition of “author” the following definition:

‘ “authorized entity” means an entity prescribed by the Minister under subsection 13(2c);’;

- (c) by inserting after the definition of “performers’ right” the following definition:

‘ “person with print disability” means a person who is registered as a person with disability under the Persons with Disabilities Act 2008 [*Act 685*] 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;’;

- (d) by inserting after the definition of “citizen” the following definition:

‘ “collective management organization” means a body corporate which is declared as a collective management organization under section 27A;’; and

(e) by inserting before the definition of “adaptation” the following definition:

‘ “accessible format copy” means a copy of a work in an alternative manner or form which gives a person with print disability access to the work including to permit the person with print disability to have access as feasibly and comfortably as a person without such disability for his exclusive use;’.

### **Amendment of section 13**

4. Section 13 of the principal Act is amended—

(a) in subsection (2)—

(i) in paragraph (gggg), by deleting the words “visually or”;

(ii) by inserting after paragraph (gggg) the following paragraph:

“(ggggg) the making and issuing of copies of any work into an accessible format copy on such terms as the Minister may determine, by—

(i) an authorized entity; or

(ii) a person with print disability or any other person acting on his behalf including his caregiver;”;

(iii) in paragraph (p), by deleting the word “and” at the end of the paragraph;

(iv) in paragraph (q), by substituting for the full stop at the end of the paragraph a semi colon; and

(v) by inserting after paragraph (q) the following paragraphs:

“(r) the importation for the purpose of distribution or making available of copies of any work in an accessible format copy by an authorized entity, the person with print disability himself or any other person acting on his behalf including his caregiver, and on such terms as the Minister may determine; and

(s) the exportation for the purpose of distribution or making available of copies of any work in an accessible format copy by an authorized entity to a member of the Marrakesh Treaty and on such terms as the Minister may determine.”; and

(b) by inserting after subsection (2A) the following subsections:

“(2B) For the purpose of paragraph 2(s), “Marrakesh Treaty” means the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled done in Marrakesh on 27 June 2013.

(2C) For the purpose of paragraphs (2)(ggggg), (r) and (s), the Minister may by order prescribe any non-profit making body or institution which provides education, instructional training, adaptive reading or information access to a person with print disability to be an authorized entity.”.

#### **Amendment of section 16A**

5. Subparagraph 16A(3)(c)(ii) of the principal Act is amended by substituting for the words “, 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”

the words “a person with print disability himself or any other person acting on his behalf including his caregiver, or an authorized entity or a non-profit making body or institution, solely for the purpose of assisting people who are hearing impaired or persons with print disability”.

**Amendment of section 25**

6. Section 25 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) Where a work is modified into an accessible format copy by an authorized entity, a person with print disability himself or any other person acting on his behalf including his caregiver, that modification shall not constitute a contravention of subsection (2) if the modification is necessary to make the work in an accessible format copy.”.

**Amendment of section 26A**

7. Section 26A of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the words “the author of the work,”;  
and

(ii) by substituting for the words “, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence” the words “or an assignee of the copyright”; and

(b) in subsection (3) by deleting paragraph (b).

**Amendment of section 27A**

8. Section 27A of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the words “A society or an organization” the words “A body corporate”; and

- (ii) by substituting for the words “or for a specified class of copyright owners” the words “, authors or performers”;

(b) in subsection (2)—

- (i) in paragraph (a), by deleting the word “and” at the end of the paragraph;

- (ii) in paragraph (b)—

- (A) by inserting after the words “copyright owners” the words “, authors or performers”;  
and

- (B) by substituting for the full stop at the end of the paragraph the words “; and”;  
and

- (iii) by inserting after paragraph (b) the following paragraph:

- “(c) the applicant’s constituent document relating to the collection and distribution of licensing scheme.”;

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

- “(2A) The application made under subsection (2) shall be accompanied with a fee as may be prescribed by the Minister.”;

(d) in subsection (3), by substituting for the words “licensing body” the words “collective management organization for a period of two years”;

(e) by inserting after subsection (3) the following subsections:

- “(3A) An application for a renewal of the declaration issued under subsection (3) shall be made by the collective management organization to the Controller

not later than sixty days before the date of expiry of the declaration, and the application shall be—

- (a) made in the form and manner as may be determined by the Controller;
- (b) accompanied with a fee as may be prescribed by the Minister; and
- (c) submitted together with any information, particulars or documents as may be determined by the Controller.

(3B) Any application for the renewal made after the expiry of the declaration issued under this Act shall be subject to a payment of surcharge as may be prescribed by the Minister.

(3C) The date of expiry of the declaration renewed under subsection (3A) shall be stated in the declaration.”;

(f) in subsection (4), by substituting for the words “licensing body” the words “collective management organization, or if the applicant’s constituent document is identical with or similar to any other collective management organizations”;

(g) by deleting subsection (5);

(h) in subsection (6), by inserting after paragraph (c) the following paragraph:

“(cc) has refused or failed, without reasonable excuse, to comply with any guidelines issued under section 27M;”;

(i) in subsection (8)—

(i) by substituting for the words “society or organization” the word “person”; and

(ii) by deleting the words “or any licensing body which does not comply with the provisions of subsection (5)”; and

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

“(9) For the purpose of this section, “body corporate” means a company limited by guarantee incorporated under the Companies Act 2016 [Act 777].”.

### **New section 27M**

**9.** The principal Act is amended by inserting after section 27L the following section:

#### **“Guidelines**

**27M.** (1) The Controller may issue guidelines on any matter relating to the declaration and operation of a collective management organization provided under this Part.

(2) The person to whom the guidelines referred to in subsection (1) applies shall comply and give effect to such guidelines.

(3) The Controller may revoke, vary, revise or amend the whole or any part of any guidelines issued under this section.”.

### **Amendment of section 36A**

**10.** Subsection 36A(2) of the principal Act is amended—

(a) in subparagraph (e)(iii), by deleting the word “or” at the end of the subparagraph;

(b) in paragraph (f), by substituting for the full stop at the end of the paragraph the words “; or”; and



(c) by inserting after paragraph (f) the following paragraph:

“(g) done by an authorized entity or a person with print disability himself or any other person acting on his behalf including his caregiver, for the exclusive use of the person with print disability, for the sole purpose of—

(i) making and issuing copies of any work into an accessible format copy; or

(ii) distributing or making available copies of any work in an accessible format copy.”.

### **Amendment of section 39**

**11.** Section 39 of the principal Act is amended by substituting for subsection (6) the following subsection:

“(6) Any Assistant Controller, police officer not below the rank of Inspector or any officer of Customs, with or without application under subsection (1), may search for and seize any infringing copies which are prohibited from being imported into Malaysia.”.

### **Amendment of section 41**

**12.** Subsection 41(1) of the principal Act is amended—

(a) in paragraph (ha), by substituting for the words “or sells” the words “, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire, possesses or distributes”;

(b) in paragraph (i), by deleting the word “or” at the end of the paragraph;

(c) in paragraph (j), by substituting for the comma at the end of the paragraph the words “; or”;

(d) by inserting after paragraph (j) the following paragraph:

“(k) provides or shares access to an online location of any works or copies of works to any other person without authority,”; and

(e) in subparagraph (iii), by substituting for the words “(i) and (j)” the words “(i), (j) and (k)”.

### **Substitution of section 41A**

**13.** The principal Act is amended by substituting for section 41A the following section:

#### **“Compounding of offences**

**41A.** (1) The Minister may, with the approval of the Public Prosecutor, make regulations—

(a) any offence under this Act and any subsidiary legislation made under this Act as an offence which may be compounded; and

(b) the method and procedure for compounding such offence.

(2) The Controller, Deputy Controller or any person authorized in writing by the Controller may, with the consent in writing of the Public Prosecutor, at any time before a prosecution is instituted, compound any offence which may be compounded by making a written offer to the person reasonably suspected of having committed the offence upon payment to the Controller, Deputy Controller or any person authorized in writing by the Controller, a sum of money not exceeding fifty per centum of the amount of the maximum fine to which the person would have been liable to if he had been convicted of the offence, within such time as may be specified in the written offer.

(3) The written offer under subsection (2) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and where the amount specified in the written offer is not paid within the time specified in the written offer, or such extended time as the Controller, Deputy Controller or any person authorized in writing by the Controller may grant, the prosecution for the offence may be instituted at any time after that against the person to whom the written offer was made.

(4) Where an offence has been compounded under subsection (2), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and the Controller, Deputy Controller or any person authorized in writing by the Controller, may forfeit or return any article, vehicle, book, document, copy or contrivance seized in connection with the offence, subject to such terms as the Controller, Deputy Controller or any person authorized in writing by the Controller thinks fit.

(5) All sums of money received by the Controller, Deputy Controller or any person authorized in writing by the Controller under this section shall be paid into and form part of the Federal Consolidated Fund.”.

#### **Amendment of section 43A**

**14.** Subsection 43A(3) of the principal Act is amended—

- (a) in the definition of “audiovisual recording device”, by substituting for the words “motion picture” the word “film”;
- (b) by deleting the definition of “motion picture”; and
- (c) in the definition of “screening room”, by substituting for the words “a motion picture, including a motion picture theatre” the word “a film”.

**New Part VIAA**

**15.** The principal Act is amended by inserting after Part VIA the following part:

“PART VIAA

STREAMING TECHNOLOGY

**Offences relating to streaming technology**

**43AA.** (1) No person shall commit or facilitate infringement of the copyright in any work by—

- (a) manufacturing a streaming technology for sale or hire;
- (b) importing a streaming technology;
- (c) selling or letting for hire, offering, exposing or advertising for sale or hire, possessing or distributing a streaming technology in the course of a business;
- (d) distributing a streaming technology for purposes other than in the course of a business to such an extent as to affect prejudicially the owner of the copyright; or
- (e) offering to the public or providing any service of streaming technology.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than ten thousand ringgit and not more than two hundred thousand ringgit or to imprisonment for a term not exceeding twenty years or to both.

(3) 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, chief executive officer, chief operating officer, secretary, manager or other similar officer of

the body corporate or every other partner in the firm or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of the affairs of the body corporate or firm or was assisting in such management, as the case may be, shall be deemed to be guilty of the offence and may be charged severally or jointly in the same proceedings with the body corporate or firm 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.

(4) For the purpose of this section, “streaming technology” includes computer program, device or component which is used in part or in whole that results in an infringement of the copyright in a work.”.

#### **Amendment of section 48**

**16.** Section 48 of the principal Act is amended—

(a) in paragraph (d), by deleting the word “or” at the end of the paragraph;

(b) in paragraph (e), by substituting for the comma at the end of the paragraph the words “; or”; and

(c) by inserting after paragraph (e) the following paragraph:

“(f) knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with the knowledge that he is likely thereby to screen the offender from legal punishment, or with that intention or knowledge gives any information in respect of the offence which he knows or believes to be false.”.

**New section 51B**

**17.** The principal Act is amended by inserting after section 51A the following section:

**“Test purchase**

**51B.** The Assistant Controller may direct the owner of the copyright or any person authorized to act on behalf of the owner of the copyright to make test purchase of any goods as may appear expedient for the purpose of determining whether or not the provisions of this Act are being complied with.”.

**New section 52B**

**18.** The principal Act is amended by inserting after section 52A the following section:

**“Power of the Assistant Controller to require provision of information**

**52B.** (1) This section applies if the Assistant Controller in carrying out an investigation under this Act has reason to believe that any person—

(a) has any information or any document that is relevant to the performance of the Assistant Controller’s powers and functions under this Act; or

(b) is capable of giving any evidence which the Assistant Controller has reason to believe is relevant to the performance of the Assistant Controller’s powers and functions under this Act.

(2) Notwithstanding any provision of any other written law, the Assistant Controller may, by written notice, direct any person—

(a) to provide to the Assistant Controller, within the period and in the manner and form specified in the notice, any information or document referred to in subsection (1);

- (b) to produce to the Assistant Controller, within the period and in the manner specified in the notice, any information or document referred to in subsection (1), whether in physical or electronic form;
- (c) to make copies of, or extracts from, any document referred to in subsection (1) and to produce copies or extracts of such documents to the Assistant Controller within the period and in the manner specified in the notice;
- (d) if the person is an individual, to appear before the Assistant Controller at a time and place specified in the notice to give any information, either orally or in writing, and to produce any document referred to in subsection (1), whether in physical or electronic form;
- (e) if the person is a body corporate or a public body, to cause a relevant and competent officer of the body to appear before the Assistant Controller at a time and place specified in the notice to give any information, either orally or in writing, and produce any document referred to in subsection (1), whether in physical or electronic form;
- (f) if the person is a partnership, to cause an individual who is a partner in the partnership or an employee of the partnership to appear before the Assistant Controller at a time and place specified in the notice to give any information, either orally or in writing, and to produce any document referred to in subsection (1), whether in physical or electronic form; or
- (g) to make a statement to the Assistant Controller by providing an explanation of any information or document referred to in subsection (1) within the period and in the manner and form specified in the notice.

(3) Where the Assistant Controller directs any person to produce any document under subsection (2) and the document is not in the custody of that person, that person shall—

- (a) state, to the best of his knowledge and belief, where the document may be found; and

(b) identify, to the best of his knowledge and belief, the last person who had custody of the document and to state, to the best of his knowledge and belief, where that last-mentioned person may be found.

(4) Any person directed to provide information under subsection (2) or (3) shall ensure that the information provided is true, accurate and complete and such person shall provide an express representation to that effect, including a declaration that he is not aware of any other information which would make the information provided untrue or misleading.

(5) Any person who refuses or fails to comply with the direction given by the Assistant Controller under this section commits an offence.”.

### **Validation and indemnity**

**19.** (1) Notwithstanding the absence of any provision under the principal Act on the requirement to pay fees to the Controller, the fees collected and imposed by the Controller in relation to the declaration issued under section 27A of the principal Act shall be deemed to have been validly imposed and collected during the period from 1 June 2012 to the day preceding the commencement date of this Act.

(2) No action or legal proceedings shall be brought, instituted or maintained against the Government of Malaysia, any officer of the Government of Malaysia, the Corporation, any officer of the Corporation, or any person acting under them in respect of any fees which were charged and collected during the period referred to in subsection (1), and if any action or legal proceedings has been brought, instituted or maintained, it shall be discharged and made void and no refund in respect of the fees charged and collected as stated in this Act shall be made.

### **Saving and transitional**

**20.** (1) All references to “licensing body” under the principal Act or any subsidiary legislation made under the principal Act shall, on the date of coming into operation of this Act, be construed as references to “collective management organization”.



(2) Any application for declaration made under section 27A of the principal Act which is pending before the date of coming into operation of this Act shall, on the date of coming into operation of this Act, be dealt with in accordance with the provision of the principal Act as amended by this Act.

(3) Any applicant that has been declared as a licensing body under subsection 27A(3) of the principal Act before the date of coming into operation of this Act shall be deemed to be declared as a collective management organization for the period of two years from the date of coming into operation of this Act.

(4) Any action under the principal Act done by a licensing body before the date of coming into operation of this Act shall remain valid from the date of coming into operation of this Act, until amended, replaced, rescinded or revoked.

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#### EXPLANATORY STATEMENT

This Bill seeks to amend the Copyright Act 1987 (“Act 332”) to comply with the international standards and practices as required by the Regional Comprehensive Economic Partnership Agreement, Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled and Comprehensive and Progressive Agreement for Trans-Pacific Partnership. The purpose of these amendments are among others to provide for an accessible format copy of any work for the exclusive use of the person with print disability, to enhance the provisions in relation to collective management organization and to strengthen the enforcement powers under Act 332.

2. *Clause 1* contains the short title and seeks to empower the Minister to appoint the commencement date of the proposed Act including the power to appoint different dates for the coming into operation of different provisions of the proposed Act.

3. *Clause 2* seeks to provide for a general amendment to Act 332 to substitute for the words “licensing body” the words “collective management organization” except for subsections 27A(3) and (4) of Act 332.

4. *Clause 3* seeks to amend section 3 of Act 332 to delete the definition of “licensing body” and to introduce new definitions of “authorized entity”, “person with print disability”, “collective management organization” and “accessible format copy”.

5. *Clause 4* seeks to amend subsection 13(2) of Act 332 to provide that an authorized entity or a person with print disability may make and issue copies of any work into an accessible format copy. This *clause* also seeks to provide that the importation or exportation for the purpose of distribution or making available of copies of work in an accessible format copy by an authorized entity or a person with print disability, does not constitute an infringement of copyright.

6. *Clause 5* seeks to amend subparagraph 16A(3)(c)(ii) of Act 332 to provide that an indirect sound recording or a film of a performance made by a person with print disability, or an authorized entity or a non-profit making body or institution, solely for the purpose of assisting people who are hearing impaired or persons with print disability does not constitute an infringement of copyright.

7. *Clause 6* seeks to amend section 25 of Act 332 to introduce a new subsection (3A) to provide that where a work is modified into an accessible format copy, that modification shall not amount to a contravention of the author's moral rights if the modification is necessary to make the work in an accessible format copy.

8. *Clause 7* seeks to amend section 26A of Act 332 to remove the right of the author of the work to make a voluntary notification of copyright in the work.

9. *Clause 8* seeks to amend section 27A of Act 332.

*Subclauses 8(a)* and *(j)* seek to amend subsection 27A(1) of Act 332 to provide that only a company limited by guarantee may apply to be declared as a collective management organization for copyright owners, authors or performers.

*Subclause 8(b)* seeks to amend subsection 27A(2) of Act 332 to provide that an applicant, upon application to be declared as a collective management organization is made to the Controller, shall in addition to the existing documents, submit the constituent document relating to the collection and distribution of licensing scheme.

*Subclause 8(d)* seeks to amend subsection 27A(3) of Act 332 to provide that the effective period of a declaration of a collective management organization is two years.

*Subclause 8(e)* seeks to introduce new subsections 27A(3A) and (3B) into Act 332 to provide for an application for a renewal of a declaration as a collective management organization and the imposition of a surcharge for any application for renewal made after the expiry of such declaration.

*Subclause 8(f)* seeks to amend subsection 27A(4) of Act 332 to provide that an application to be declared as a collective management organization shall be refused if the applicant's constituent document is identical with or similar to any other collective management organizations.

10. *Clause 9* seeks to introduce a new section 27M into Act 332 to provide that the Controller may issue guidelines relating to any matter on the declaration and operation of the collective management organization.

11. *Clause 10* seeks to amend section 36A of Act 332 to provide that a technological protection measure applied to a copy of a work by the owner of the copyright in the work may be circumvented for the sole purpose of making, issuing, distributing or making available copies of any work in an accessible format copy for the exclusive use of a person with print disability, done by an authorized entity or a person with print disability.

12. *Clause 11* seeks to amend subsection 39(6) of Act 332 to empower any Assistant Controller, police officer not below the rank of an Inspector or any officer of Customs to search for and seize any infringing copies which are prohibited from being imported into Malaysia, with or without the application made under subsection 39(1) of Act 332.

13. *Clause 12* seeks to amend subsection 41(1) of Act 332 to introduce a new paragraph (k) to make it an offence for any person who provides or shares access to an online location of any works or copies of works to any other person without authority.

14. *Clause 13* seeks to amend section 41A of Act 332 to clarify further the procedure for the exercise of power of the Controller, Deputy Controller or any person authorized in writing by the Controller, with the written consent of the Public Prosecutor, to compound any offence which is prescribed to be a compoundable offence committed by any person under Act 332. The amount compounded shall not exceed fifty per centum of the amount of the maximum fine for that offence.

15. *Clause 15* seeks to introduce a new Part VIAA into Act 332. The proposed new section 43AA seeks to provide for the offence of infringement of copyright in any work by a person who among others manufactures, imports, or sells or lets for hire, a streaming technology.

16. *Clause 16* seeks to amend section 48 of Act 332 to introduce a new paragraph (f) to make it an offence for any person who intentionally caused any evidence relating to the commission of an offence to disappear or who gives any information in respect of the offence which he knows or believes to be false, with the intention of screening the offender from legal punishment.

17. *Clause 17* seeks to introduce a new section 51B into Act 332 to empower an Assistant Controller to direct the copyright owner or any person authorized to act on behalf of the copyright owner to make test purchases for the purpose of determining the compliance with Act 332.

18. *Clause 18* seeks to introduce a new section 52B into Act 332 to empower an Assistant Controller to require any person that has any information or document, or is capable of giving any evidence, to produce such information, document or evidence relevant to the performance of the Assistant Controller's powers and functions, and to provide for the procedures on the exercise of the powers by the Assistant Controller.

19. *Clause 19* seeks to validate the imposition and collection of fees in respect of declarations issued under section 27A of Act 332 during the period from 1 June 2012 to the day preceding the commencement date of this Act.

20. *Clause 20* deals with saving and transitional provisions.

21. Other amendments not specifically dealt with in this Explanatory Statement are minor or consequential in nature.

*FINANCIAL IMPLICATIONS*

This Bill will not involve the Government in any extra financial expenditure.

[PN(U2)3267]