

Copyright (Amendment) Bill

Bill No. 27/99.

Read the first time on 3rd August 1999.

A BILL

intituled

An Act to amend the Copyright Act (Chapter 63 of the 1988 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1.—(1) This Act may be cited as the Copyright (Amendment) Act 1999 and, with the exception of section 25, shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

(2) Section 25 shall be deemed to have come into operation on 16th April 1998.

Amendment of section 2

2. Section 2 of the Copyright Act is amended —

- (a) by deleting the words “Part XI” and substituting the words “Parts XI and XII”; and
- (b) by deleting the word “provides” and substituting the word “provide”. 5

Amendment of section 7

3. Section 7 of the Copyright Act is amended —

- (a) by deleting the definition of “literary work” in subsection (1); 10
- (b) by inserting, immediately after subsection (2), the following subsection:

“(2A) Without limiting the meaning of the expression “reasonable portion” in this Act, where a literary, dramatic or musical work is contained in a published edition of that work, being an edition which is stored on any medium by electronic means and is not divided into pages, a copy of part of that work, as it appears in that edition, shall be taken to contain only a reasonable portion of that work if the part that is copied in the edition — 15 20

- (a) does not exceed, in the aggregate, 10% of the total number of bytes in that edition; or
 - (b) in a case where the work is divided into chapters, exceeds, in the aggregate, 10% of the total number of bytes in that edition but contains only the whole or part of a single chapter of the work.”; and 25
- (c) by deleting the words “or a handicapped reader’s copy” in subsection (3) (k) (i) and substituting the words “a handicapped reader’s copy, or an intellectually handicapped reader’s copy”. 30

New section 7A

4. The Copyright Act is amended by inserting, immediately after section 7, the following section:

“Literary works include compilation and computer program

5 **7A.**—(1) For the purposes of this Act, “literary work” includes —

 (a) a compilation in any form; and

 (b) a computer program.

10 (2) Any copyright subsisting in a compilation by virtue of Part III —

 (a) is limited to the selection or arrangement of its contents which constitutes an intellectual creation; and

15 (b) is in addition to, and independent of, any right subsisting by virtue of Part III, IV or XII in any relevant material or data contained in the compilation.

(3) For the purposes of this section —

 “compilation” means —

 (a) a compilation, or table, consisting wholly of relevant materials or parts of relevant materials;

20 (b) a compilation, or table, consisting partly of relevant materials or parts of relevant materials; or

25 (c) a compilation, or table, of data other than relevant materials or parts of relevant materials, which, by reason of the selection or arrangement of its contents, constitutes an intellectual creation;

 “relevant material” means —

 (a) a work, including a computer program;

 (b) a sound recording;

30 (c) a cinematograph film;

 (d) a published edition of a work;

 (e) a television or sound broadcast;

 (f) a cable programme; or

35 (g) a recording of a performance within the meaning of Part XII.”.

Amendment of section 15

5. Section 15 of the Copyright Act is amended —

- (a) by inserting, immediately after subsection (1), the following subsection:

“(1A) For the purposes of this Act, reproduction, in relation to any work, includes the making of a copy which is transient or is incidental to some other use of the work.”; and

- (b) by deleting the words “Subsection (1)” in subsection (2) and substituting the words “Subsections (1) and (1A)”. 10

Repeal and re-enactment of section 17

6. Section 17 of the Copyright Act is repealed and the following section substituted therefor:

“Storage in computer or on any medium by electronic means

17. References in this Act to the reduction of any work or of an adaptation of a work to a material form, or to the reproduction of any work or of an adaptation of a work in a material form, shall include references to the storage of that work or adaptation — 15

- (a) in a computer; or 20
(b) on any medium by electronic means.”.

Amendment of section 39

7. Section 39 of the Copyright Act is amended —

- (a) by inserting, immediately after the words “computer program” in the 2nd line of subsection (3), the words “or of a compilation within the meaning of section 7A in an electronic form”; 25

- (b) by inserting, immediately after the words “computer program” in the 4th and in the 6th lines of subsection (3), the words “or compilation”; 30

- (c) by deleting subsection (5) and substituting the following subsection:

“(5) For the purposes of this section, a reference to a copy of a computer program or compilation or of an adaptation of a computer program or compilation is a 35

reference to any article in which the computer program, compilation or adaptation is reproduced in a material form.”; and

- (d) by inserting, immediately after the word “program” at the end of the marginal note, the word “, etc”.

Amendment of section 47

8. Section 47 of the Copyright Act is amended —

- (a) by deleting the words “a copy of the work, or, in the case of a literary, dramatic or musical work, the manuscript of the work,” in the 1st, 2nd and 3rd lines of subsection (1) (b) and substituting the words “the original version, or a copy, of the work”; and
- (b) by deleting the words “a manuscript” in the 1st line of subsection (2) and substituting the words “the original version”.

Amendment of section 48

9. Section 48 of the Copyright Act is amended —

- (a) by deleting the words “(including a microform copy)” in the 5th line of subsection (1);
- (b) by deleting the words “held in manuscript form or is in original artistic work — for the purpose of preserving the manuscript or original artistic work, as the case may be,” in the 1st to 4th lines of subsection (1) (a) and substituting the words “the original version of the work — for the purpose of preserving the original version”;
- (c) by deleting the word “microform” in the 5th line of subsection (2); and
- (d) by deleting the words “(including a microform copy)” in the 1st line of subsection (4).

Repeal and re-enactment of section 51

10. Section 51 of the Copyright Act is repealed and the following section substituted therefor:

“Multiple copying of insubstantial portions of works

51.—(1) Copyright in a literary or dramatic work is not infringed by the making of one or more copies of a part of the

work in an edition of the work by any person if the copying is carried out on the premises of an educational institution for the purposes of a course of education provided by the institution.

(2) Subsection (1) does not apply to the making of a copy of the whole of a work. 5

(3) Subsection (1) does not apply to the making of a copy of more than 5 of the pages of a work in an edition of the work unless —

(a) there are more than 500 pages in the edition; and

(b) the total number of pages so copied does not exceed 5% 10 of the total number of pages in the edition.

(4) Subsection (1) does not apply to the making of a copy of a part of a work in an edition of the work, being an edition stored on any medium by electronic means and not divided into pages, if the part copied exceeds, in the aggregate, 5% of the total 15 number of bytes in the edition.

(5) Where —

(a) a person makes or causes to be made a copy of a part of a work; and

(b) subsection (1) applies to the making of that copy, 20 that subsection does not apply to the making, by or on behalf of that person, of a copy of any other part of that work within 14 days after the day on which the previous copy was made.

(6) In this section —

(a) a reference to an edition of a work includes a reference 25 to an edition of works that include that work; and

(b) a reference to the making of a copy of a part of a work on the premises of an educational institution for the purposes of a course of education provided by the institution includes a reference to the making of a copy 30 of that part in an electronic form on a network operated or controlled by the educational institution concerned to enable persons undertaking a course of education provided by the educational institution to access the work.”. 35

Amendment of section 52

11. Section 52 of the Copyright Act is amended by inserting, immediately after subsection (13), the following subsection:

5 “(14) For the purposes of this section, a reference to the making of copies of the whole or a part of an article contained in a periodical publication, or of a work, for the educational purposes of an educational institution includes the making of a copy of the whole of the article or work, or that part of the article or work, in an electronic form on a network operated or
10 controlled by that or another educational institution to enable persons undertaking a course of education provided by that or another educational institution to access the article or work, or that part of the article or work.”.

Amendment of section 81

15 **12.** Section 81 of the Copyright Act is amended by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

“ (2) In this Part, a reference to the reproduction or making of a copy of any subject-matter includes a reference to the making
20 of a copy which is transient or is incidental to some other use of the subject-matter.”.

Amendment of section 108

13. Section 108 of the Copyright Act is amended by deleting subsection (2).

Amendment of section 117

14. Section 117 (1) of the Copyright Act is amended by deleting the words “Subject to section 108 (2), where” in the 1st line and substituting the word “Where”.

Amendment of section 120

30 **15.** Section 120 (1) of the Copyright Act is amended by deleting the words “or any article specifically designed or adapted for making copies of a work or other subject-matter which has been used, or is to be used, for making infringing copies of the work or subject-matter” in the 4th to 7th lines and substituting the words “or any article which
35 has been predominantly used for making infringing copies”.

Amendment of section 123

16. Section 123 of the Copyright Act is amended by deleting the words “sections 119 and 120” in the 5th line and substituting the words “sections 119, 120 and 120A”.

Amendment of section 136

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17. Section 136 of the Copyright Act is amended —

- (a) by deleting the words “article specifically designed or adapted for making copies of a work or other subject-matter which has been used or is to be used for making infringing copies of the work or subject-matter” in the 5th to 8th lines of subsection (8) and substituting the words “article which has been predominantly used for making infringing copies”; 10
- (b) by deleting the word “Magistrate” in the 1st and in the 5th lines of subsection (9) and substituting in each case the word “court”; and 15
- (c) by deleting the word “he” in the 6th line of subsection (9) and substituting the words “the court”.

Amendment of section 140C

18. Section 140C of the Copyright Act is amended by inserting, immediately after the word “copies” in the 5th line of paragraph (a), the words “and pay such compensation as may be ordered by the court under section 140I (7) or 140IA (2)”. 20

Amendment of section 140I

19. Section 140I of the Copyright Act is amended —

- (a) by inserting, immediately after the word “section” in subsection (1), the words “and section 140IA”; and 25
- (b) by inserting, immediately before the words “the court” in subsection (7) (a), the words “the action is dismissed or discontinued, or”.

New section 140IA

20. The Copyright Act is amended by inserting, immediately after section 140I, the following section:

“Compensation for failure to take action

5 **140IA.**—(1) Where copies have been seized pursuant to a notice given under section 140B and the objector concerned fails to take infringement action within the retention period for the copies, a person aggrieved by such seizure may apply to the court for an order of compensation against the objector.

10 (2) Where the court is satisfied that the applicant had suffered loss or damage as a result of the seizure of the copies, the court may order the objector to pay compensation in such amount as the court thinks fit to the applicant.

15 (3) For the purposes of subsection (1), the retention period for seized copies is —

 (a) the period specified in a notice given under section 140E in respect of the copies; and

 (b) if that period has been extended under section 140E, that period as so extended.”.

20 **New Part IXA**

21. The Copyright Act is amended by inserting, immediately after section 193, the following Part:

“PART IXA

WORKS, OR OTHER SUBJECT-MATTER, 25 IN ELECTRONIC FORM

Interpretation of this Part

193A. In this Part, unless the context otherwise requires —

30 “electronic copy”, in relation to any material, means a copy of the material in an electronic form, and includes the original version of the material in that form;

 “material” means —

 (a) any work; or

(b) any subject-matter other than work,
in which copyright subsists by virtue of this Act.

Acts by network service provider to enable access

193B. A network service provider does not infringe the copyright in any material by doing any act in relation to an electronic copy of the material made available on a network if the doing of the act is incidental to the provision of the technical means to enable users of this or another network to access the material. 5

Acts by network service provider at direction of another 10

193C.—(1) A network service provider does not infringe the copyright in any material by doing any act in relation to an electronic copy of the material made available on a network (referred to in this section and section 193D as the primary network) if — 15

- (a) the act is done in the course of storing, transmitting, routing or otherwise providing connections to the copy on the primary or another network;
- (b) the storage, transmission, routing or provision of connections (as the case may be) is done at the express or implied direction of a user of the network referred to in paragraph (a); and 20
- (c) the copy is stored, transmitted or routed (as the case may be) without any deliberate modification by the network service provider to its contents. 25

(2) Subsection (1) does not apply if —

- (a) the primary network is operated, and controlled, solely by the network service provider;
- (b) the network service provider was furnished with a statutory declaration, purportedly made by the owner of the copyright in the material or under the owner's authority, stating — 30
 - (i) that the maker of the declaration in good faith believes that an act which constitutes an infringement of the copyright in question was 35
carried out in, or in the course of, making

available the copy of the material on the primary network;

(ii) the grounds for his belief; and

(iii) such other information as may be prescribed; and

(c) despite being furnished with the statutory declaration, the network service provider fails within a reasonable time to take reasonable steps to —

(i) remove the copy from the primary network; or

(ii) disable access to the material on the primary network.

Exemption of network service provider from liability for removal of copy, etc., from network

193D.—(1) Notwithstanding anything to the contrary in any law (written or otherwise), a network service provider shall not be subject to any civil or criminal liability under any rule of law in respect of —

(a) the removal of an electronic copy of any material from a network operated, and controlled, solely by him; or

(b) the disabling of access to the material on the network, if such removal or disabling was done pursuant to a statutory declaration referred to in section 193C (2) (b) in relation to the material.

(2) Subsection (1) shall apply whether or not it is ultimately determined that an act which constitutes an infringement of the copyright in question was carried out in, or in the course of, making available the copy of the material on the primary network.

User caching

193E. Copyright in any material is not infringed by the making of a transient or incidental electronic copy of the material from an electronic copy of the material made available on a network, if the making of the first-mentioned copy is required for the viewing, listening or utilisation of the material by a user of this or another network.

Transfer of electronic copy of material

193F.—(1) This section shall apply where an electronic copy of any material has been purchased on or after the commencement of the Copyright (Amendment) Act 1999 on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the material, or to adapt it or make copies of an adaptation, in connection with his use of it. 5

(2) If there are no express terms —

(a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence or terminating any licence on a transfer; or 10

(b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do, anything which the purchaser was allowed to do may also be done without infringement of copyright by a transferee. 15

(3) Notwithstanding subsection (2), any copy (including the original purchased copy), adaptation or copy of an adaptation which is not also transferred is to be treated as an infringing copy of the material for all purposes after the transfer. 20

(4) Subsections (2) and (3) shall also apply where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

(5) Subsections (2), (3) and (4) shall also apply on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.”. 25

Amendment of section 199

22. Section 199 of the Copyright Act is amended by inserting, immediately after subsection (5), the following subsection: 30

“(6) A reference in subsection (3) to a broadcast shall —

(a) in the case of a television broadcast, be read as a reference to a television broadcast made from a place in Singapore by the holder of a broadcasting licence; and

- (b) in the case of a sound broadcast, be read as a reference to a sound broadcast made from a place in Singapore by the holder of a broadcasting licence.”.

New section 201B

- 5 **23.** The Copyright Act is amended by inserting, immediately after section 201A, the following section:

“Offence committed by partnership or body corporate

10 **201B.**—(1) Proceedings for an offence under section 136, 139 or 254A alleged to have been committed by a partnership shall be brought against the partnership in the name of the firm and not in that of the partners; but without prejudice to any liability of the partners under subsection (3).

(2) A fine imposed on a partnership on its conviction in such proceedings shall be paid out of the partnership assets.

15 (3) Where a partnership is guilty of an offence under section 136, 139 or 254A, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is also guilty of the offence and liable to be proceeded against and punished accordingly.

20 (4) Where an offence under section 136, 139 or 254A committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the
25 body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.”.

Amendment of section 246

- 24.** Section 246 (1) of the Copyright Act is amended —

30 (a) by inserting, immediately after the definition of “direct”, the following definitions:

“ “electronic copy”, in relation to an electronic recording, means a copy in an electronic form of the recording;

“electronic recording” means a recording in an electronic form;”;

- (b) by inserting, immediately after the word “made” in paragraph (d) of the definition of “exempt recording”, the word “solely”;
- (c) by deleting the words “or associated with” in paragraph (h) (i) of the definition of “exempt recording” and substituting the words “or in relation to”; and
- (d) by inserting, immediately after the definition of “recording”, the following definition:

“ “sound recording” includes an article in which sounds are embodied;”.

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Amendment of section 248

25. Section 248 of the Copyright Act is amended by deleting subsections (1) and (2) and substituting the following subsections:

“(1) If any recording of a performance, being a recording that is an exempt recording under paragraph (j) of the definition of “exempt recording” in section 246 (1), is not destroyed —

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- (a) before the expiration of the period of 6 months or, in the case of a recording made by a non-profit organisation solely for its own broadcast, 2 years, commencing on the day on which the recording is first used for broadcasting the performance; or
- (b) before the expiration of such further period, if any, as is agreed between the maker of the recording and the performer of the performance,

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the recording shall, at the end of that period, cease to be an exempt recording.

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(2) If any copy of a recording of a performance, being an exempt recording under paragraph (m) of the definition of “exempt recording” in section 246 (1), is not destroyed —

- (a) before the expiration of the period of 6 months or, in the case of a copy made by a non-profit organisation solely for its own broadcast, 2 years, commencing on the day on which the copy is first used for broadcasting the performance; or
- (b) before the expiration of such further period, if any, as is agreed between the maker of the copy and the performer of the performance,

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the copy of the recording shall, at the end of that period, cease to be an exempt recording.”.

Amendment of section 249

26. Section 249 of the Copyright Act is amended by deleting
5 paragraphs (a), (b) and (c) and substituting the following paragraphs:

- “(a) selling it, letting it for hire, or by way of trade offering or exposing it for sale or hire;
- (b) distributing it for the purposes of trade;
- (c) by way of trade exhibiting it in public;
- 10 (d) broadcasting it or including it in a cable programme service; or
- (e) causing it to be heard in public.”.

Amendment of section 250

27. Section 250 of the Copyright Act is amended —

- 15 (a) by inserting, immediately after the word “performance” in the 1st line, the words “or a recording thereof”;
- (b) by inserting, immediately after the word “performance” in the 3rd line, the words “ or recording”; and
- 20 (c) by inserting, immediately after the word “cable” in the section heading, the word “programme”.

Amendment of section 251

28. Section 251 (1) of the Copyright Act is amended by deleting the word “This” and substituting the words “Subject to the other provisions of this Part, this”.

Amendment of section 252

29. Section 252 of the Copyright Act is amended by inserting, immediately after subsection (1), the following subsections:

- “(1A) A person makes an unauthorised use of a performance if the person, at any time on or after the commencement of the Copyright (Amendment) Act 1999 and during the protection period of the performance, and without the authority of the performer —
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- (a) sells, lets for hire, or by way of trade exhibits in public or offers or exposes for sale or hire a recording of the performance that the person knows, or ought reasonably to know, is an unauthorised recording;
- (b) distributes a recording of the performance for the purposes of trade, being a recording that the person knows, or ought reasonably to know, is an unauthorised recording; or
- (c) imports a recording of the performance into Singapore for the purpose of —
 - (i) selling it, letting it for hire, or by way of trade exhibiting it in public or offering or exposing it for sale or hire; or
 - (ii) distributing it for the purposes of trade, being a recording that the person knows, or ought reasonably to know, is an unauthorised recording.

(1B) A reference in this section to the making of a copy of a recording of a performance includes a reference to the making of a copy which is transient or is incidental to some other use of the recording.”.

New sections 252A to 252D

30. The Copyright Act is amended by inserting, immediately after section 252, the following sections:

“Acts by network service provider to enable access

252A. Notwithstanding section 252, a network service provider does not make an unauthorised use of a performance by doing any act in relation to a recording of the performance, being an electronic recording made available on a network, if the doing of the act is incidental to the provision of the technical means to enable users of this or another network to access the performance.

Acts by network service provider at direction of another

252B.—(1) Notwithstanding section 252, a network service provider does not make an unauthorised use of a performance by doing any act in relation to a recording of the performance, being

an electronic recording made available on a network (referred to in this section as the primary network), if —

- 5 (a) the act is done in the course of storing, transmitting, routing or otherwise providing connections to the recording on the primary or another network;
 - (b) the storage, transmission, routing or provision of connections (as the case may be) is done at the express or implied direction of a user of the network referred to in paragraph (a); and
 - 10 (c) the recording is stored, transmitted or routed (as the case may be) without any deliberate modification by the network service provider to its contents.
- (2) Subsection (1) does not apply if —
- 15 (a) the primary network is operated, and controlled, solely by the network service provider;
 - (b) the network service provider was furnished with a statutory declaration, purportedly made by the performer of the performance or under the performer's authority, stating —
 - 20 (i) that the maker of the declaration in good faith believes that the recording is an unauthorised recording;
 - (ii) the grounds for his belief; and
 - (iii) such other information as may be prescribed;
 - 25 and
 - (c) despite being furnished with the statutory declaration, the network service provider fails within a reasonable time to take reasonable steps to —
 - 30 (i) remove the recording from the primary network; or
 - (ii) disable access to the recording on the primary network.

Exemption of network service provider from liability for removal of recording from network

- 35 **252C.**—(1) Notwithstanding anything to the contrary in any law (written or otherwise), a network service provider shall not

be subject to any civil or criminal liability under any rule of law in respect of —

- (a) the removal of an electronic recording of a performance from a network operated, and controlled, solely by him; or
- (b) the disabling of access to the performance on the network,

if such removal or disabling was done pursuant to a statutory declaration referred to in section 252B (2) (b) in relation to the recording.

(2) Subsection (1) shall apply whether or not the recording of the performance is ultimately determined to be an unauthorised recording.

User caching

252D. Notwithstanding section 252, the making of a transient or incidental electronic copy of a recording of a performance, being an electronic recording made available on a network, does not constitute an unauthorised use of the performance if the making of the copy is required for the viewing, listening or utilisation of the performance by the user of this or another network.”.

Amendment of section 253

31. Section 253 (4) of the Copyright Act is amended by deleting the words “specifically designed or adapted” in the 3rd line and substituting the words “which has been predominantly used”.

New section 254A

32. The Copyright Act is amended by inserting, immediately after section 254, the following section:

“Offences

254A.—(1) A person who, at any time on or after the commencement of the Copyright (Amendment) Act 1999 and during the protection period of a performance —

- (a) makes for sale or hire;

(b) sells or lets for hire, or by way of trade offers or exposes for sale or hire; or

(c) by way of trade exhibits in public,

any recording which he knows, or ought reasonably to know, to be an unauthorised recording of the performance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 for the recording or for each recording in respect of which the offence was committed or \$100,000, whichever is the lower, or to imprisonment for a term not exceeding 5 years or to both.

(2) A person who, at any time during the protection period of a performance, has in his possession, or imports into Singapore, any recording of a performance which he knows, or ought reasonably to know, to be an unauthorised recording of the performance, for the purpose of —

(a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the recording;

(b) distributing the recording for the purposes of trade; or

(c) by way of trade exhibiting the recording in public,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 for the recording or for each recording in respect of which the offence was committed or \$100,000, whichever is the lower, or to imprisonment for a term not exceeding 5 years or to both.

(3) Any person who, at any time during the protection period of a performance, distributes for the purposes of trade recordings which he knows, or ought reasonably to know, to be unauthorised recordings of the performance, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.

(4) A person who, at any time during the protection period of a performance, makes or has in his possession an article specifically designed or adapted for making recordings of the performance that the person knows, or ought reasonably to know, is to be used to make unauthorised recordings of the performance, shall be guilty of an offence and shall be liable on

conviction to a fine not exceeding \$20,000 for each such article in respect of which the offence is committed or to imprisonment for a term not exceeding 2 years or to both.

(5) A person who, at any time during the protection period of a performance, for his private profit and without the authority of the performer causes the performance to be seen or heard, or seen and heard, live in public, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) A person who, at any time during the protection period of a performance, for his private profit and without the authority of the performer, causes a recording of the performance, being a recording which he knows or ought reasonably to know is an unauthorised recording, to be heard in public shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

(7) For the purposes of this section, any person who has in his possession 5 or more unauthorised recordings of a performance shall, unless the contrary is proved, be presumed —

- (a) to be in possession of such recordings otherwise than for private and domestic use; or
- (b) to be in possession of such recordings for the purpose of sale.

(8) The court before which a person is charged with an offence under this section may, whether he is convicted of the offence or not, order that any article that appears to the court to be an unauthorised recording of a performance or any article which has been predominantly used for making unauthorised recordings of a performance, in the possession of the alleged offender or before the court, be destroyed or delivered up to the performer concerned or otherwise dealt with in such manner as the court thinks fit.

(9) If information is given upon oath to a court that there is reasonable cause for suspecting that there is in any premises any article or document which is evidence that an offence under subsection (1), (2), (3), (4), (5) or (6) has been committed, the

court may issue, either unconditionally or subject to such conditions as the court thinks fit, a warrant authorising a police officer to enter and search the premises for the articles and documents which are specified in the warrant, and to seize such articles and documents found at the premises.

(10) If an article was seized under subsection (9) and —

(a) in proceedings brought under this section in connection with the offence, no order is made under subsection (8) as to the article; or

(b) no such proceedings are instituted within 6 months of the seizure,

the article shall be returned to the person in whose possession it was when it was seized or, if it is not reasonably practicable to return it to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities.

(11) If a document was seized under subsection (9) and no proceedings under this section are instituted within 6 months of the seizure, the document and all copies of the document shall be returned to the person in whose possession the document was when it was seized or, if it is not reasonably practicable to return the document and copies to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities.

(12) For the purposes of this section —

“document” means anything in which information of any description is recorded;

“premises” includes any land, building, structure and conveyance.”.

Amendment of section 255

33. Section 255 of the Copyright Act is amended —

(a) by deleting the words “under this Part is not assignable” and substituting the words “may be assigned”; and

(b) by deleting the words “not assignable” in the section heading and substituting the words “may be assigned”.

New Part XIII

34. The Copyright Act is amended by inserting, immediately after section 257, the following Part:

“PART XIII

RIGHTS MANAGEMENT INFORMATION

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Interpretation of this Part

258. In this Part —

- (a) “performance”;
- (b) “recording”, in relation to a performance; and
- (c) “unauthorised use”, in relation to a performance,

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have the meanings given to them under Part XII.

Application of this Part

259.—(1) This Part shall not apply to any act done for the service of the Government.

(2) Nothing in this Part shall affect —

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- (a) any copyright subsisting in a work or other subject-matter;
- (b) any right in relation to a performance or a recording thereof;
- (c) any limitation on copyright in a work or other subject-matter, or on a right in relation to a performance or a recording thereof; or
- (d) any defence to an action for infringement of copyright, or for an unauthorised use of a performance,

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under any provision of this Act.

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Removal or alteration of rights management information

260.—(1) This section shall apply where rights management information in an electronic form is attached to a copy of a work or other subject-matter or a recording of a performance, or appears in connection with the making available of a copy of a work or subject-matter, or a recording of a performance, on a network.

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(2) An action may be brought by the person who provides the rights management information against another person who, knowingly and with intent to mislead or to induce or facilitate an infringement of the copyright in the work or subject-matter or an unauthorised use of the performance (as the case may be), removes or alters the rights management information.

(3) Subsection (2) does not apply where the removal or alteration of electronic rights management information is carried out with the consent of the person who provides the rights management information.

(4) In this section, “rights management information”, in relation to a copy of a work or other subject-matter or a recording of a performance, means any of the following:

- (a) information which identifies the work, subject-matter or performance;
- (b) information which identifies the author of the work, the owner of copyright in a work or subject-matter or the performer of a performance;
- (c) information about the terms and conditions of use of the copy of the work or subject-matter or the recording of the performance;
- (d) any numbers or codes that represent the information referred to in paragraph (a), (b) or (c),

but excludes any information relating to a user of the copy of the work or subject-matter or the recording of the performance, such as the name, account, address or other contact information of, or pertaining to, the user.

Relief which court may grant

261.—(1) In an action brought under section 260, the court, if satisfied that the defendant has carried out or is carrying out an act referred to in section 260 (2), may grant the plaintiff an injunction (subject to such terms, if any, as the court thinks fit) or damages, or both.

(2) In addition to the relief referred to in subsection (1), the court may order that any article —

- (a) by means of which, or in relation to which, the act referred to in that subsection was or is being carried out; and
- (b) which is in the possession of the defendant or before the court,

be delivered up to the plaintiff or destroyed.”.

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Transitional provision

35. The Minister may by regulations make such transitional and saving provisions in relation to the provisions of this Act as he considers appropriate.

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EXPLANATORY STATEMENT

This Bill seeks to amend the Copyright Act (Cap. 63) for the following main purposes:

- (a) to address various issues arising from the use of copyright material in a digital environment;
- (b) to give greater rights to performers in relation to performances under the Act;
- (c) to make further amendments to the Act to give full effect to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to clarify that that section does not apply in relation to Part XII of the Act (Performers’ Protection).

Clause 3 deletes the definition of “literary work”. The definition is replaced by new section 7A. The clause also inserts new subsection (2A) in section 7 to define the expression “reasonable portion” in relation to a published electronic edition of a work not divided into pages. The new definition provides a quantitative test in relation to copying of editions of works in an electronic form under section 35 (fair dealing for purpose of research or study), section 45 (copying by libraries and archives for users), section 46 (copying by libraries or archives for other libraries or archives) and section 52 (multiple copying under statutory licence by educational institutions).

Clause 4 inserts new section 7A to clarify that the expression “literary work” includes a compilation of any type of copyright material (eg. a multimedia work)

which, by reason of the selection or arrangement of its contents, constitutes an intellectual creation.

Clause 5 amends section 15 to clarify that the reproduction of a work includes the making of a copy of the work that is transient or incidental to some other use of the work. Such a copy is frequently made when a work is transmitted electronically.

Clause 6 repeals and re-enacts section 17 to clarify that a work is reproduced in a material form if it is stored on any medium by electronic means. The reproduction of a work in a material form is one of the rights making up the copyright in the work.

Clause 7 amends section 39 (3) to extend the defence in that subsection in relation to a compilation in an electronic form. This will enable the user of a compilation such as a multimedia work to make a copy thereof without infringing copyright in the compilation if the making of the copy is an essential step in the browsing or other use of the compilation.

Clauses 8 and 9 amend section 47 (which provides for copying of unpublished works in libraries and archives for certain purposes) and section 48 (which provides for copying of works in libraries and archives for preservation and other purposes) respectively by substituting or deleting technology-specific words like “microform” and “manuscript”.

Clause 10 repeals and re-enacts section 51 in relation to the making of copies of a work for the purposes of a course of education. The new section provides for the applicability of the defence to the making of copies by an educational institution on a network controlled or operated by it so that persons undertaking a course of education can access the copies. This is relevant to the conduct of distance learning courses on a network by an educational institution. The new section also sets out the limits of an electronic edition of a work not divided into pages which may be copied.

Clause 11 amends section 52 to provide for the applicability of that section in relation to the making of copies by an educational institution on a network controlled or operated by an educational institution so that persons undertaking a course of education can access the copies.

Clause 12 amends section 81 to make a clarification, in relation to subject-matter other than works, corresponding to that in clause 5.

Clause 13 deletes subsection (2) of section 108 which provides that a person who causes a film to be seen or heard, or seen and heard, in public after the expiry of copyright in the film does not thereby infringe copyright in a work included in the film.

Clause 14 makes a consequential amendment to section 117 (1).

Clause 15 amends section 120 (1) to enable the court to make a delivery up order in respect of any article predominantly used for making infringing copies of a work or subject-matter.

Clause 16 amends section 123 to provide that an exclusive licensee is also entitled to the remedy in section 120A (order for disposal of infringing copy or other object delivered up under section 120).

Clause 17 amends section 136 —

- (a) to empower a court to order delivery up or destruction of any article which was predominantly used for making infringing copies; and
- (b) to enable an application for a search warrant to be made to any court.

Clauses 18, 19 and 20 amend sections 140C and 140I, and insert new section 140IA —

- (a) to empower an authorised officer to require a person giving a notice under section 140B to give security sufficient to pay such compensation as the court may order under section 140I or the new section 140IA;
- (b) to empower the court to order a person giving a notice under section 140B to pay compensation if the infringement action is dismissed or discontinued; and
- (c) to give a person aggrieved by the seizure of copies of work pursuant to a notice given under section 140B to apply to court for compensation if the person giving the notice fails to take infringement action within a specified time.

Clause 21 introduces a new Part IXA dealing with works or other subject-matter in electronic form. The new Part provides that a network service provider is not liable for copyright infringement in 2 situations —

- (a) where the copying is incidental to the provision of access to users of a network (section 193B); and
- (b) where the copying is done by the network service provider at the express or implied direction of a user of a network and in the course of carrying out a service akin to that carried out by a telecommunication carrier (section 193C).

An example of a situation in paragraph (a) is copying in a cache system by a network service provider to enhance online delivery of copyright material on the Internet. An example of a situation in paragraph (b) is the making available of copyright material on the Internet on demand via a search service.

However, the network service provider cannot avail himself of the defence in section 193C if the copyright holder or a person authorised by him has lodged with him a complaint of infringement by way of a statutory declaration and the network service provider fails to take steps to remove or disable access to the copy on the network operated and controlled solely by him. Conversely, the network service provider is not subject to any civil or criminal liability for any removal of or

disabling of access to a copy on the network in pursuance of such a statutory declaration (section 193D).

The new section 193E provides for a defence to copyright infringement in relation to caching by a user of a network of copyright material made available on the network to enable the user to browse or otherwise use the material.

The new section 193F allows a transferee of an electronic copy of material to do anything which the transferor may do in relation to the copy without infringing copyright.

Clause 22 amends section 199 by restricting subsection (3), which allows the retransmission of broadcasts by cable without infringing copyright in the underlying works, to local broadcasts.

Clause 23 inserts new section 201B which relates to the commission of an offence against section 136, 139 or 254A by a partnership or body corporate.

Clauses 24 to 33 amend various provisions in Part XII (Performers' Protection). The amendments seek primarily to —

- (a) enable a broadcaster to agree with a performer to a longer period for retention of a recording of his performance made for broadcast (clause 25);
- (b) give performers a right of action in relation to the commercial dealing in recordings of their performances which are made without their authority (unauthorised recordings) (clause 29);
- (c) make provisions corresponding to those in the new Part IXA in relation to performances (clause 30);
- (d) make an amendment to section 253 (4) corresponding to that in clause 15 (clause 31);
- (e) make the carrying out of various acts in relation to performances or recordings thereof offences, including the commercial dealing in unauthorised recordings and the making or possession of an article specifically designed or adapted for making unauthorised recordings (clause 32); and
- (f) allow performers to assign their right to bring an action under Part XII (clause 33).

Clause 34 introduces a new Part XIII which deals with the protection of rights management information electronically attached to copyright material or a performance on a network. Rights management information typically includes information identifying the author of the work, the owner of copyright in a work or subject-matter or the performer of a performance and terms and conditions of use of the copy of the work or subject-matter or the recording of the performance. The person who provides such information may bring an action against another who removes or alters the information with intent to mislead or to induce or facilitate an infringement of the copyright in the work or subject-matter or an

unauthorised use of the performance (section 260). The court may, in the action brought under section 260, grant an injunction or damages or make an order of delivery up (section 261).

Clause 35 empowers the Minister to make transitional and saving provisions by regulations.

EXPENDITURE OF PUBLIC MONEY

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