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Notification No. B 48 — The Copyright (Amendment) Bill is hereby published for general information. It was introduced in Parliament on the 19th day of October 2004.

Copyright (Amendment) Bill

Bill No. 48/2004.

Read the first time on 19th October 2004.

A BILL

i n t i t u l e d

An Act to amend the Copyright Act (Chapter 63 of the 1999 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. This Act may be cited as the Copyright (Amendment) Act 2004 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 7

2. Section 7 of the Copyright Act is amended —

(a) by inserting, immediately after the definition of “citizen of Singapore” in subsection (1), the following definition:

10 “ “communicate” means to transmit by electronic means (whether over a path, or a combination of paths, provided by a material substance or by wireless means or otherwise) a work or other subject-matter, whether or not it is sent in response to a request, and includes —

- (a) the broadcasting of a work or other subject-matter;
- 15 (b) the inclusion of a work or other subject-matter in a cable programme; and
- (c) the making available of a work or other subject-matter (on a network or otherwise) in such a way that the work or subject-matter may be accessed
- 20 by any person from a place and at a time chosen by him,

and “communication” shall have a corresponding meaning;”;

25 (b) by inserting, immediately after the definition of “Copyright Tribunal” or “Tribunal” in subsection (1), the following definition:

“ “digital audio transmission” means a transmission of a sound recording, in whole or in part, in a digital or other non-analogue form;”;

30 (c) by deleting the definition of “educational institution” in subsection (1) and substituting the following definitions:

“ “educational institution” means —

- (a) a school or similar institution at which one or more of the following is provided:

- (i) full-time primary education;
 - (ii) full-time secondary education;
 - (iii) full-time pre-university education;
 - 5 (iv) such other full-time education as may be prescribed by regulations made under this Act;
- (b) a junior college, a university, a college of advanced education or a technical and further education institution;
- 10 (c) an institution that conducts courses of primary, secondary, pre-university or tertiary education by correspondence or on an external study basis;
- (d) a school of nursing;
- 15 (e) an undertaking within a hospital, being an undertaking that conducts courses of study or training in —
 - (i) the provision of medical services; or
 - (ii) the provision of services incidental to the provision of medical services;
- 20 (f) a teacher education centre;
- (g) an institution that has, as its principal function, the provision of courses of study or training for the purpose of —
 - (i) general education;
 - 25 (ii) the preparation of persons for a particular occupation or profession; or
 - (iii) the continuing education of persons engaged in a particular occupation or profession;
- 30 (h) such other institution at which education is provided as may be declared by regulations made under this Act to be an institution to which this paragraph applies;

- 5 (i) an undertaking within a body administering an educational institution of a kind referred to in paragraphs (a) to (h), being an undertaking that has as its principal function, or as one of its principal functions, the provision of teacher training for persons engaged as instructors in educational institutions of such a kind, or of 2 or more such kinds;
- 10 (j) an institution, or an undertaking within a body administering an educational institution of a kind referred to in paragraphs (a) to (i), being an institution or undertaking that has as its principal function, or as one of its principal functions, the furnishing of materials to educational institutions of a kind referred to in paragraphs (a) to (i), or to educational institutions of 2 or more such kinds, for the purpose of assisting those institutions in their teaching purposes,
- 20 but does not include an institution that is conducted for the profit, direct or indirect, of an individual or individuals;
- “electronic copy”, in relation to any work or other subject-matter, means a copy of the work or subject-matter in an electronic form;”;
- 25 (d) by inserting, immediately after the definition of “prospective owner” in subsection (1), the following definition:
- 30 ““receiving apparatus” means any device or equipment the operation of which, either alone or together with any other device or equipment, enables people to hear or see a work or other subject-matter that is communicated;”;
- (e) by inserting, immediately after the definition of “regulations” in subsection (1), the following definition:
- 35 ““re-transmission”, in relation to a broadcast, means a re-transmission of the broadcast without altering the contents of the broadcast, whether the re-transmission is simultaneous with the original transmission or whether

the technique that is used to achieve the re-transmission is different from that used to achieve the original transmission;”;

- (f) by inserting, immediately after the definition of “sculpture” in subsection (1), the following definition:

“ “simulcasting”, in relation to a work, an adaptation of a work, a sound recording or a cinematograph film, means simultaneously broadcasting the work, adaptation, recording or film in both analogue form and digital form;” and

- (g) by deleting paragraphs (a) and (b) of subsection (2A) and substituting the following paragraphs:

“(a) does not exceed, in the aggregate —

- (i) 10% of the total number of bytes in that edition;
or

- (ii) 10% of the total number of words in that edition or, where it is not practicable to use the total number of words as a measure, 10% of the contents of that edition; or

- (b) in a case where the work is divided into chapters, exceeds, in the aggregate —

- (i) 10% of the total number of bytes in that edition;
or

- (ii) 10% of the total number of words in that edition or, where it is not practicable to use the total number of words as a measure, 10% of the contents of that edition,

but contains only the whole or part of a single chapter of the work.”.

Amendment of section 15

3. Section 15 of the Copyright Act is amended —

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

“(1B) Without limiting the meaning of the term “reproduced”, for the purposes of this Act, a literary, dramatic, musical or artistic work, including a reproduction of such work in the form of a sound recording or cinematographic film, is reproduced if it is converted into or from a digital or other electronic machine-readable form, and any article embodying the work or reproduction of the work in such a form is taken to be a reproduction of the work.”; and

(b) by deleting the words “Subsections (1) and (1A)” in subsection (2) and substituting the words “Subsections (1), (1A) and (1B)”.

Amendment of section 16

4. Section 16 of the Copyright Act is amended by inserting, immediately after subsection (5), the following subsection:

“(6) For the purposes of this Act, a communication other than a broadcast is taken to have been made by the person responsible for determining the content of the communication at the time the communication is made.”.

Amendment of section 17

5. Section 17 of the Copyright Act is amended —

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

(b) by deleting the full-stop at the end of paragraph (b) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

“(c) on any other medium from which the work or adaptation, or a substantial part of the work or adaptation, can be directly reproduced.”; and

(c) by deleting the words “or on any medium by electronic means” in the section heading and substituting the words “or on any other medium”.

Amendment of section 22

6. Section 22 of the Copyright Act is amended —

- (a) by deleting subsections (1), (2) and (3) and substituting the following subsections:

“(1) Subject to this section, unless the context otherwise requires, a reference in this Act to “performance” shall —

5 (a) be read as including a reference to any mode of visual or aural presentation, whether the presentation is by the use of any receiving apparatus, by the exhibition of a cinematograph film, by the use of a record or by any other means; and

10 (b) in relation to a lecture, an address, a speech or a sermon, be read as including a reference to delivery, and a reference in this Act to performing a work or an adaptation of a work shall have a corresponding meaning.

15 (2) For the purpose of this Act, the communication of a work or other subject-matter to the public shall not —

 (a) constitute a performance; or

 (b) amount to causing visual images to be seen or sounds to be heard.

20 (3) For the purposes of this Act, where visual images are displayed or sounds are emitted by any receiving apparatus to which they are communicated, the operation of any device or equipment by which the images or sounds are communicated, directly or indirectly, to the receiving apparatus does not constitute a performance or amount to causing images to be
25 seen or sounds to be heard but, insofar as the display of the images or emission of the sounds constitutes a performance, or causes the images to be seen or the sounds to be heard, the performance, or the causing of the images to be seen or sounds to be heard, as the case may be, shall be deemed to be effected
30 by the operation of the receiving apparatus.”; and

- (b) by deleting the word “apparatus” wherever it appears in subsection (4) and substituting in each case the words “device or equipment”.

Amendment of section 23

7. Section 23 of the Copyright Act is amended —

(a) by inserting, immediately after the words “the students” in subsections (1) and (2), the words “or staff”;

5 (b) by deleting subsection (4) and substituting the following subsections:

10 “(4) Subsections (2) and (3) shall apply in relation to cinematograph films, broadcasts, cable programmes and recordings of performances in like manner as they apply in relation to literary and dramatic works but, in the application of those subsections in relation to such films, broadcasts, cable programmes or recordings, any reference to the performance of the work shall be read as a reference to the act of causing the sounds concerned to be heard or the visual images concerned to be seen.

15 (5) For the purposes of this section, the staff of an educational institution shall include —

(a) any adjunct staff of the educational institution; and

20 (b) any person engaged by the educational institution to conduct any course of instruction, activity or programme of or offered by the educational institution.”; and

25 (c) by deleting the words “students, etc.” in the section heading and substituting the words “students or staff of educational institution, etc.”.

Amendment of section 26

8. Section 26(1) of the Copyright Act is amended —

(a) by deleting sub-paragraphs (iv) and (v) of paragraph (a) and substituting the following sub-paragraph:

30 “(iv) to communicate the work to the public;”; and

(b) by deleting sub-paragraphs (iii) and (iv) of paragraph (b) and substituting the following paragraph:

“(iii) to communicate the work to the public; and”.

Amendment of section 35

9. Section 35 of the Copyright Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:

5 “(1) Subject to this section, a fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, for any purpose other than a purpose referred to in section 36 or 37 shall not constitute an infringement of the copyright in the work.

10 (1A) The purposes for which a dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, may constitute a fair dealing under subsection (1) shall include research and study.”;

15 (b) by deleting the words “for the purpose of research or private study” in subsection (2) and substituting the words “for any purpose other than a purpose referred to in section 36 or 37”;

(c) by deleting the word “and” at the end of subsection (2)(c);

20 (d) by deleting the full-stop at the end of paragraph (d) of subsection (2) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

 “(e) the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price.”;

25 (e) by deleting the words “private study” wherever they appear in subsection (3) and substituting in each case the word “study”; and

(f) by deleting the words “for purpose of research or study” in the section heading and substituting the words “in relation to works”.

New section 38A

30 **10.** The Copyright Act is amended by inserting, immediately after section 38, the following section:

“Temporary reproduction made in the course of communication

38A.—(1) Subject to subsection (2), the copyright in a work, or an adaptation of a work, is not infringed by the making of a temporary, incidental or transient reproduction of the work or adaptation as part of the technical process of making or receiving a communication.

(2) Subsection (1) shall not apply to the making of a temporary, incidental or transient reproduction of a work, or an adaptation of a work, as part of the technical process of making a communication if the making of the communication itself constitutes an infringement of copyright.”.

New sections 39A, 39B and 39C

11. The Copyright Act is amended by inserting, immediately after section 39, the following sections:

“Decompilation

39A.—(1) Subject to subsection (2), the copyright in a literary work, being a computer program expressed in a low level language, is not infringed by a lawful user of the computer program decompiling it if —

(a) it is necessary to decompile the computer program to achieve the objective of obtaining the information necessary to create an independent computer program which can be operated with the computer program decompiled or with another computer program (referred to in this section as the permitted objective); and

(b) the information so obtained is not used for any purpose other than the permitted objective.

(2) Subsection (1) shall not apply if the lawful user —

(a) has readily available to him the information necessary to achieve the permitted objective;

(b) does not confine the decompiling to such acts as are necessary to achieve the permitted objective;

(c) supplies the information obtained by the decompiling to any person to whom it is not necessary to supply the information in order to achieve the permitted objective; or

(d) uses the information —

(i) to create a computer program which is substantially similar in its expression to the computer program decompiled; or

5 (ii) to do any act restricted by copyright.

(3) Where an act is permitted under this section —

(a) it shall be irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act; and

10 (b) any such term or condition shall, in so far as it purports to prohibit or restrict the act, be void.

(4) For the avoidance of doubt, this section is without prejudice to the generality of section 35 and does not limit the operation of that section.

15 (5) For the purposes of this section and sections 39B and 39C, a person is a lawful user of a computer program if he has a right to use the computer program, whether under a licence to do any act restricted by the copyright in the computer program or otherwise.

20 (6) In this section, “decompiling”, in relation to a computer program expressed in a low level language, means —

(a) converting the computer program into a version expressed in a higher level language; or

(b) incidentally in the course of so converting the computer program, copying the computer program,

25 and “decompile” shall be construed accordingly.

Observing, studying and testing of computer programs

30 **39B.**—(1) The copyright in a literary work, being a computer program, is not infringed by a lawful user of the computer program observing, studying or testing the functioning of the computer program in order to determine the ideas and principles which underlie any element of the computer program, if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the computer program which he is entitled to do.

(2) Where an act is permitted under this section —

(a) it shall be irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act; and

5 (b) any such term or condition shall, in so far as it purports to prohibit or restrict the act, be void.

(3) For the avoidance of doubt, this section is without prejudice to the generality of section 35 and does not limit the operation of that section.

10 **Other acts permitted to lawful users**

39C.—(1) Subject to subsection (3), the copyright in a literary work, being a computer program, is not infringed by a lawful user of the computer program copying or adapting the computer program, if such copying or adapting is necessary for his lawful use.

15 (2) For the avoidance of doubt, it may be necessary for the lawful use of a computer program to copy or adapt the computer program for the purpose of correcting errors in the computer program.

(3) Subsection (1) shall not apply to any copying or adapting permitted under section 39 or 39A.”.

20 **Amendment of section 41**

12. Section 41 of the Copyright Act is amended —

(a) by deleting the words “a sound broadcast or television broadcast or a cable programme” and substituting the words “a communication”; and

25 (b) by deleting the word “broadcast” in the section heading and substituting the word “communication”.

New section 43A

13. The Copyright Act is amended by inserting, immediately after section 43, the following section:

30 **“Reproduction for purpose of simulcasting**

43A.—(1) Subject to subsections (2) and (3), where the broadcasting by a person of a literary, dramatic or musical work, or of

an adaptation of such a work, would not for any reason constitute an infringement of the copyright in the work, but the making by the person of a sound recording or a cinematograph film of the work or adaptation would, apart from this subsection, constitute such an infringement, the copyright in the work is not infringed by the person making the recording or film solely for the purpose of simulcasting the work or adaptation in digital form.

(2) Subsection (1) shall not apply in relation to the making of a recording or film if a record embodying the recording or a copy of the film is used for a purpose other than —

(a) the simulcasting of the work or adaptation in circumstances that do not for any reason constitute an infringement of the copyright in the work; or

(b) the making of —

(i) further records embodying the recording; or

(ii) further copies of the film,

for the purpose of simulcasting the work or adaptation in such circumstances.

(3) Subsection (1) shall not apply in relation to the making of a recording or film unless all the records embodying the recording or all the copies of the film made under that subsection are destroyed before the expiration of the prescribed period.”.

Amendment of section 45

14. Section 45 of the Copyright Act is amended —

(a) by deleting the words “private study” in subsection (1)(b)(i) and substituting the word “study”;

(b) by inserting, immediately after subsection (7), the following subsection:

“(7A) If an article contained in a periodical publication or a published work (other than an article contained in a periodical publication) is acquired, in electronic form, as part of the collection of a library or archives, the copyright in the article or published work is not infringed by the officer-in-charge of the library or archives making it available online within the

premises of the library or archives in such a manner that users cannot, by using any equipment supplied by the library or archives —

(a) make an electronic copy of the article or work; or

5 (b) communicate the article or work.”; and

(c) by inserting, immediately after subsection (8), the following subsection:

“(9) Subsections (6) and (7) shall not apply to the making, in accordance with subsection (2), of an electronic copy of —

10 (a) an article, or a part of an article, contained in a periodical publication; or

(b) the whole or part of a published work, other than such an article,

15 in relation to a request under this section for communication to the person who made the request, unless —

(i) before or when the electronic copy is communicated to the person, a notice is given to the person in accordance with the regulations stating —

20 (A) that the electronic copy has been made under this section and that the article or work might be subject to copyright protection under this Act; and

(B) such other matters as may be prescribed; and

25 (ii) as soon as practicable after the electronic copy is communicated to the person, the electronic copy made in accordance with subsection (2) and held by the library or archives is destroyed.”.

Amendment of section 47

15. Section 47 of the Copyright Act is amended —

30 (a) by deleting paragraphs (i) and (ii) of subsection (1) and substituting the following paragraphs:

“(i) by the making of a copy, or the communication, of the work by a person for the purpose of research or study or with a view to publication; or

(ii) by the making of a copy, or the communication, of the work by or on behalf of the officer-in-charge of that library or archives, if the copy or work is supplied (whether by communication or otherwise) to a person who satisfies the officer-in-charge of that library or archives that he requires the copy or work for the purpose of research or study or with a view to publication and that he will not use it for any other purpose.”;

(b) by deleting subsection (2) and substituting the following subsection:

“(2) Where the original version, or a copy, of a thesis or other similar literary work that has not been published is kept in a library of a university or other similar institution or in archives, the copyright in the thesis or other work is not infringed by the making of a copy, or the communication, of the thesis or other work by or on behalf of the officer-in-charge of the library or archives, if the copy, thesis or other work is supplied (whether by communication or otherwise) to a person who satisfies an authorised officer of the library or archives that he requires the copy, thesis or other work for the purpose of research or study.”; and

(c) by inserting, immediately after the word “Copying” in the section heading, the words “or communication”.

Amendment of section 51

16. Section 51 of the Copyright Act is amended —

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

“(1A) Copyright in a literary or dramatic work is not infringed by the communication of a part of the work in an edition of the work by any person if the communication is initiated from the premises of an educational institution for the purposes of a course of education provided by the institution.”;

(b) by inserting, immediately after the words “making of a copy of” in subsections (2) and (3), the words “, and subsection (1A) does not apply to the communication of,”;

(c) by deleting subsection (4) and substituting the following subsection:

“(4) Subsection (1) does not apply to the making of a copy, and subsection (1A) does not apply to the communication, 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 or communicated exceeds, in the aggregate —

(a) 5% of the total number of bytes in the edition; and

(b) 5% of the total number of words in that edition or, where it is not practicable to use the total number of words as a measure, 5% of the contents of the edition.”;

(d) by inserting, immediately after subsection (5), the following subsection:

“(5A) Where —

(a) a person communicates or causes to be communicated a part of a work; and

(b) subsection (1A) applies to that communication,

that subsection does not apply to the communication, by or on behalf of that person, of any other part of that work within 14 days after the day on which the previous communication was made.”; and

(e) by inserting, immediately after the word “copying” in the section heading, the words “or communication”.

Amendment of section 52

17. Section 52 of the Copyright Act is amended —

(a) by inserting, immediately after the words “the making of copies” in subsections (1) and (2), the words “, or the communication,”;

(b) by inserting, immediately after subsection (7), the following subsections:

“(7A) Subsection (1) shall not apply in relation to the communication of, or of parts of, 2 or more articles contained in the same periodical publication, unless the articles relate to the same subject-matter.

5 (7B) Subsection (2) shall not apply in relation to the communication of, or of more than a reasonable portion of, a work that has been separately published, unless the person who communicates the work or portion, or causes the work or portion to be communicated, for or on behalf of the body administering the educational institution, is satisfied, after
10 reasonable investigation, that copies (not being secondhand copies) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

15 (7C) Subsection (1) shall not apply to the communication of the whole or a part of an article contained in a periodical publication by or on behalf of the body administering an educational institution, for the educational purposes of an educational institution, unless there is made, by or on behalf of that body, as soon as practicable after the communication, a
20 record of the communication setting out such particulars as may be prescribed by the regulations.

25 (7D) Subsection (2) shall not apply to the communication of the whole or a part of a work (not being an article contained in a periodical publication) by or on behalf of the body administering an educational institution, for the educational purposes of an educational institution, unless there is made, by or on behalf of that body, as soon as practicable after the communication, a record of the communication setting out such particulars as may be prescribed by the regulations.”;

- 30 (c) by inserting, immediately after the words “by or on behalf of” in subsection (9), the words “the body administering”;
- (d) by inserting, immediately after subsection (11), the following subsections:

“(11A) Where —

- 35 (a) the whole or a part of a work, other than an article in a periodical publication, is communicated as provided in subsection (2) —

(i) by or on behalf of the body administering an educational institution for the educational purposes of an educational institution; and

(ii) to persons undertaking a correspondence course, or an external study course, provided by the educational institution, otherwise than as a part of the lecture notes prepared in connection with that course; and

(b) the communication does not contain more than a reasonable portion of the work,

the record made in relation to the communication in accordance with subsection (7D) may state that it is a communication to which this subsection applies.

(11B) Where the whole or a part of a work consisting of an article in a periodical publication is communicated as provided in subsection (1) —

(a) by or on behalf of the body administering an educational institution for the educational purposes of an educational institution; and

(b) to persons undertaking a correspondence course, or an external study course, provided by the educational institution, otherwise than as a part of the lecture notes prepared in connection with that course,

the record made in relation to the communication in accordance with subsection (7C) may state that it is a communication to which this subsection applies.

(11C) Where —

(a) the whole or a part of a work is communicated by or on behalf of the body administering an educational institution;

(b) the communication is not a communication to which subsection (11A) or (11B) applies; and

- (c) by virtue of this section, the communication does not infringe copyright in the work,

that body shall, if the owner of the copyright in the work makes a request in writing, at any time during the prescribed period after the communication, for payment for the communication, pay to the owner such an amount by way of equitable remuneration for the communication as is agreed upon between the owner and the body or, in default of agreement, as is determined by the Copyright Tribunal on the application of either the owner or the body.”;

- (e) by inserting, immediately after the words “copies of the whole or a part of that work that have been made” in subsection (12), the words “, or the communication of the whole or a part of that work,”;

- (f) by deleting subsection (13) and substituting the following subsection:

“(13) Nothing in this section shall affect the right of the owner of copyright in a work to grant a licence authorising the body administering an educational institution —

- (a) to make, or cause to be made, copies of the whole or a part of the work; or

- (b) to communicate, or cause to be communicated, the whole or a part of the work,

without infringement of that copyright.”;

- (g) by inserting, immediately after subsection (14), the following subsection:

“(15) For the purposes of this section, a reference to the communication 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 communication 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 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.”; and

- (h) by inserting, immediately after the word “copying” in the section heading, the words “or communication”.

Amendment of section 54

- 5 **18.** Section 54 of the Copyright Act is amended by deleting the words “private study” in subsections (1) and (2) and substituting in each case the word “study”.

Amendment of section 81

- 19.** Section 81 of the Copyright Act is amended by deleting subsection (1) and substituting the following subsection:

- 10 “(1) In this Part —
- “interactive service” means a service that enables an individual to receive —
- (a) a transmission of a programme specially created for that individual; or
- 15 (b) on request, a transmission of a particular sound recording, whether or not as part of a programme, which is selected by or on behalf of that individual,
- but does not include any service that enables an individual to request that particular sound recording be performed for reception by the public at large or, in the case of a subscription service, by all subscribers of that service, unless the programming on each channel of that service consists substantially of sound recordings that are performed within an hour of the request or at a time designated by that individual;
- 20 “qualified person” means —
- (a) a citizen of Singapore, or an individual resident in Singapore; or
- (b) a body corporate incorporated under any written law in Singapore.”.
- 25

Amendment of section 82

- 30 **20.** Section 82 of the Copyright Act is amended —

(a) by deleting the full-stop at the end of paragraph (b) of subsection (1) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

“(c) to publish the sound recording if it is unpublished;

5 (d) to make available to the public a sound recording by means of, or as part of, a digital audio transmission.”; and

(b) by inserting, immediately after subsection (2), the following subsection:

10 “(3) For the avoidance of doubt, “make available” for the purposes of this Part does not include the causing of a sound recording to be heard, otherwise than by means of or as part of a digital audio transmission.”.

Amendment of section 83

15 **21.** Section 83 of the Copyright Act is amended by deleting paragraphs (c) and (d) and substituting the following paragraph:

“(c) to communicate the film to the public.”.

Amendment of section 84

20 **22.** Section 84(1) of the Copyright Act is amended by deleting the words “to include it in a cable programme” in paragraph (d) and substituting the words “to otherwise communicate it to the public”.

Amendment of section 85

23. Section 85(1) of the Copyright Act is amended by deleting paragraph (d) and substituting the following paragraph:

25 “(d) to communicate it to the public.”.

New section 105A

24. The Copyright Act is amended by inserting, immediately after section 105, the following section:

“Infringing copies made on machines installed in libraries and archives

105A. Where —

- 5 (a) a person makes an infringing copy of, or of part of, an audio-visual item on a machine (including a computer), being a machine installed by or with the approval of the body administering any library or archives on the premises of the library or archives, or outside those premises for the convenience of persons using the library or archives; and
 - 10 (b) there is affixed to, or in close proximity to, the machine, in a place readily visible to persons using the machine, a notice of the prescribed dimensions and in accordance with the prescribed form,
- neither the body administering the library or archives, nor the officer-in-charge of the library or archives, shall be taken to have authorised the making of the infringing copy by reason only that the copy was made on that machine.”.

Amendment of section 107

20 **25.** Section 107 of the Copyright Act is amended by inserting, immediately after subsection (2), the following subsection:

“**(2A)** Notwithstanding subsections (1) and (2), where a sound recording is intended for broadcast or is broadcast, the copyright in the sound recording is not infringed by —

- 25 (a) the making of a copy of the sound recording for, or the supply of a copy of the sound recording to, any statutory authority; or
- (b) the use of a copy of the sound recording by that statutory authority or any of its authorised officers,

30 for the purpose of ascertaining whether the intended broadcast complies with, or the broadcast contravenes, the provisions of any written law administered by that statutory authority.”.

New sections 107A to 107E

26. The Copyright Act is amended by inserting, immediately after section 107, the following sections:

“Making of copy of sound recording or cinematograph film for purpose of simulcasting

5 **107A.**—(1) Where the broadcasting of a sound recording or a cinematograph film would not for any reason constitute an infringement of the copyright in the recording or film, but the making of a copy of the recording or film would, apart from this section, constitute an infringement of the copyright, the copyright is not infringed by the making of a copy of the recording or film if the copy is made solely for the purpose of simulcasting the recording or film in digital form.

(2) Subsection (1) shall not apply in relation to a copy of a recording or film if the copy is used for a purpose other than —

15 (a) the simulcasting of the recording or film in circumstances that do not for any reason constitute an infringement of the copyright in the recording or film; or

(b) the making of further copies of the recording or film for the purpose of simulcasting the recording or film in such circumstances.

20 (3) Subsection (1) shall not apply in relation to a copy of a recording or film unless all copies of the recording or film made under that subsection are destroyed before the expiration of the prescribed period.

Non-subscription digital audio transmissions

25 **107B.** Without prejudice to the generality of section 82(3), it is not an infringement of a copyright in a sound recording to make available to the public the sound recording —

(a) by means of or as part of an exempt transmission, being a digital audio transmission of a sound broadcast where the transmission —

30 (i) is not part of an interactive service; and

(ii) is not a subscription transmission; or

(b) by re-transmitting or simultaneously transmitting, by means of or as part of a digital audio transmission, an exempt transmission of a sound recording where the re-transmission

or simultaneous transmission is obtained directly from the exempt transmission.

Digital audio transmissions within business establishment

107C.—(1) It is not an infringement of a copyright in a sound recording to make available to the public the sound recording by means of or as part of a digital audio transmission if —

- (a) the sound recording is made available to the public by such means within the premises of a business establishment;
- (b) the making available to the public of the sound recording by such means causes the sound recording to be heard within the premises or immediate surroundings of the business establishment; and
- (c) the business carried on in the business establishment does not consist primarily of the making available to the public of sound recordings by such means for payment.

(2) In this section, “premises” includes any land, building structure and conveyance.

Other non-infringing non-interactive transmissions

107D. It is not an infringement of a copyright in a sound recording to make available to the public the sound recording by means of or as part of a digital audio transmission that is not part of an interactive service, if the person who does so pays the owner of the copyright in the sound recording such amount by way of equitable remuneration in respect of the transmission as may be agreed upon between them or, in default of such an agreement, as may be determined by the Copyright Tribunal on the application of either party.

Temporary copy made in course of communication

107E.—(1) The copyright in an audio-visual item is not infringed by the making of a temporary, incidental or transient copy of the audio-visual item as part of the technical process of making or receiving a communication.

(2) Subsection (1) shall not apply to the making of a temporary, incidental or transient reproduction of an audio-visual item as part of

the technical process of making a communication if the making of the communication itself constitutes an infringement of copyright.”.

Repeal and re-enactment of section 109

27. Section 109 of the Copyright Act is repealed and the following
5 section substituted therefor:

“Fair dealing in relation to other subject-matter

109.—(1) Subject to this section, a fair dealing with an audio-visual item for any purpose other than a purpose referred to in section 110 or 111 shall not constitute an infringement of the copyright in the
10 item or in any work or other audio-visual item included in the item.

(2) The purposes for which a dealing with an audio-visual item may constitute a fair dealing under subsection (1) shall include research and study.

(3) For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with an audio-visual item, being a dealing by way of copying the whole or a part of the audio-visual item, constitutes a fair dealing with the audio-visual item for any purpose other than a purpose referred to in section 110 or 111 shall include —
15

- 20 (a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;
- (b) the nature of the audio-visual item;
- (c) the amount and substantiality of the part copied taken in
25 relation to the whole audio-visual item;
- (d) the effect of the dealing upon the potential market for, or value of, the audio-visual item; and
- (e) the possibility of obtaining the audio-visual item within a reasonable time at an ordinary commercial price.”.

Amendment of section 111

28. Section 111 of the Copyright Act is amended by inserting, immediately after the words “cable programme service” in paragraph (b), the words “, by any other means of communication to the public,”.

Amendment of section 112

29. Section 112 of the Copyright Act is amended by deleting paragraphs (i) and (ii) and substituting the following paragraphs:

- 5 “(i) by the making of a copy, or the communication, of the
 sound recording or cinematograph film by a person for the
 purpose of research or study or with a view to publication;
 or
- 10 (ii) by the making of a copy, or the communication, of the
 sound recording or cinematograph film by or on behalf of
 the officer-in-charge of the library or archives, if the copy or
 the recording or film is supplied (whether by communication
 or otherwise) to a person who satisfies the officer that he
15 requires the copy or the recording or film for the purpose of
 research or study or with a view to publication and that he
 will not use it for any other purpose.”.

Amendment of section 119

30. Section 119 of the Copyright Act is amended —

- (a) by deleting subsection (2) and substituting the following
subsections:
- 20 “(2) Subject to the provisions of this Act, in an action for an
 infringement of copyright, the types of relief that the court may
 grant include the following:
- (a) an injunction (subject to such terms, if any, as the
 court thinks fit);
- 25 (b) damages;
- (c) an account of profits;
- (d) where the plaintiff has elected for an award of
 statutory damages in lieu of damages or an account of
 profits, statutory damages of —
- 30 (i) not more than \$10,000 for each work or subject-
 matter in respect of which the copyright has been
 infringed; but

- (ii) not more than \$200,000 in the aggregate, unless the plaintiff proves that his actual loss from such infringement exceeds \$200,000.

5 (2A) When the court awards any damages under subsection (2)(b), the court may also make an order under subsection (2)(c) for an account of any profits attributable to the infringement that have not been taken into account in computing the damages.

10 (2B) Except as provided for in subsection (2A), the types of relief referred to in subsection (2)(b), (c) and (d) are mutually exclusive.

(2C) For the purposes of subsection (2)(d), all the parts of a collective work constitute one work.”;

15 (b) by inserting, immediately after the words “damages for the infringement” in the 9th line of subsection (4), the words “under subsection (2)(b)”;

(c) by inserting, immediately after subsection (4), the following subsections:

20 “(5) In awarding statutory damages under subsection (2)(d), the court shall have regard to —

- (a) the nature and purpose of the infringing act, including whether the infringing act was of a commercial nature or otherwise;
- (b) the flagrancy of the infringement;
- 25 (c) whether the defendant acted in bad faith;
- (d) any loss that the plaintiff has suffered or is likely to suffer by reason of the infringement;
- (e) any benefit shown to have accrued to the defendant by reason of the infringement;
- 30 (f) the conduct of the parties before and during the proceedings;
- (g) the need to deter other similar infringements; and
- (h) all other relevant matters.

(6) In this section —

“collective work” means a work in which relevant materials, constituting separate and independent works in themselves, are assembled into a collective whole;

5 “relevant material” has the same meaning as in section 7A(3).”.

Amendment of section 120

31. Section 120(1) of the Copyright Act is amended by deleting the word “predominantly”.

10 Repeal and re-enactment of section 124

32. Section 124 of the Copyright Act is repealed and the following section substituted therefor:

“Joinder of owner or exclusive licensee as party

124. Where —

15 (a) an action is brought by the owner of the copyright or by the exclusive licensee; and

(b) the action, insofar as it is brought under section 119, relates, in whole or in part, to an infringement in respect of which the owner and the licensee have concurrent rights of action
20 under that section,

the owner or licensee, as the case may be, shall be entitled to proceed with the action without joining the other party as a plaintiff or adding the other party as a defendant in the action, unless the court orders otherwise.”.

25 Amendment of section 126

33. Section 126 of the Copyright Act is amended by inserting, immediately after the word “damages”, the words “or statutory damages”.

Amendment of section 128

30 **34.** Section 128 of the Copyright Act is amended by inserting, immediately after the word “damages” in paragraphs (a) and (b), the words “or statutory damages”.

Amendment of section 130

35. Section 130 of the Copyright Act is amended by inserting, immediately after subsection (1), the following subsections:

5 “(1A) Where the defendant puts in issue the question of whether copyright subsists in the work or other subject-matter or whether the plaintiff is the owner of the copyright, but does not satisfy the court that he does so in good faith, the presumption as to the subsistence or ownership of copyright under subsection (1)(a) or (b), as the case may be, shall apply notwithstanding that the defendant puts that question in issue.

10 (1B) Where the defendant, in good faith, puts in issue the question of whether copyright subsists in the work or other subject-matter or whether the plaintiff is the owner of the copyright, an affidavit made on behalf of the plaintiff in which the plaintiff makes assertions of facts relevant to showing —

(a) that copyright subsists in the work or other subject-matter; and

(b) that he is the owner of the copyright,

15 shall be admitted in evidence and shall be prima facie proof of the matters stated therein until the contrary is proved, unless the court directs that oral evidence be adduced to prove those matters.”.

Amendment of section 136

36. Section 136 of the Copyright Act is amended —

25 (a) by inserting, immediately after subsection (3), the following subsection:

“(3A) Where, at any time when copyright subsists in a work —

30 (a) a person does any act that constitutes an infringement of the copyright in a work other than an act referred to in subsection (1), (2), (3) or (6);

(b) the infringement of the copyright in the work by the person is wilful; and

(c) either or both of the following apply:

(i) the extent of the infringement is significant;

(ii) the person does the act to obtain a commercial advantage,

the person 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 6 months or to both and, in the case of a second or subsequent offence, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.”;

(b) by inserting, immediately after subsection (6), the following subsections:

“(6A) For the purposes of subsection (3A)(c)(i), in determining whether the extent of the infringement is significant, the court shall have regard to —

(a) the volume of any articles that are infringing copies;

(b) the value of any articles that are infringing copies;

(c) whether the infringement has a substantial prejudicial impact on the owner of the copyright; and

(d) all other relevant matters.

(6B) For the purposes of subsection (3A)(c)(ii), a person does an act for the purpose of obtaining a commercial advantage if the act is done to obtain a direct advantage, benefit or financial gain for a business or trade carried on by him.”;

(c) by inserting, immediately after the words “this section” in subsection (7), the words “(other than subsection (3A))”;

(d) by deleting the word “predominantly” in subsection (8); and

(e) by deleting subsection (9) and substituting the following subsection:

“(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), (3A) or (4) 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, whether specifically or in any general category, and to seize any such articles and documents found at the premises.”.

Amendment of section 138

5 **37.** Section 138 of the Copyright Act is amended by deleting subsection (2) and substituting the following subsections:

“**(2)** Any authorised officer may, without a warrant issued under section 136(9) —

- 10 **(a)** stop, search and board, whether forcibly or otherwise, any conveyance in which he reasonably suspects that there is any infringing copy of any work or other subject-matter; and
- (b)** seize, remove or detain any such infringing copy and anything which appears to him —

- (i) to be or to contain; or
 - 15 (ii) to be likely to be or to contain,
evidence of an offence under this Act.

(3) In this section, “authorised officer” means —

- (a)** a police officer;
- (b)** an officer of customs as defined in the Customs Act (Cap. 70);
- 20 **(c)** an immigration officer as defined in the Immigration Act (Cap. 133); or
- (d)** any officer or class or description of officers appointed by the Minister, by notification in the *Gazette*, to exercise the powers and perform the duties conferred and imposed on an
- 25 authorised officer by this section.”.

Amendment of section 140B

38. Section 140B of the Copyright Act is amended by deleting subsection (1) and substituting the following subsection:

30 “**(1)** A person who is the owner of the copyright in any copyright material or a licensee thereof may give the Director-General a written notice —

- (a) stating that he is —
 - (i) the owner of the copyright in the copyright material; or
 - (ii) a licensee thereof having the power to give such a notice;
- 5 (b) stating that copies of the copyright material which are infringing copies are expected to be imported;
- (c) providing sufficient information —
 - (i) to identify the copies of the copyright material;
 - 10 (ii) to enable the Director-General to ascertain the time when and place where the copies are expected to be imported; and
 - (iii) to satisfy the Director-General that the copies are infringing copies; and
- (d) stating that he objects to such importation.”.

15 **New section 140LA**

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

“Detention of infringing copies

20 **140LA.**—(1) Notwithstanding section 140B(4), any authorised officer may —

- (a) detain any copies of copyright material —
 - (i) that are imported into, or that are to be exported from, Singapore; and
 - 25 (ii) that are not goods in transit, unless the copies are consigned to any person with a commercial or physical presence in Singapore; or
- (b) examine any copies of copyright material, including goods in transit,

30 which he reasonably suspects are infringing copies of any copyright material.

(2) As soon as practicable after the copies of copyright material are detained under subsection (1)(a), the Director-General shall give —

(a) to the importer, exporter or consignee, as the case may be, of the detained copies; and

(b) to the owner of the copyright in the copyright material,

a written notice identifying the copies, stating that they have been detained and setting out the matters referred to in subsection (3).

(3) The detained copies of copyright material shall be released to the importer, exporter or consignee, as the case may be, of the copies, unless, within the prescribed period, the owner of the copyright in the copyright material —

(a) in the case of copies that are imported into Singapore and that are not goods in transit —

(i) gives the Director-General the written notice referred to in section 140B(1);

(ii) submits to the Director-General the documents and information referred to in section 140B(2); and

(iii) deposits with the Director-General the sum of money referred to in section 140C(a) or gives the security referred to in section 140C(b); or

(b) in the case of copies that are to be exported from Singapore or copies that are goods in transit and consigned to a person with a commercial or physical presence in Singapore —

(i) institutes an action for the infringement of his copyright;

(ii) serves on the Director-General an order of the court authorising the further detention of the copies; and

(iii) deposits with the Director-General a sum of money that, in the opinion of the Director-General, is sufficient to —

(A) reimburse the Government for any liability or expense it has and is likely to further incur as a result of the detention of the copies; and

(B) pay such compensation to any person who suffers loss or damage as a result of the detention of the copies as may be ordered by the court,

5 or gives security, to the satisfaction of the Director-General, for the reimbursement of the Government for any such liability or expense and the payment of such compensation.

10 (4) Every order of the court authorising the further detention of copies under subsection (3)(b)(ii) shall be subject to the condition that the owner of the copyright in the copyright material complies with subsection (3)(b)(iii) within the period prescribed under subsection (3).

(5) Where the court has made an order authorising the further detention of copies under subsection (3)(b)(ii) —

15 (a) the detained copies shall be taken to such secure place as the Director-General directs; and

(b) sections 140F and 140G and 140I to 140L shall apply, with the necessary modifications, to the further detention of the copies, and for the purposes of such application —

20 (i) any reference to the objector shall be read as a reference to the owner of the copyright in the copyright material;

(ii) any reference to the importer shall be read as a reference to the exporter or consignee, as the case may be, of the detained copies;

25 (iii) any reference to the seized copies shall be read as a reference to the detained copies;

(iv) any reference to the seizure of copies shall be read as a reference to the detention or further detention of the copies;

30 (v) any reference to the import or importation of copies shall be read —

(A) in the case of copies that are to be exported from Singapore, as a reference to the export of the copies; or

(B) in the case of copies that are goods in transit and that are consigned to a person with a presence in Singapore, as a reference to the import, importation or export, of the copies by the consignee;

(vi) any reference to infringement action shall be read as a reference to an action for the infringement of the copyright in the copyright material under subsection (3)(b)(i); and

(vii) any reference to the retention period shall be read as a reference to the prescribed period under subsection (3).”.

Amendment of section 140M

40. Section 140M(1) of the Copyright Act is amended by inserting, immediately after the words “seized under section 140B(7)”, the words “or detained under section 140LA”.

Amendment of section 140N

41. Section 140N(1) of the Copyright Act is amended by inserting, immediately after the words “seized under section 140B(7)”, the words “or detained under section 140LA”.

Amendment of section 140P

42. Section 140P(1) of the Copyright Act is amended by inserting, immediately after the words “seized under section 140B(7)” wherever they appear in paragraphs (a) and (b), the words “or detained under section 140LA”.

New section 156C

43. The Copyright Act is amended by inserting, immediately after section 156B, the following section:

“Application to Tribunal for determination of remuneration payable for making available to public sound recording by means of digital audio transmission

156C.—(1) This section shall apply where an application is made to the Tribunal under section 107D for the determination of equitable

remuneration to be paid to the owner of the copyright in a sound recording for the making available to the public of the sound recording by means of or as part of a digital audio transmission that is not part of an interactive service.

5 (2) The parties to an application in relation to which this section applies are —

(a) the owner of the copyright in the sound recording; and

10 (b) the person who makes available to the public the sound recording by means of or as part of a digital audio transmission that is not part of an interactive service.

15 (3) Where an application in relation to which this section applies is made to the Tribunal, the Tribunal shall consider the application and, after giving to the parties to the application an opportunity of presenting their cases, shall make an order determining the amount that it considers to be equitable remuneration to the owner of the copyright for the making available to the public of the sound recording by means of or as part of a digital audio transmission that is not part of an interactive service.

20 (4) In this section, “interactive service” has the same meaning as in section 81(1).”.

Amendment of section 158

44. Section 158(1) of the Copyright Act is amended by inserting, immediately after the words “section 52(11)”, the words “or (11C)”.

Repeal and re-enactment of sections 187, 188 and 189

25 45. Sections 187, 188 and 189 of the Copyright Act are repealed and the following sections substituted therefor:

“Interpretation of this Part

187. In this Part, unless the context otherwise requires —

“name” includes initials or a monogram;

30 “performance”, “protection period” and “recording” have the same meanings as in Part XII.

Duty not to attribute falsely authorship of work or identity of performer of performance

188.—(1) A person (referred to in this subsection as the offender) shall, by virtue of this section, be under a duty to the author of a work or a performer of a performance not to —

- (a) insert or affix another person's name in or on the work or a recording of the performance, or in or on a reproduction of the work or recording, in such a way as to imply that the other person is the author of the work or the performer of the performance;
- (b) publish, sell or let for hire, by way of trade offer or expose for sale or hire, or by way of trade exhibit in public, the work or recording of the performance with another person's name so inserted or affixed, if the offender knows that the other person is not the author of the work or the performer of the performance;
- (c) do any of the acts mentioned in paragraph (b) in relation to, or distribute, reproductions of the work or recording of the performance, being reproductions in or on which another person's name has been so inserted or affixed, if the offender knows that the other person is not the author of the work or the performer of the performance; or
- (d) perform in public or communicate the work as being a work of which another person is the author, or make available to the public the recording of a performance as being a recording of a performance of which another person is the performer, if the offender knows that the other person is not the author of the work or the performer of the performance.

(2) Subsection (1) shall apply where, contrary to the fact, a work is represented as being an adaptation of the work of another person in like manner as it applies where a work is represented as being the work of another person.

(3) After the death of the author of a work or the performer of the performance, a person shall, by virtue of this section, be under a duty to the legal personal representative of the author or performer not to do in relation to, or to a reproduction of, the work or an adaptation of the work or a recording of the performance any act that, but for the

death of the author or performer, the person would, by reason of either subsection (1) or (2), have been under a duty to the author or performer not to do.

(4) In this section —

5 “performance” means a performance in respect of which the protection period under Part XII has not expired;

“work” means a work in which copyright subsists under this Act.

Duty not to falsely represent altered work or recording of performance as unaltered

10 **189.** Where a work in which copyright subsists or a recording of a performance in respect of which the protection period has not expired has been altered by a person other than the author of the work or the performer of the performance, a person shall be under a duty to the author or performer not to —

15 (a) publish, sell or let for hire, or by way of trade offer or expose for sale or hire, the work or recording as so altered as being the unaltered work of the author or as an unaltered recording of the performance; or

20 (b) publish, sell or let for hire, or by way of trade offer or expose for sale or hire, a reproduction of the work or a recording of the performance as so altered as being a reproduction of the unaltered work of the author or an unaltered recording of the performance by the performer,

25 if, to his knowledge, it is not the unaltered work or a reproduction of the unaltered work, as the case may be, of the author or the unaltered recording or a reproduction of the unaltered recording, as the case may be, of the performance by the performer.”.

Amendment of section 192

30 **46.** Section 192 of the Copyright Act is amended by deleting subsection (3) and substituting the following subsection:

“(3) Where, in respect of an act done in relation to, or to a reproduction of, a work or an adaptation of a work or a recording of a performance after the death of the author of the work or the performer of the performance, damages are recovered under this section by the

legal personal representative of the author or performer, those damages devolve as if they formed part of the estate of the author or performer and as if the right of action in respect of the doing of that act had subsisted, and had been vested in the author or performer,
 5 immediately before his death.”.

Repeal and re-enactment of sections 193A to 193D and new sections 193DA to 193DE

47. Sections 193A to 193D of the Copyright Act are repealed and the following sections substituted therefor:

10 **“Interpretation and effect of application of this Part**

193A.—(1) In this Part, unless the context otherwise requires —

“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;

15 “material” means any work or other subject-matter in which copyright subsists by virtue of this Act;

“monetary relief” means damages, an account of profits or statutory damages;

“network service provider” —

20 (a) for the purposes of section 193B, means a person who provides services relating to, or provides connections for, the transmission or routing of data; and

(b) for the purposes of this Part (other than section 193B), means a person who provides, or operates facilities for, online services or network access and includes a person referred to in paragraph (a),
 25

but does not include such person or class of persons as the Minister may prescribe;

30 “primary network”, in relation to a network service provider, refers to a network controlled or operated by or for the network service provider;

“routing” means directing or choosing the means or routes for the transmission of data.

(2) This Part does not limit the operation of the other provisions of this Act in relation to determining whether copyright has been infringed.

Transmission, routing and provision of connections

193B.—(1) The court shall not grant any monetary relief or, except as provided for in section 193DB, make any order against a network service provider for any infringement of copyright in any material that occurs by reason of —

- (a) the transmission or routing by the network service provider of, or the provision of connections by the network service provider for, an electronic copy of the material through the network service provider's primary network; or
- (b) any transient storage by the network service provider of an electronic copy of the material in the course of such transmission, routing or provision of connections,

if the network service provider satisfies the conditions set out in subsection (2).

(2) The conditions referred to in subsection (1) are that —

- (a) the transmission of the electronic copy of the material was initiated by or at the direction of a person other than the network service provider;
- (b) the transmission, routing, provision of connections or storage is carried out through an automatic technical process without any selection of the electronic copy of the material by the network service provider;
- (c) the network service provider does not select the recipients of the electronic copy of the material except as an automatic response to the request of another person; and
- (d) the network service provider does not make any substantive modification (other than any modification made as part of a technical process) to the content of the electronic copy of the material during the transmission of the electronic copy of the material through the primary network.

System caching

5 **193C.**—(1) The court shall not grant any monetary relief or, except as provided for in section 193DB, make any order against a network service provider for any infringement of copyright in any material that occurs by reason of the making by the network service provider of an electronic copy of the material (referred to in this section as the cached copy) on the network service provider's primary network —

- 10 (a) from another electronic copy of the material made available on a network (referred to in this section as the originating network);
- (b) through an automatic process;
- (c) in response to an action by a user of the primary network; and
- 15 (d) in order to facilitate efficient access to the material by that user or other users,

if the network service provider satisfies the conditions set out in subsection (2).

(2) The conditions referred to in subsection (1) are that —

- 20 (a) the network service provider does not make any substantive modification (other than any modification made as part of a technical process) to the content of the cached copy of the material during the transmission of the cached copy of the material to users of the primary network or another network;
- 25 (b) if the network service provider is furnished in the prescribed manner with a notice in the prescribed form relating to the cached copy of the material —
 - (i) purportedly made by the owner of the copyright in the material or under the owner's authority; and
 - (ii) stating the prescribed matters,
- 30 the network service provider expeditiously takes reasonable steps to remove or disable access to the cached copy of the material on the primary network; and
- (c) the network service provider satisfies such other conditions as the Minister may prescribe in relation to —

- (i) access to the cached copy of the material by users of the primary network or another network;
- (ii) the refreshing, reloading or updating of the cached copy of the material; and
- 5 (iii) non-interference with technology used at the originating network to obtain information about the use of any material on the originating network, being technology that is consistent with industry standards in Singapore.

Storage and information location

10 **193D.**—(1) The court shall not grant any monetary relief or, except as provided for in section 193DB, make any order against a network service provider for any infringement of copyright in any material that occurs by reason of —

- 15 (a) the storage, at the direction of a user of the network service provider's primary network, of an electronic copy of the material on the primary network, if the network service provider satisfies the conditions referred to in subsection (2); or
- 20 (b) the network service provider referring or linking a user of any network to an online location on a network (referred to in this section as the originating network), being a location at which an electronic copy of the material is made available, by the use of —
 - 25 (i) an information location tool such as a hyperlink or directory; or
 - (ii) an information location service such as a search engine, if the network service provider satisfies the conditions referred to in subsection (4).

(2) The conditions referred to in subsection (1)(a) are that —

- 30 (a) the network service provider does not receive any financial benefit directly attributable to the infringement of the copyright in the material that occurs in, or in the course of, making available the electronic copy of the material on the primary network, provided that the network service provider
- 35 has the right and ability to control the infringing activity;

(b) if the network service provider —

- 5 (i) acquires actual knowledge that the copyright in the material has been infringed in, or in the course of, making available the electronic copy of the material on the primary network;
 - 10 (ii) acquires knowledge of such facts or circumstances which would lead inevitably to the conclusion that the copyright in the material has been infringed in, or in the course of, making available the electronic copy of the material on the primary network; or
 - (iii) is furnished in the prescribed manner with a notice in the prescribed form relating to the electronic copy of the material on the primary network —
 - 15 (A) purportedly made by the owner of the copyright in the material or under the owner's authority; and
 - (B) stating the prescribed matters,
- the network service provider expeditiously takes reasonable steps to remove or disable access to the copy of the material on the primary network; and
- 20 (c) the network service provider has designated a representative to receive any notice referred to in paragraph (b)(iii) and published the prescribed information on the designated representative in the prescribed manner.

25 (3) For the purposes of subsection (2), where a network service provider is not an individual, the network service provider shall not be treated as having acquired any knowledge referred to in subsection (2)(b)(i) or (ii) —

- 30 (a) unless that knowledge is acquired by the representative referred to in subsection (2)(c); and
- (b) where it is alleged that the representative has acquired that knowledge by reason only of any communication made to the representative, unless that communication is in the form of the notice referred to in subsection (2)(b)(iii).

(4) The conditions referred to in subsection (1)(b) are that —

(a) the network service provider does not receive any financial benefit directly attributable to the infringement of the copyright in the material that occurs in, or in the course of, making available the electronic copy of the material on the originating network, provided that the network service provider has the right and ability to control the infringing activity;

(b) if the network service provider —

(i) acquires actual knowledge that the copyright in the material has been infringed in, or in the course of, making available the electronic copy of the material on the originating network;

(ii) acquires knowledge of such facts or circumstances which would lead inevitably to the conclusion that the copyright in the material has been infringed in, or in the course of, making available the electronic copy of the material on the originating network; or

(iii) is furnished in the prescribed manner with a notice in the prescribed form relating to the electronic copy of the material on the originating network —

(A) purportedly made by the owner of the copyright in the material or under the owner's authority; and

(B) stating the prescribed matters,

the network service provider expeditiously takes reasonable steps to disable access to the electronic copy of the material on the originating network, and to remove or disable access to any electronic copy of the material (being a copy made from the electronic copy of the material on the originating network and of which the network service provider has actual knowledge) on the primary network; and

(c) the network service provider has designated a representative to receive any notice referred to in paragraph (b)(iii) and published the prescribed information on the designated representative in the prescribed manner.

(5) For the purposes of subsection (4), where a network service provider is not an individual, the network service provider shall not be treated as having acquired any knowledge referred to in subsection (4)(b) —

5 (a) unless that knowledge is acquired by the representative referred to in subsection (4)(c); and

 (b) where it is alleged that the representative has acquired that knowledge by reason only of any communication made to the representative, unless that communication is in the form of the notice referred to in subsection (4)(b)(iii).

10

(6) For the purposes of subsections (2)(a) and (4)(a) —

(a) a financial benefit does not include a benefit that is received merely on account of the provision of any online service by the network service provider; and

15 (b) a financial benefit is to be regarded as directly attributable to the infringing activity only if the network service provider knew or ought reasonably to have known at the time of the receipt of the benefit that an infringement of copyright was involved.

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

193DA.—(1) Notwithstanding anything to the contrary in any law (written or otherwise), a network service provider shall not be subject to any liability under any rule of law in respect of any action taken in good faith in relation to —

25

(a) the removal of an electronic copy of any material from his primary network; or

(b) the disabling of access to an electronic copy of any material on his primary network or another network,

30 if —

(i) such removal or disabling was done in reliance on any notice referred to in section 193C(2)(b) or 193D(2)(b)(iii) or (4)(b)(iii) or any knowledge referred to in section 193D(2)(b)(i) or (ii) or (4)(b)(i) or (ii); and

- (ii) in the case of any removal or disabling done in reliance on any notice referred to in section 193D(2)(b)(iii) or (4)(b)(iii) or any knowledge referred to in section 193D(2)(b)(i) or (ii) or (4)(b)(i) or (ii), the conditions referred to in subsection (2) are satisfied.

(2) The conditions referred to in subsection (1)(ii) are that —

(a) after such removal or disabling, the network service provider expeditiously takes reasonable steps to notify the person who made available the electronic copy of the material on the network of this; and

(b) where the network service provider is furnished in the prescribed manner, within the prescribed time, with a notice in the prescribed form purportedly made by the person who made available the electronic copy of the material on the network, or under that person's authority, stating the prescribed matters —

(i) the network service provider expeditiously takes reasonable steps to restore the electronic copy of the material to the network, or to restore access to that electronic copy, as the case may be, if it is technically and practically feasible to do so; or

(ii) before the network service provider has completed the steps referred to in sub-paragraph (i), the owner of the copyright in the material commences proceedings to prevent the electronic copy of the material, or the access to it, from being restored, and the network service provider is informed of those proceedings.

(3) Subsection (1) shall apply whether or not it is ultimately determined that any relevant act that was carried out constitutes an infringement of copyright in the material under this Act.

(4) Notwithstanding anything to the contrary in any law (written or otherwise), a network service provider shall not be subject to any liability under any rule of law in respect of any action taken in good faith in relation to —

(a) the restoration of an electronic copy of any material to his primary network; or

- (b) the restoration of access to an electronic copy of any material on any network,

if such restoration was done in reliance on any notice referred to in subsection (2)(b).

5 (5) A network service provider shall not be treated as having authorised the doing of any act which is an infringement of copyright under this Act by reason only that the network service provider —

- (a) has provided a facility which was used by another person to do that act;
- 10 (b) has received any notice referred to in section 193C(2)(b) or 193D(2)(b)(iii) or (4)(b)(iii) in respect of that act; or
- (c) has acquired any knowledge referred to in section 193D(2)(b)(i) or (ii) or (4)(b)(i) or (ii) in respect of that act.

Relief which court may grant

15 **193DB.**—(1) The types of relief that the court may grant against a network service provider, if the court is satisfied that section 193B(1) applies to the network service provider, shall be limited to either or both of the following:

- 20 (a) an order requiring the network service provider to take reasonable steps to disable access to an online location that is physically situated outside Singapore;
- (b) an order requiring the network service provider to terminate a specified account.

25 (2) The types of relief that the court may grant against a network service provider, if the court is satisfied that section 193C(1) or 193D(1) applies to the network service provider, shall be limited to one or more of the following:

- (a) an order requiring the network service provider —
 - 30 (i) to remove an infringing electronic copy of the material from the network service provider's primary network; or
 - (ii) to disable access to an infringing electronic copy of the material on the primary network or another network;

(b) an order requiring the network service provider to terminate a specified account;

(c) such other order or orders as may be necessary, if that order is, or those orders are, the least burdensome to the network service provider among comparatively effective non-monetary orders.

(3) When making an order under subsection (1) or (2), the court shall have regard to —

(a) the harm that has been or may foreseeably be caused to the plaintiff;

(b) the burden that the making of the order will place on the network service provider;

(c) the technical feasibility of complying with the order;

(d) the effectiveness of the order;

(e) any possible adverse effect on the business or operations of the network service provider;

(f) whether some other comparatively effective order would be less burdensome; and

(g) all other matters which it considers relevant.

Evidence of compliance with conditions

193DC. If, in an action relating to this Part, a network service provider adduces evidence, as prescribed, that suggests that he has complied with a condition —

(a) referred to in section 193B(2), 193C(2) or 193D(2) or (4); or

(b) prescribed in any regulations made under section 193DE,

the court shall presume, in the absence of evidence to the contrary, that the network service provider has complied with that condition.

Maker of false notice guilty of offence and liable in damages

193DD.—(1) A person who, in making a notice under section 193C(2)(b), 193D(2)(b)(iii) or (4)(b)(iii) or 193DA(2)(b), makes any statement which is false, which he knows is false or does not believe

to be true, and which touches any point material to the object of the notice —

(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years; and

(b) shall also be liable in damages to any person who suffers any loss or damage as a result of the making of that notice for any such loss or damage that is reasonably foreseeable as likely to result from the making of that notice.

(2) Subsection (1) shall apply whether or not the statement is made in Singapore, and if a person makes the statement outside Singapore, he may be dealt with under subsection (1)(a) as if the offence were committed in Singapore.

Regulations

193DE.—(1) The Minister may make regulations prescribing any thing required or authorised to be prescribed under this Part.

(2) Without prejudice to the generality of subsection (1), the regulations may —

(a) prescribe the procedure or requirements for the notices to be furnished under this Part, including the forms of and information to be contained in such notices, the manner of sending such notices, and the manner of verification of statements in such notices; and

(b) prescribe other conditions which a network service provider must comply with in order to benefit from the provisions in this Part.”.

Amendment of section 199

48. Section 199 of the Copyright Act is amended —

(a) by deleting the words “cinematograph film programme” in the 4th line of subsection (3) and substituting the words “cinematograph film”; and

(b) by inserting, immediately after subsection (6), the following subsection:

“(7) For the avoidance of doubt, a reference in subsection (3) to an inclusion of a literary, dramatic, musical or artistic work or a cinematograph film in a programme in a cable programme service shall not include the making available of the work or film on the Internet.”.

Amendment of section 236

49. Section 236 of the Copyright Act is amended —

(a) by inserting, immediately after the words “subsection (1)(b) and (c) of that section” in subsection (1), the words “in relation to a work”;

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

“(1A) It is a breach of the duty imposed on a person by section 188 if the person does, on or after 1st January 2005, any of the acts mentioned in subsection (1)(b) and (c) of that section in relation to a recording of a performance, notwithstanding that the name concerned was inserted or affixed before that date.”; and

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

“(2A) Subject to subsection (1A), Part IX shall not apply in relation to acts done before 1st January 2005 in respect of a recording of a performance.”.

Amendment of section 246

50. Section 246(1) of the Copyright Act is amended —

(a) by inserting, immediately after the words “electronic form” in the definition of “electronic recording”, the words “, whether it is a direct recording or a copy thereof”;

(b) by inserting, immediately after the word “direct” wherever it appears in the definition of “exempt recording”, the words “or an indirect”;

(c) by deleting the words “private study” in paragraph (f) of the definition of “exempt recording” and substituting the word “study”;

(d) by inserting, immediately after the definition of “exempt recording”, the following definitions:

“ “monetary relief” means damages, an account of profits or statutory damages;

5 “network service provider” —

(a) for the purposes of section 252A, means a person who provides services relating to, or provides connections for, the transmission or routing of data; and

10 (b) for the purposes of sections 252B to 252CC and 252CE, means a person who provides, or operates facilities for, online services or network access and includes a person referred to in paragraph (a),

15 but does not include such person or class of persons as the Minister may prescribe;”;

(e) by inserting, immediately after the definition of “performance”, the following definition:

20 “ “primary network”, in relation to a network service provider, refers to a network controlled or operated by or for the network service provider;” and

(f) by inserting, immediately after the definition of “recording”, the following definition:

“ “routing” means directing or choosing the means or routes for the transmission of data;”.

25 **Amendment of section 252**

51. Section 252(1) of the Copyright Act is amended —

(a) by deleting paragraphs (a) and (b) and substituting the following paragraphs:

30 “(a) makes a direct or an indirect recording of the performance in any manner or medium;

(b) communicates the live performance to the public;”;

(b) by deleting the word “or” at the end of sub-paragraph (d); and

(c) by deleting the full-stop at the end of paragraph (e) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

5 “(f) publishes the recording of the performance if it is unpublished; or

(g) makes available a recording of the performance to the public (on a network or otherwise) in such a way that the recording may be accessed by any person from a place and at a time chosen by him.”.

10 **Repeal and re-enactment of sections 252A, 252B and 252C and new sections 252CA to 252CF**

52. Sections 252A, 252B and 252C of the Copyright Act are repealed and the following sections substituted therefor:

“Transmission, routing and provision of connections

15 **252A.**—(1) The court shall not grant any monetary relief or, except as provided for in section 252CB, make any order against a network service provider for any unauthorised use of any performance, the protection period of which has not expired, that occurs by reason of —

20 (a) the transmission or routing by the network service provider of, or the provision of connections by the network service provider for, an electronic recording of the performance through the network service provider’s primary network; or

25 (b) any transient storage by the network service provider of an electronic recording of the performance in the course of such transmission, routing or provision of connections,

if the network service provider satisfies the conditions set out in subsection (2).

(2) The conditions referred to in subsection (1) are that —

30 (a) the transmission of the electronic recording of the performance was initiated by or at the direction of a person other than the network service provider;

(b) the transmission, routing, provision of connections or storage is carried out through an automatic technical process

without any selection of the electronic recording of the performance by the network service provider;

(c) the network service provider does not select the recipients of the electronic recording of the performance except as an automatic response to the request of another person; and

(d) the network service provider does not make any substantive modification (other than any modification made as part of a technical process) to the content of the electronic recording of the performance during the transmission of the electronic recording of the performance through the primary network.

System caching

252B.—(1) The court shall not grant any monetary relief or, except as provided for in section 252CB, make any order against a network service provider for any unauthorised use of any performance, the protection period of which has not expired, that occurs by reason of the making by the network service provider of an electronic recording of the performance (referred to in this section as the cached copy) on the network service provider's primary network —

(a) from another electronic recording of the performance made available on a network (referred to in this section as the originating network);

(b) through an automatic process;

(c) in response to an action by a user of the primary network; and

(d) in order to facilitate efficient access to the performance by that user or other users,

if the network service provider satisfies the conditions set out in subsection (2).

(2) The conditions referred to in subsection (1) are that —

(a) the network service provider does not make any substantive modification (other than any modification made as part of a technical process) to the content of the cached copy of the electronic recording of the performance during the transmission of the cached copy of the electronic recording

of the performance to users of the primary network or another network;

(b) if the network service provider is furnished in the prescribed manner with a notice in the prescribed form relating to the cached copy of the electronic recording of the performance —

(i) purportedly made by the performer of the performance or under the performer's authority; and

(ii) stating the prescribed matters,

the network service provider expeditiously takes reasonable steps to remove or disable access to the cached copy of the electronic recording of the performance on the primary network; and

(c) the network service provider satisfies such other conditions as the Minister may prescribe in relation to —

(i) access to the cached copy of the electronic recording of the performance by users of the primary network or another network;

(ii) the refreshing, reloading or updating of the cached copy of the electronic recording of the performance; and

(iii) non-interference with technology used at the originating network to obtain information about the use of any electronic recording of any performance on the originating network, being technology that is consistent with industry standards in Singapore.

Storage and information location

252C.—(1) The court shall not grant any monetary relief or, except as provided for in section 252CB, make any order against a network service provider for any infringement of copyright in any performance, the protection period of which has not expired, that occurs by reason of —

(a) the storage, at the direction of a user of the network service provider's primary network, of an electronic recording of the performance on the primary network, if the network

service provider satisfies the conditions referred to in subsection (2); or

(b) the network service provider referring or linking a user of any network to an online location on a network (referred to in this section as the originating network), being a location at which an electronic recording of the performance is made available, by the use of —

(i) an information location tool such as a hyperlink or directory; or

(ii) an information location service such as a search engine, if the network service provider satisfies the conditions referred to in subsection (4).

(2) The conditions referred to in subsection (1)(a) are that —

(a) the network service provider does not receive any financial benefit directly attributable to any unauthorised use of the performance that occurs in, or in the course of, making available the electronic recording of the performance on the primary network, provided that the network service provider has the right and ability to control the unauthorised use of the performance;

(b) if the network service provider —

(i) acquires actual knowledge that there has been an unauthorised use of the performance in, or in the course of, making available the electronic recording of the performance on the primary network;

(ii) acquires knowledge of such facts or circumstances which would lead inevitably to the conclusion that there has been an unauthorised use of the performance in, or in the course of, making available the electronic recording of the performance on the primary network; or

(iii) is furnished in the prescribed manner with a notice in the prescribed form relating to the electronic recording of the performance on the primary network —

(A) purportedly made by the performer of the performance or under the performer's authority; and

(B) stating the prescribed matters,

5 the network service provider expeditiously takes reasonable steps to remove or disable access to the electronic recording of the performance on the primary network; and

(c) the network service provider has designated a representative to receive any notice referred to in paragraph (b)(iii) and
10 published the prescribed information on the designated representative in the prescribed manner.

(3) For the purposes of subsection (2), where a network service provider is not an individual, the network service provider shall not be treated as having acquired any knowledge referred to in
15 subsection (2)(b)(i) or (ii) —

(a) unless that knowledge is acquired by the representative referred to in subsection (2)(c); and

(b) where it is alleged that the representative has acquired that knowledge by reason only of any communication made to the representative, unless that communication is in the form
20 of the notice referred to in subsection (2)(b)(iii).

(4) The conditions referred to in subsection (1)(b) are that —

(a) the network service provider does not receive any financial benefit directly attributable to any unauthorised use of the performance that occurs in, or in the course of, making
25 available the electronic recording of the performance on the originating network, provided that the network service provider has the right and ability to control the unauthorised use of the performance;

30 (b) if the network service provider —

(i) acquires actual knowledge that there has been an unauthorised use of the performance in, or in the course of, making available the electronic recording of the performance on the originating network;

(ii) acquires knowledge of such facts or circumstances which would lead inevitably to the conclusion that there has been an unauthorised use of the performance in, or in the course of, making available the electronic recording of the performance on the originating network; or

(iii) is furnished in the prescribed manner with a notice in the prescribed form relating to the electronic recording of the performance on the originating network —

(A) purportedly made by the performer of the performance or under the performer's authority; and

(B) stating the prescribed matters,

the network service provider expeditiously takes reasonable steps to disable access to the electronic recording of the performance on the originating network, and to remove or disable access to any electronic recording of the performance (being a copy made from the electronic recording of the performance on the originating network and of which the network service provider has actual knowledge) on the primary network; and

(c) the network service provider has designated a representative to receive any notice referred to in paragraph (b)(iii) and published the prescribed information on the designated representative in the prescribed manner.

(5) For the purposes of subsection (4), where a network service provider is not an individual, the network service provider shall not be treated as having acquired any knowledge referred to in subsection (4)(b) —

(a) unless that knowledge is acquired by the representative referred to in subsection (4)(c); and

(b) where it is alleged that the representative has acquired that knowledge by reason only of any communication made to the representative, unless that communication is in the form of the notice referred to in subsection (4)(b)(iii).

(6) For the purposes of subsections (2)(a) and (4)(a) —

- (a) a financial benefit does not include a benefit that is received merely on account of the provision of any online service by the network service provider; and
- (b) a financial benefit is to be regarded as directly attributable to an unauthorised use of the performance only if the network service provider knew or ought reasonably to have known at the time of the receipt of the benefit that an unauthorised use of the performance was involved.

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

252CA.—(1) Notwithstanding anything to the contrary in any law (written or otherwise), a network service provider shall not be subject to any liability under any rule of law in respect of any action taken in good faith in relation to —

- (a) the removal of an electronic recording of any performance from his primary network; or
- (b) the disabling of access to an electronic recording of any performance on his primary network or another network,

if —

- (i) such removal or disabling was done in reliance on any notice referred to in section 252B(2)(b) or 252C(2)(b)(iii) or (4)(b)(iii) or any knowledge referred to in section 252C(2)(b)(i) or (ii) or (4)(b)(i) or (ii); and
- (ii) in the case of any removal or disabling done in reliance on any notice referred to in section 252C(2)(b)(iii) or (4)(b)(iii) or any knowledge referred to in section 252C(2)(b)(i) or (ii) or (4)(b)(i) or (ii), the conditions referred to in subsection (2) are satisfied.

(2) The conditions referred to in subsection (1)(ii) are that —

- (a) after such removal or disabling, the network service provider expeditiously takes reasonable steps to notify the person who made available the electronic recording of the performance on the network of this; and
- (b) where the network service provider is furnished in the prescribed manner, within the prescribed time, with a notice

in the prescribed form purportedly made by the person who made available the electronic recording of the performance on the network, or under that person's authority, stating the prescribed matters —

- 5 (i) the network service provider expeditiously takes reasonable steps to restore the electronic recording of the performance to the network, or to restore access to that electronic recording, as the case may be, if it is technically and practically feasible to do so; or
- 10 (ii) before the network service provider has completed the steps referred to in sub-paragraph (i), the performer of the performance commences proceedings to prevent the electronic recording of the performance, or the access to it, from being restored, and the network service
- 15 provider is informed of those proceedings.

(3) Subsection (1) shall apply whether or not it is ultimately determined that any relevant act that was carried out constitutes an unauthorised use of the performance under this Act.

20 (4) Notwithstanding anything to the contrary in any law (written or otherwise), a network service provider shall not be subject to any liability under any rule of law in respect of any action taken in good faith in relation to —

- (a) the restoration of an electronic recording of any performance to his primary network; or
- 25 (b) the restoration of access to an electronic recording of any performance on any network,

if such restoration was done in reliance on any notice referred to in subsection (2)(b).

30 (5) A network service provider shall not be treated as having authorised the doing of any act which is an unauthorised use of a performance under this Act by reason only that the network service provider —

- (a) has provided a facility which was used by another person to do that act;
- 35 (b) has received any notice referred to in section 252B(2)(b) or 252C(2)(b)(iii) or (4)(b)(iii) in respect of that act; or

- (c) has acquired any knowledge referred to in section 252C(2)(b)(i) or (ii) or (4)(b)(i) or (ii) in respect of that act.

Relief which court may grant

252CB.—(1) The types of relief that the court may grant against a network service provider, if the court is satisfied that section 252A(1) applies to the network service provider, shall be limited to either or both of the following:

- (a) an order requiring the network service provider to take reasonable steps to disable access to an online location that is physically situated outside Singapore;
- (b) an order requiring the network service provider to terminate a specified account.

(2) The types of relief that the court may grant against a network service provider, if the court is satisfied that section 252B(1) or 252C(1) applies to the network service provider, shall be limited to one or more of the following:

- (a) an order requiring the network service provider —
 - (i) to remove an unauthorised electronic recording of the performance from the network service provider's primary network; or
 - (ii) to disable access to an unauthorised electronic recording of the performance on the primary network or another network;
- (b) an order requiring the network service provider to terminate a specified account;
- (c) such other order or orders as may be necessary, if that order is, or those orders are, the least burdensome to the network service provider among comparatively effective non-monetary orders.

(3) When making an order under subsection (1) or (2), the court shall have regard to —

- (a) the harm that has been or may foreseeably be caused to the plaintiff;

- (b) the burden that the making of the order will place on the network service provider;
- (c) the technical feasibility of complying with the order;
- (d) the effectiveness of the order;
- 5 (e) any possible adverse effect on the business or operations of the network service provider;
- (f) whether some other comparatively effective order would be less burdensome; and
- (g) all other matters which it considers relevant.

10 **Evidence of compliance with conditions**

252CC. If, in an action relating to this Part, a network service provider adduces evidence, as prescribed, that suggests that he has complied with a condition —

(a) referred to in section 252A(2), 252B(2) or 252C(2) or (4); or

15 (b) prescribed in any regulations made under section 252CE,

the court shall presume, in the absence of evidence to the contrary, that the network service provider has complied with that condition.

Maker of false notice guilty of offence and liable in damages

20 **252CD.**—(1) A person who, in making a notice under section 252B(2)(b), 252C(2)(b)(iii) or (4)(b)(iii) or 252CA(2)(b), makes any statement which is false, which he knows is false or does not believe to be true, and which touches any point material to the object of the notice —

25 (a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years; and

(b) shall also be liable in damages to any person who suffers any loss or damage as a result of the making of that notice for any such loss or damage that is reasonably foreseeable as
30 likely to result from the making of that notice.

(2) Subsection (1) shall apply whether or not the statement is made in Singapore, and if a person makes the statement outside Singapore,

he may be dealt with under subsection (1)(a) as if the offence were committed in Singapore.

Regulations

252CE.—(1) The Minister may make regulations prescribing anything required or authorised to be prescribed under sections 252A to 252CD.

(2) Without prejudice to the generality of subsection (1), the regulations may —

(a) prescribe the procedure or requirements for the notices to be furnished under sections 252B(2)(b), 252C(2)(b)(iii) and (4)(b)(iii) and 252CA(2)(b), including the forms of and information to be contained in such notices, the manner of sending such notices, and the manner of verification of statements in such notices; and

(b) prescribe other conditions which a network service provider must comply with in order to benefit from the provisions in section 252A to 252CD.

Effect of application of sections 252A to 252CD

252CF. Sections 252A to 252CD do not limit the operation of the other provisions of this Part in relation to determining whether there has been an unauthorised use of a performance.”.

Amendment of section 253

53. Section 253 of the Copyright Act is amended —

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

“(1A) An action shall not be brought for an unauthorised use of a performance after the expiration of 6 years from the time when the unauthorised use took place.”;

(b) by deleting subsection (2) and substituting the following subsections:

“(2) Subject to the provisions of this Act, in an action for unauthorised use of a performance, the types of relief that the court may grant include the following:

(a) an injunction (subject to such terms, if any, as the court thinks fit);

(b) damages;

(c) an account of profits;

5 (d) where the plaintiff has elected for an award of statutory damages in lieu of damages or an account of profits, statutory damages of —

10 (i) not more than \$10,000 for each performance in respect of which there has been an unauthorised use; but

(ii) not more than \$200,000 in the aggregate, unless the plaintiff proves that his actual loss from such infringement exceeds \$200,000.

15 (2A) When the court awards any damages under subsection (2)(b), the court may also make an order under subsection (2)(c) for an account of any profits attributable to the unauthorised use that have not been taken into account in computing the damages.

20 (2B) Except as provided for in subsection (2A), the types of relief referred to in subsection (2)(b), (c) and (d) are mutually exclusive.

(c) by inserting, immediately after the words “assessing damages” in the penultimate line of subsection (3), the words “under subsection (2)(b)”;

25 (d) by inserting, immediately after subsection (3), the following subsection:

“(3A) In awarding statutory damages under subsection (2)(d), the court shall have regard to —

30 (a) the nature and purpose of the unauthorised use, including whether the unauthorised use was of a commercial nature or otherwise;

(b) the flagrancy of the unauthorised use;

(c) whether the defendant acted in bad faith;

- (d) any loss that the plaintiff has suffered or is likely to suffer by reason of the unauthorised use;
- (e) any benefit shown to have accrued to the defendant by reason of the unauthorised use;
- 5 (f) the conduct of the parties before and during the proceedings;
- (g) the need to deter other similar instances of unauthorised use; and
- (h) all other relevant matters.”; and
- 10 (e) by deleting the word “predominantly” in subsection (4).

New section 253A

54. The Copyright Act is amended by inserting, immediately after section 253, the following section:

“Presumptions in relation to performance

15 **253A.**—(1) Where the name of a person appears on copies of a recording of a performance, as made available to the public, in such a way as to imply that the person is the performer of the performance, and that name is his true name or a name by which he is commonly known, the person shall, in an action brought by virtue of this Part, be
20 presumed, unless the contrary is established, to be the performer of the performance embodied in the recording.

(2) Where the name of a group of performers appears on copies of a recording of a performance, as made available to the public, in such a way as to imply that the group performed in the performance
25 embodied in the recording, and that name is the true name of the group or a name by which the group is commonly known, the group shall, in an action brought by virtue of this Part, be presumed, unless the contrary is established, to have performed in the performance embodied in the recording.”.

Amendment of section 254A

55. Section 254A of the Copyright Act is amended —

- (a) by inserting, immediately after subsection (3), the following subsection:

“(3A) Where, at any time during the protection period of a performance —

(a) a person does any act that constitutes an unauthorised use of the performance other than an act referred to in subsection (1), (2), (3), (5) or (6);

(b) the unauthorised use of the performance by the person is wilful; and

(c) either or both of the following apply:

(i) the extent of the unauthorised use is significant;

(ii) the person does the act to obtain a commercial advantage,

the person 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 6 months or to both and, in the case of a second or subsequent offence, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.”;

(b) by inserting, immediately after subsection (6), the following subsections:

“(6A) For the purposes of subsection (3A)(c)(i), in determining whether the extent of the unauthorised use of a performance is significant, the court shall have regard to —

(a) the volume of any articles that are unauthorised recordings of the performance;

(b) the value of any articles that are unauthorised recordings of the performance;

(c) whether the unauthorised use has a substantial prejudicial impact on the performer of the performance; and

(d) all other relevant matters.

(6B) For the purposes of subsection (3A)(c)(ii), a person does an act for the purpose of obtaining a commercial advantage if the act is done to obtain a direct advantage,

benefit or financial gain for a business or trade carried on by him.”;

(c) by inserting, immediately after the words “this section” in subsection (7), the words “(other than subsection (3A))”;

5 (d) by deleting the word “predominantly” in subsection (8); and

(e) by deleting subsection (9) and substituting the following subsection:

10 “(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), (3A), (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, whether specifically or in any general category, and to seize
15 any such articles and documents found at the premises.”.

New section 254B

20 **56.** The Copyright Act is amended by inserting, immediately after section 254A, the following section:

“Application of sections 140A to 141

25 **254B.**—(1) Sections 140A to 141 shall apply, with the necessary modifications, to copies of an unauthorised recording of a performance as those provisions apply in relation to copies of copyright material.

(2) For the purposes of subsection (1) —

(a) a reference in those provisions to copyright material shall be read as a reference to an unauthorised recording of a performance the protection period of which has not expired;

30 (b) a reference in those provisions to the owner of the copyright or the owner of the copyright in the copyright material shall be read as a reference to the performer of a performance embodied in an unauthorised recording;

- (c) a reference in those provisions to an action for infringement of copyright shall be read as a reference to an action for unauthorised use of a performance;
- 5 (d) a reference in those provisions to infringing copies shall be read as a reference to copies of an unauthorised recording which were made without the authorisation of the performer; and
- 10 (e) a reference in section 140B(6) to the subsequent owner of the copyright shall be read as a reference to a person to whom the right of a performer to bring an action under section 253 has been assigned.”.

Repeal and re-enactment of section 258

57. Section 258 of the Copyright Act is repealed and the following section substituted therefor:

15 “Interpretation of this Part

258. In this Part, unless the context otherwise requires —

- “performance”, “recording” and “unauthorised use” have the same meanings as in Part XII;
 - 20 “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;
 - 25 (c) information about the terms and conditions of use of the copy of the work or subject-matter or the recording of the performance;
 - 30 (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.”.

Repeal and re-enactment of sections 260 and 261 and new section 261A

- 5 **58.** Sections 260 and 261 of the Copyright Act are repealed and the following sections substituted therefor:

“Removal or alteration of rights management information

260.—(1) This section shall apply where rights management information in an electronic form —

- 10 (a) is attached to or embodied in a copy of a work or other subject-matter in which copyright subsists or a recording of a performance; or
- (b) appears in connection with the communication or making available to the public of a copy of a work or other subject-matter or a recording of a performance.
- 15

(2) Where a person —

- (a) knowingly removes or alters the rights management information relating to any work or other subject-matter or recording of a performance;
- 20 (b) does so without the consent of —
- (i) the owner or exclusive licensee of the copyright in the work or subject-matter; or
- (ii) the performer of the performance; and
- (c) knows or ought reasonably to know that the removal or alteration of the rights management information will induce, enable, facilitate or conceal —
- 25 (i) an infringement of the copyright of the work or subject-matter; or
- (ii) an unauthorised use of the performance,

30 an action may be brought by the owner or exclusive licensee of the copyright or the performer against the person.

(3) Where a person —

(a) distributes or imports for distribution the rights management information relating to any work or other subject-matter or any recording of a performance, being rights management information which has been altered without the consent of —

(i) the owner or exclusive licensee of the copyright in the work or subject-matter; or

(ii) the performer of the performance;

(b) does so without the consent of the owner or exclusive licensee of the copyright or the performer;

(c) does so knowing that the rights management information has been altered without the consent of the owner or exclusive licensee of the copyright or the performer; and

(d) knows or ought reasonably to know that the distribution or importation of the rights management information will induce, enable, facilitate or conceal —

(i) an infringement of the copyright in the work or subject-matter; or

(ii) an unauthorised use of the performance,

to which the rights management information relates,

an action may be brought by the owner or exclusive licensee of the copyright or the performer against the person.

(4) Where a person —

(a) distributes, imports for distribution, communicates or makes available to the public copies of a work or other subject-matter or a recording of a performance in respect of which the rights management information has been removed or altered without the consent of —

(i) the owner or exclusive licensee of the copyright in the work or subject matter; or

(ii) the performer of the performance;

(b) does so without the consent of the owner or exclusive licensee of the copyright or the performer;

(c) does so knowing that the rights management information has been removed or altered without the consent of the owner or exclusive licensee of the copyright or the performer; and

5 (d) knows or ought reasonably to know that the distribution, importation, communication or making available to the public of the copies of the work or subject-matter or the recording of the performance will induce, enable, facilitate or conceal —

10 (i) an infringement of the copyright in the work or subject-matter; or

(ii) an unauthorised use of a performance,

an action may be brought by the owner or exclusive licensee of the copyright or the performer against the person.

15 (5) An action shall not be brought in respect of any act referred to in subsection (2), (3) or (4) after the expiration of 6 years from the time when the act took place.

(6) Subject to subsection (7), where a person does an act referred to in subsection (2), (3) or (4) —

(a) wilfully; and

20 (b) for the purpose of obtaining any commercial advantage,

he shall be guilty of an offence and shall be liable on conviction —

(i) in the case of an act referred to in subsection (2), to a fine not exceeding \$20,000; or

25 (ii) in the case of an act referred to in subsection (3) or (4), to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

30 (7) Subsection (6) shall not apply to any act done by or on behalf of a non-profit library, any non-profit archives, an educational institution, an institution assisting handicapped readers, an institution assisting intellectually handicapped readers, or such public, non-commercial broadcasting organisation as the Minister may prescribe.

(8) For the purposes of subsection (6), a person does an act for the purpose of obtaining a commercial advantage if the act is done to

obtain a direct advantage, benefit or financial gain for a business or trade carried on by him.

Relief which court may grant

261.—(1) In an action brought under section 260, the types of relief that the court may grant if it is satisfied that the defendant has carried out or is carrying out an act referred to in section 260(2), (3) or (4) (referred to in this section as a relevant act) include the following:

- (a) an injunction (subject to such terms, if any, as the court thinks fit);
- (b) damages;
- (c) an account of profits;
- (d) where the plaintiff has elected for an award of statutory damages in lieu of damages or an account of profits, statutory damages of not more than \$20,000.

(2) When the court awards any damages under subsection (1)(b) in respect of a relevant act, the court may also make an order under subsection (1)(c) for an account of any profits attributable to the relevant act that have not been taken into account in computing the damages.

(3) Except as provided for in subsection (2), the types of relief referred to in subsection (1)(b), (c) or (d) are mutually exclusive.

(4) In awarding statutory damages under subsection (1)(d) in respect of any relevant act, the court shall have regard to —

- (a) the nature or purpose of the act concerned, including whether the act was of a commercial nature or otherwise;
- (b) the flagrancy of the act;
- (c) whether the defendant acted in bad faith;
- (d) any loss that the plaintiff has suffered or is likely to suffer by reason of the act;
- (e) any benefit shown to have accrued to the defendant by reason of the act;
- (f) the conduct of the parties before and during the proceedings;
- (g) the need to deter other similar acts; and

(h) all other relevant matters.

(5) 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, a relevant act 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.

Enforcement measures

261A.—(1) The court before which a person is charged with an offence under section 260(6) may, whether he is convicted of the offence or not, order that any article that appears to the court to be —

(a) a copy of a work or other subject-matter or a recording of a performance in respect of which the rights management information has been altered or removed without the consent of the owner or exclusive licensee of the work or other subject-matter or the performer of the performance, as the case may be; or

(b) used predominantly for removing or altering the rights management information in respect of any work or other subject-matter or any recording of a performance,

in the possession of the alleged offender or before the court, be destroyed or delivered up to the owner or exclusive licensee of the copyright concerned or the performer of the performance, as the case may be, or otherwise dealt with in such manner as the court thinks fit.

(2) 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 section 260(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, whether specifically or in any general category, and to seize any such articles and documents found at the premises.

(3) If an article was seized under subsection (2) and —

(a) in proceedings brought under section 260(6), no order is made as to the disposal of the article, whether under subsection (1) or otherwise; or

5 (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
10 regulating the disposal of lost or unclaimed property in the hands of police authorities.

(4) If a document was seized under subsection (2) and no proceedings under section 260(6) are instituted within 6 months of the seizure, the document and all copies of the document shall be
15 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.

20 (5) In this section —

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

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

25 **New Part XIII A**

59. The Copyright Act is amended by inserting at the end of Part XIII the following Part:

“PART XIII A

CIRCUMVENTION OF TECHNOLOGICAL MEASURES

30 **Interpretation and effect of application of this Part**

261B.—(1) In this Part, unless the context otherwise requires —

“circumvent” means to avoid, bypass, remove, deactivate, descramble (where the copy is scrambled), decrypt (where the copy is encrypted) or otherwise impair;

5 “copy”, in relation to any work or other subject-matter or any performance, means a copy of the work or subject-matter or of a recording of the performance, and includes the original version of the work or subject-matter or a recording of the performance;

10 “encryption technology” means technology for scrambling and descrambling information using mathematical formulae or algorithms;

“non-profit” means not operated or conducted for profit;

“performance”, “protection period”, “recording” and “unauthorised use” have the same meanings as in Part XII;

15 “personally identifying information” means information which can be used to identify persons using a network;

“technological access control measure” means any technology, device or component that, in the normal course of its operation, effectively controls access to a copy of —

20 (a) a work or other subject-matter; or

(b) a performance,

but excludes such technology, device or component as the Minister may prescribe;

25 “technological measure” means a technological access control measure or a technological protection measure;

“technological protection measure” means any technology, device or component that, in the normal course of its operation, effectively prevents or limits the doing of —

30 (a) in relation to a copy of a work or other subject-matter, any act comprised in the copyright in the work or subject-matter; or

(b) in relation to a copy of a performance, an unauthorised use of the performance,

but excludes such technology, device or component as the Minister may prescribe.

5 (2) Nothing in this Part shall affect any act done in relation to a work or other subject-matter in which copyright no longer subsists, or in relation to a performance the protection period of which has expired.

(3) Nothing in this Part shall affect —

- 10 (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
- 15 (d) any defence to an action for infringement of copyright, or for an unauthorised use of a performance,

under any provision of this Act.

Circumvention of technological measures

20 **261C.**—(1) Subject to sections 261D and 261E, where a technological measure is applied to a copy of a work or other subject-matter by or with the authorisation of the owner of the copyright in the work or subject-matter in connection with the exercise of the copyright, or to a copy of a performance by or with the authorisation of the performer of the performance in connection with the exercise of any right in the performance, no person shall, without the authorisation of the owner of the copyright or the performer of the performance, as the case may be —

- 30 (a) if the technological measure is a technological access control measure, do any act which he knows or ought reasonably to know circumvents the technological measure;
- (b) manufacture, import, distribute, offer to the public, provide or otherwise traffic in any device, product or component which —

- (i) is promoted, advertised or marketed for the purpose of circumventing the technological measure;
 - (ii) has only a limited commercially significant purpose or use other than to circumvent the technological measure; or
 - (iii) is designed or made primarily for the purpose of circumventing the technological measure;
- (c) offer to the public or provide any service which —
- (i) is promoted, advertised or marketed for the purpose of circumventing the technological measure;
 - (ii) has only a limited commercially significant purpose or use other than to circumvent the technological measure; or
 - (iii) is performed primarily for the purpose of circumventing the technological measure.

(2) An action may be brought by the owner of the copyright or the performer of the performance against a person who contravenes subsection (1).

(3) An action shall not be brought under subsection (2) in respect of any contravention of subsection (1) after the expiration of 6 years from the time when the contravention took place.

(4) Where a person contravenes subsection (1)(a) wilfully and for the purpose of obtaining a commercial advantage, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.

(5) Where a person contravenes subsection (1)(b) or (c) wilfully and for the purpose of obtaining a commercial advantage, he 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) For the purposes of subsection (5), a person shall not be treated as having contravened subsection (1)(b) wilfully unless —

- (a) in the case of a device, product or component referred to in subsection (1)(b)(i), he had himself —

- (i) promoted, advertised or marketed it; or
- (ii) authorised the promotion, advertising or marketing of it,

for the purpose of circumventing the technological measure;

- 5 (b) in the case of a device, product or component referred to in subsection (1)(b)(ii), he knew or had reason to believe at the time of the contravention that it had only a limited commercially significant purpose or use other than to circumvent the technological measure; or

- 10 (c) in the case of a device, product or component referred to in subsection (1)(b)(iii), he knew or had reason to believe at the time of the contravention that it was designed or made primarily for the purpose of circumventing the technological measure.

- 15 (7) For the purposes of subsection (5), a person shall not be treated as having contravened subsection (1)(c) wilfully unless—

- (a) in the case of a service referred to in subsection (1)(c)(i), he had himself —

- (i) promoted, advertised or marketed it; or

- 20 (ii) authorised the promotion, advertising or marketing of it,

for the purpose of circumventing the technological measure;

- 25 (b) in the case of a service referred to in subsection (1)(c)(ii), he knew or had reason to believe at the time of the contravention that it had only a limited commercially significant purpose or use other than to circumvent the technological measure; or

- (c) in the case of a service referred to in subsection (1)(c)(iii), he had himself —

30 (i) performed it; or

- (ii) authorised the performance of it,

primarily for the purpose of circumventing the technological measure.

(8) For the purposes of subsections (4) and (5), a person does an act for the purpose of obtaining a commercial advantage if the act is done to obtain a direct advantage, benefit or financial gain for a business or trade carried on by him.

5 (9) Subsections (4) and (5) shall not apply to any act done by or on behalf of a non-profit library, any non-profit archives, an educational institution, an institution assisting handicapped readers, an institution assisting intellectually handicapped readers, or such public, non-commercial broadcasting organisation as the Minister may prescribe.

10 (10) This section does not affect the import or sale of a device that does not render effective a technological measure whose sole purpose is to control market segmentation for access to cinematograph films, if the import or sale of the device does not otherwise contravene any written law including this Act.

15 **Exceptions to prohibition on circumvention**

261D.—(1) Subject to subsection (3), section 261C(1)(a) is not contravened by the doing of an act to circumvent a technological measure if —

20 (a) the act is done to enable a non-profit library, any non-profit archives, an educational institution, an institution assisting handicapped readers, or an institution assisting intellectually handicapped readers to have access to a work or other subject-matter or recording of a performance which is not otherwise available to the library, archives or institution, for
25 the sole purpose of determining whether to acquire a copy of the work or other subject-matter or recording;

30 (b) the technological measure has the capability to collect or disseminate personally identifying information to reflect the manner of use of a network by persons without providing conspicuous notice of such collection or dissemination to those persons, and the act is done for the sole purpose of identifying and disabling the technological measure, provided that the act does not affect the ability of any person to gain access to any work or other subject-matter or
35 recording of any performance;

(c) the act is done in relation to a work or other subject-matter or performance that is prescribed by the Minister under subsection (2);

(d) the act is done —

- 5 (i) in good faith;
- (ii) in relation to a copy of a computer program that is not an infringing copy; and
- (iii) with respect to particular elements of the computer program that are not readily available to the person
- 10 doing the act,

for the sole purpose of achieving interoperability of an independently created computer program with another computer program;

(e) the act is done when undertaking research on any encryption technology, provided that —

- 15 (i) the person doing the act —
- (A) is engaged in a legitimate course of study in the field of encryption technology;
- (B) is employed or appropriately trained or experienced in that field; or
- 20 (C) is doing so on behalf of a person so engaged, employed, trained or experienced;

(ii) the act is necessary to conduct such research;

25 (iii) the act is done in good faith and in relation to a copy of the work or subject-matter that is not an infringing copy thereof or a copy of the performance that is not an unauthorised recording thereof; and

30 (iv) the person doing the act has made a reasonable effort to obtain the authorisation of the owner of the copyright in the work or subject-matter or the performer of the performance to do the act;

(f) the act consists of the inclusion of a component or part in any technology, product or device for the sole purpose of preventing access by minors to any material on the Internet,

provided that the technology, product or device is not prohibited under section 261C(1)(b);

(g) the act is done by or under the authority of the owner of a computer, computer system or computer network for the sole purpose of testing, investigating, or correcting a security flaw or vulnerability of that computer, computer system or computer network; or

(h) the act is carried out by the Government or by any person authorised by the Government for the purpose of law enforcement, intelligence, national defence, essential security or other similar purpose.

(2) The Minister may, by order published in the *Gazette*, exclude the operation of section 261C(1)(a) in relation to a specified work or other subject-matter or performance, or a specified class of works or other subject-matters or performances, if he is satisfied that any dealing with the work, subject-matter or performance or with the class of works, subject-matters or performances, being a dealing which does not amount to an infringement of copyright therein or an unauthorised use thereof (as the case may be), has been adversely impaired or affected as a result of the operation of this section.

(3) Subsection (1) shall not apply if —

(a) in the case of an act referred to in paragraph (b), (e) or (g) of that subsection, the act violates a provision of any written law other than this Act;

(b) in the case of an act referred to in paragraph (c), (d), (e) or (g) of that subsection, the act infringes the copyright in the work or other subject-matter or amounts to an unauthorised use of the performance; or

(c) in the case of an act referred to in paragraph (a) of that subsection, the act leads to an infringement of the copyright in the work or other subject-matter or to an unauthorised use of the performance, or otherwise violates a provision of any other written law.

Exceptions to prohibition on making, etc., circumventing device and offering circumventing service

261E.—(1) Subject to subsections (2) and (3), section 261C(1)(b) and (c) is not contravened by the doing of any of the following:

- 5 (a) the manufacture, importation, distribution, offering to the public or provision of a device, product or component, or the offering to the public or provision of a service, to carry out an act to circumvent a technological measure that is done —
 - (i) in good faith;
 - 10 (ii) in relation to a copy of a computer program that is not an infringing copy; and
 - (iii) with respect to particular elements of the computer program that are not readily available to the person doing the act,
 - 15 for the sole purpose of achieving interoperability of an independently created computer program with another computer program;
- 20 (b) the manufacture, importation, distribution, offering to the public or provision of a device, product or component, or the offering to the public or provision of a service, to carry out an act to circumvent a technological measure referred to in section 261D(1)(e);
- 25 (c) the manufacture, importation, distribution, offering to the public or provision of a component or part referred to in section 261D(1)(f);
- 30 (d) the manufacture, importation, distribution, offering to the public or provision of a device, product or component, or the offering to the public or provision of a service, to carry out an act to circumvent a technological measure referred to in section 261D(1)(g);
- (e) an act carried out by the Government or by any person authorised by the Government for the purpose of law enforcement, intelligence, national defence, essential security or other similar purpose.

(2) Paragraphs (b), (c) and (d) of subsection (1) apply only if the technological measure is a technological access control measure.

(3) Subsection (1) shall not apply if —

- 5 (a) in the case of an act referred to in paragraph (a) of that subsection, the circumvention referred to in that paragraph infringes the copyright in the work or other subject-matter or amounts to an unauthorised use of the performance; or
- 10 (b) in the case of an act referred to in paragraph (b) or (d) of that subsection, the circumvention referred to in that paragraph infringes the copyright in the work or other subject-matter or amounts to an unauthorised use of the performance, or otherwise violates a provision of any other written law.

Relief which court may grant

15 **261F.**—(1) In an action brought under section 261C(2), the types of relief that the court may grant, if it is satisfied that the defendant has contravened section 261C(1), include —

- (a) an injunction (subject to such terms, if any, as the court thinks fit); and
- (b) either of the following:
 - 20 (i) damages;
 - (ii) where the plaintiff has elected for an award of statutory damages in lieu of damages, statutory damages of not more than \$20,000.

25 (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 giving rise to the contravention of subsection 261C(1) was or is being carried out; and
- 30 (b) which is in the possession of the defendant or before the court,

be delivered up to the plaintiff or destroyed.

(3) For the purposes of subsection (1)(b)(i), damages include any profits that are attributable to the act giving rise to the contravention of subsection 261C(1).

(4) In awarding statutory damages under subsection (1)(b)(ii), the court shall have regard to —

- (a) the nature or purpose of the act concerned, including whether the act was of a commercial nature or otherwise;
- 5 (b) the flagrancy of the act;
- (c) whether the defendant acted in bad faith;
- (d) any loss that the plaintiff has suffered or is likely to suffer by reason of the act;
- 10 (e) any benefit shown to have accrued to the defendant by reason of the act;
- (f) the conduct of the parties before or during the proceedings;
- (g) the need to deter other similar acts; and
- (h) all other relevant matters.

(5) Notwithstanding subsection (1), where, in an action for a
15 contravention of section 261C(1)(b), such contravention is established but it is also established that —

- (a) in the case of a device, product or component referred to in section 261C(1)(b)(i), the defendant did not himself promote, advertise or market it, or authorise the promotion,
20 advertising or marketing of it, for the purpose of circumventing the technological measure;
- (b) in the case of a device, product or component referred to in section 261C(1)(b)(ii), at the time of the contravention, the defendant was not aware, and had no reasonable grounds for
25 suspecting, that it had only a limited commercially significant purpose or use other than circumventing the technological measure; or
- (c) in the case of a device, product or component referred to in section 261C(1)(b)(iii), at the time of the contravention, the
30 defendant was not aware, and had no reasonable grounds for suspecting, that it was designed or made primarily for the purpose of circumventing the technological measure,

the plaintiff shall not be entitled, as against the defendant, to any damages or statutory damages for the contravention.

(6) Notwithstanding subsection (1), where, in an action for a contravention of section 261C(1)(c), such contravention is established but it is also established that —

- 5 (a) in the case of a service referred to in section 261C(1)(c)(i), the defendant did not himself promote, advertise or market it, or authorise the promotion, advertising or marketing of it, for the purpose of circumventing the technological measure;
- 10 (b) in the case of a service referred to in section 261C(1)(c)(ii), at the time of the contravention, the defendant was not aware, and had no reasonable grounds for suspecting, that it had only a limited commercially significant purpose or use other than to circumvent the technological measure; or
- 15 (c) in the case of a service referred to in section 261C(1)(c)(iii), the defendant did not himself perform it, or authorise the performance of it, primarily for the purpose of circumventing the technological measure,

the plaintiff shall not be entitled to any damages or statutory damages against the defendant for the contravention.

Enforcement measures

20 **261G.**—(1) The court before which a person is charged with an offence under section 261C(4) or (5) may, whether he is convicted of the offence or not, order that any article that appears to the court to be used predominantly for circumventing a technological measure used in connection with —

- 25 (a) the exercise of the copyright in a work or other subject-matter by the owner of the copyright; or
- (b) any right in a performance by the performer of the performance,

30 in the possession of the alleged offender or before the court, be destroyed or delivered up to the owner or exclusive licensee of the copyright concerned or the performer of the performance, as the case may be, or otherwise dealt with in such manner as the court thinks fit.

35 (2) 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

section 261C(4) or (5) 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, whether specifically or in any general category, and to seize any such articles and documents found at the premises.

(3) If an article was seized under subsection (2) and —

(a) in proceedings brought under section 261C(4) or (5), no order is made as to the disposal of the article, whether under subsection (1) or otherwise; 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.

(4) If a document was seized under subsection (2) and no proceedings under section 261C(4) or (5) 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.

(5) In this section —

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

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

New Part XV

60. The Copyright Act is amended by inserting, immediately after section 267, the following Part:

“PART XV

SAVINGS AND TRANSITIONAL PROVISIONS
UNDER COPYRIGHT (AMENDMENT) ACT 2004

Interpretation of this Part

5 **268.** In this Part —

“amendment Act” means the Copyright (Amendment) Act 2004;

“appointed day” means the date of commencement of the amendment Act;

“performance” has the same meaning as in section 246(1).

10 **Assignments and licences before appointed day**

269. Where any licence has been granted, or any contract or arrangement (including any assignment of copyright) has been entered into, before the appointed day, being a licence, contract or arrangement relating to —

15 (a) the broadcast of a work or other subject-matter; or

 (b) the inclusion of a work or other subject-matter in a cable programme,

the licence, contract or arrangement shall, subject to any contrary intention, continue to have effect on or after that day in accordance with the provisions of this Act in force immediately before that day, as if the amendment Act had not been enacted.

Action for infringement which took place before appointed day

25 **270.** Section 119, as it was in force immediately before the appointed day, shall apply to an action brought in respect of any infringement of copyright which took place before that day as if the amendment Act had not been enacted.

Action for unauthorised use before appointed day

30 **271.** Section 253, as it was in force immediately before the appointed day, shall apply to an action brought in respect of any unauthorised use of a performance which took place before that day as if the amendment Act had not been enacted.

Action relating to rights management information

5 **272.** Section 261 shall only apply to an action brought in respect of any act referred to in section 260(2), (3) or (4) which is carried out on or after the appointed day, and section 261, as it was in force immediately before that day, shall continue to apply to an action brought in respect of any act referred to in section 260 as it was in force immediately before that day which is carried out before that day as if the amendment Act had not been enacted.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Copyright Act (Cap. 63) —

- (a) to implement certain obligations pertaining to copyright undertaken by Singapore under the United States-Singapore Free Trade Agreement (USSFTA) concluded in 2003; and
- (b) to restate the law on certain matters.

Clause 1 relates to the short title and commencement.

Clause 2 amends —

- (a) section 7(1) to incorporate new definitions for “communicate”, “digital audio transmission”, “educational institution”, “electronic copy”, “receiving apparatus”, “re-transmission” (in relation to a broadcast) and “simulcasting” as these words are used in the Act; and
- (b) section 7(2A) to restate what constitutes a “reasonable portion” of a work contained in a published edition which is stored by electronic means and is not divided into pages.

Clause 3 amends section 15 by inserting a new subsection (1B) to clarify that the term “reproduced” in relation to a literary, dramatic, musical or artistic work includes the conversion of the work or a reproduction thereof into or from a digital or other electronic machine-readable form.

Clause 4 amends section 16 by inserting a new subsection (6) to deem a communication (other than a broadcast) to have been made by the person who determines the content of the communication at the time the communication is made.

Clause 5 amends section 17 to clarify that a reference in the Act to the reduction of a work or an adaptation thereof, or to the reproduction of any work or adaptation thereof, in a material form includes the storage of the work or adaptation in any medium from which the work or adaptation, or a substantial part of the work or adaptation, can be directly reproduced.

Clause 6 amends section 22 —

- (a) to clarify that the definition of “performance” in subsection (1) applies wherever it is referred to in the Act, unless the context otherwise requires;
- (b) to clarify that the communication of a work or other subject-matter to the public does not constitute a performance or amount to causing visual images to be seen or sounds to be heard; and
- (c) to make consequential and technical amendments to subsections (3) and (4).

Clause 7 amends section 23 —

- (a) to deem a performance of a work by the students or staff of an educational institution not to be a performance in public if certain conditions are satisfied; and
- (b) to extend the application of subsections (2) and (3) to broadcasts, cable programmes and recordings of performances.

Clause 8 amends section 26(1) to give effect to Article 16.4.2 of the USSFTA —

- (a) by replacing the exclusive rights of the owner of copyright in a literary, dramatic or musical work to broadcast the work and to include the work in a cable programme with a new right to communicate the work to the public; and
- (b) by replacing the exclusive rights of the owner of copyright in an artistic work to include the work in a television broadcast and to include the work in a cable programme with a new right to communicate the work to the public.

Clause 9 amends section 35 —

- (a) to introduce a new generic fair dealing defence to the infringement of copyright in a work;
- (b) to provide that one of the factors to which regard will be had in determining whether a dealing with a work or an adaptation of the work is a fair dealing for any purpose other than criticism, review or the reporting of current events, is the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price;
- (c) to substitute all references to fair dealing for the purposes of “private study” with references to fair dealing for the purposes of “study”; and
- (d) to make technical amendments to the section and section heading.

Clause 10 inserts a new section 38A to provide that copyright in a work or an adaptation of a work is not infringed by the making of a temporary, incidental or transient reproduction of the work or adaptation as part of the technical process of making or receiving a communication. This defence does not apply if the making of the communication itself constitutes an infringement of copyright.

Clause 11 inserts new sections 39A, 39B and 39C.

The new section 39A provides that copyright in a computer program is not infringed by a lawful user of the computer program decompiling it, if certain conditions are satisfied.

The new section 39B provides that copyright in a computer program is not infringed by a lawful user of the computer program observing, studying or testing the functioning of the computer program in order to determine the ideas and principles which underlie any element of the computer program, if certain conditions are satisfied.

The new section 39C provides that copyright in a computer program is not infringed by a lawful user of the computer program copying or adapting the computer program, if such copying or adapting is necessary for his lawful use.

Clause 12 makes amendments to section 41 that are consequential to the conferment of the new communication right on the copyright owner of literary and dramatic works under the amended section 26.

Clause 13 inserts a new section 43A to provide that it is not an infringement of the copyright in a literary, dramatic or musical work, or of an adaptation of such a work, to make a sound recording or cinematograph film of the work or adaptation solely for the purpose of simulcasting the work or adaptation in digital form, subject to the conditions set out in subsections (2) and (3).

Clause 14 amends section 45 —

- (a) to substitute the reference to “private study” in subsection (1)(b)(i) with a reference to “study” for consistency with the amendment to section 35;
- (b) to provide that it is not an infringement of the copyright in an article contained in a periodical publication or a published work which is acquired in electronic form by a library or archives to make available the article or work online within the premises of the library or archives in such a manner that users of the library or archives cannot make an electronic copy of, or communicate, the article or work; and
- (c) to specify the circumstances in which the making of an electronic copy of an article contained in a periodical publication or a published work by the officer-in-charge of a library or archives for communication to a person does not constitute an infringement of the copyright in the article or work.

Clause 15 amends section 47 to provide that it is not an infringement of the copyright in an unpublished work that is kept in a library or archives —

- (a) for a person to make a copy of, or communicate, the work for the purposes of research or study or with a view to publication; or
- (b) for the officer-in-charge of the library or archives to make a copy of, or communicate, the work if the copy or work is supplied (whether by communication or otherwise) to a person who requires the copy or work for research or study.

Clause 16 amends section 51 —

- (a) to provide that copyright in a literary or dramatic work is not infringed by the communication of a part of the work if the communication is initiated from the premises of an educational institution for the purposes of a course of education provided by the institution; and
- (b) to specify the part of the work that may be so communicated if the work is in an edition stored on any medium by electronic means and not divided into pages.

Clause 17 amends section 52 to provide for the communication of works by educational institutions under statutory licence.

Clause 18 amends section 54(1) and (2) to substitute the references to “private study” with references to “study” for consistency with the amendment to section 35.

Clause 19 amends section 81 to insert a new definition for “interactive service” as referred to in the new sections 107B and 107D.

Clause 20 amends section 82 to give effect to Article 16.4.2 of the USSFTA by conferring on the owner of copyright in a sound recording the new exclusive rights to publish the sound recording and to make available the sound recording by means of or as part of a digital audio transmission.

Clause 21 amends section 83 to replace the exclusive rights of the owner of copyright in a cinematograph film to broadcast the film and to include the film in a cable programme with a new right to communicate the film to the public.

Clause 22 amends section 84(1) to replace the exclusive rights of the owner of copyright in a broadcast to re-broadcast the broadcast and to include the broadcast in a cable programme with a new right to communicate the broadcast to the public.

Clause 23 amends section 85(1) to replace the exclusive rights of the owner of copyright in a cable programme to broadcast the programme and to include it in a cable programme service with a new exclusive right to communicate the cable programme to the public.

Clause 24 inserts a new section 105A to make it clear that neither the body administering a library or archives nor the officer-in-charge thereof shall be taken to have authorised the making of an infringing copy of an audio-visual work on a machine installed by or with the approval of the body on or outside the premises of the library or archives by reason only that the copy was made on that machine, if a notice of the prescribed dimensions in the prescribed form is affixed to or near the machine.

Clause 25 amends section 107 by inserting a new subsection (2A) to provide that it is not an infringement of the copyright in a sound recording that is intended for, or that is, broadcast —

- (a) to make a copy of the sound recording for, or to supply a copy of the sound recording to, a statutory authority; or

(b) for the statutory authority to use a copy of the sound recording, for ensuring compliance with any written law administered by the statutory authority.

Clause 26 inserts new sections 107A to 107E to introduce certain new defences to the infringement of copyright in a sound recording, cinematograph film, television broadcast or a cable programme.

The new section 107A provides that it is not an infringement of the copyright in a sound recording or cinematograph film to make a copy of the recording or film solely for the purpose of simulcasting the recording or film in digital form, subject to the conditions set out in subsections (2) and (3).

The new section 107B provides that it is not an infringement of the copyright in a sound recording to make available to the public a sound recording —

- (a) by means of or as part of an exempt transmission, being a digital audio transmission that is not part of an interactive service and that is not a subscription transmission; or
- (b) by re-transmitting or simultaneously transmitting, by means of or as part of a digital audio transmission, an exempt transmission.

The new section 107C provides that it is not an infringement of the copyright in a sound recording to make available to the public the sound recording by means of or as part of a digital audio transmission if —

- (a) the sound recording is made available to the public by such means within the premises of a business establishment;
- (b) the making available to the public of the sound recording by such means causes the sound recording to be heard within the premises or immediate surroundings of the business establishment; and
- (c) the business carried on in the business establishment does not consist primarily of the making available to the public of sound recordings by such means for payment.

The new section 107D provides that it is not an infringement of the copyright in a sound recording to make available to the public the sound recording by means of or as part of a digital audio transmission that is not part of an interactive service, if the person who makes available the sound recording pays the copyright owner equitable remuneration in respect of the transmission.

The new section 107E provides that it is not an infringement of the copyright in an audio-visual item (i.e. a sound recording, cinematograph film, sound broadcast, television broadcast or cable programme) to make a temporary, incidental or transient reproduction thereof as part of the technical process of making or receiving a communication. This defence does not apply if the making of the communication itself constitutes an infringement of copyright.

Clause 27 repeals and re-enacts section 109 —

- (a) to introduce a new generic fair dealing defence to the infringement of copyright in an audio-visual item; and
- (b) to provide for the factors to which regard will be had in determining whether a dealing with an audio-visual item is a fair dealing for any purpose other than criticism, review or the reporting of current events.

Clause 28 amends section 111 to extend the defence of fair dealing for the purpose of the reporting of news to the reporting of news by any means of communication to the public.

Clause 29 amends section 112 to provide that it is not an infringement of the copyright in an unpublished sound recording or cinematograph film that is kept in a library or archives —

- (a) for a person to make a copy of, or communicate, the recording or film for the purposes of research or study or with a view to publication; or
- (b) for the officer-in-charge of the library or archives to make a copy of, or communicate, the recording or film if the copy or recording or film is supplied (whether by communication or otherwise) to a person who requires the copy or the recording or film for research or study or with a view to publication.

Clause 30 amends section 119 to give effect to Articles 16.9.8 and 16.9.9 of the USSFTA —

- (a) by restating the types of relief that the court may grant in an action for copyright infringement;
- (b) by stating the circumstances in which the court may make an order for an account of profits in addition to an award of damages; and
- (c) by introducing the remedy of statutory damages.

Clause 31 amends section 120(1) for consistency with Article 16.9.12(b) of the USSFTA.

Clause 32 repeals and re-enacts section 124 to give effect to Article 16.9.7 of the USSFTA (read with footnote 16-15 of the USSFTA) by providing that where a copyright owner and his exclusive licensee enjoy concurrent rights of action, either of them may proceed with the action without joining the other as a plaintiff or adding the other as a defendant, unless the court otherwise orders.

Clauses 33 and 34 make consequential amendments to sections 126 and 128, respectively, arising from the introduction of the new relief of statutory damages under the amended section 119.

Clause 35 amends section 130 to give effect to Article 16.9.6 of the USSFTA as read with paragraph 5 of the side letter dated 6th May 2003 to Chapter 16 of the USSFTA, which relates to that Article. The amended section 130 provides that —

- (a) the presumption as to the subsistence and ownership of copyright under subsection (1) will apply notwithstanding that the defendant has put those matters in issue, unless the defendant satisfies the court that the defendant does so in good faith; and
- (b) if the defendant puts those matters in issue in good faith, an affidavit filed by the plaintiff asserting facts relevant to establishing those matters will be prima facie proof of the matters stated therein until the contrary is proved or unless the court directs that oral evidence be adduced to prove those matters.

Clause 36(a) and (b) amends section 136 to give effect to Article 16.9.21 of the USSFTA by introducing new subsections (3A), (6A) and (6B). Under the new section 136(3A), it is an offence for a person to carry out a wilful infringement of copyright (other than an infringement referred to in subsection (1), (2), (3) or (6)) if the extent of the infringement is significant or the infringement was carried out to obtain a commercial advantage. The new section 136(6A) states the factors which the court will have regard to in determining whether the extent of the infringement is significant. The new section 136(6B) explains when a person does an act for the purpose of obtaining a commercial advantage.

Clause 36(c) makes an amendment to section 136(7) that is consequential to the introduction of new section 136(3A).

Clause 36(d) amends section 136(8) to give effect to Article 16.9.12(b) of the USSFTA.

Clause 36(e) amends section 136(9) to give effect to Article 16.9.21(a)(ii) of the USSFTA and to make an amendment that is consequential to the introduction of new section 136(3A).

Clause 37 amends section 138 to give effect to Articles 16.9.19 and 16.9.21(a)(ii) and (iv) of the USSFTA.

Clause 38 amends section 140B(1) to give effect to Article 16.9.16 of the USSFTA.

Clause 39 introduces a new section 140LA to give effect to Article 16.9.19 of the USSFTA.

Clauses 40, 41 and 42 make amendments to sections 140M(1), 140N(1) and 140P(1), respectively, that are consequential to the introduction of the new section 140LA.

Clause 43 inserts a new section 156C to provide for the determination by the Copyright Tribunal of the amount of equitable remuneration payable pursuant to an application to the Tribunal under the new section 107D.

Clause 44 makes an amendment to section 158(1) that is consequential to the introduction of the new section 52(11C).

Clause 45 repeals and re-enacts sections 187, 188 and 189 to expand the scope of these provisions to include the prohibition of certain acts relating to —

- (a) the false attribution of another person as the performer of a performance; or

- (b) the false representation of an altered recording of a performance as an unaltered recording of the performance by the performer.

Clause 46 makes amendments to section 192(3) that are consequential to the expansion of the scope of new sections 188 and 189.

Clause 47 repeals and re-enacts sections 193A to 193D and introduces new sections 193DA to 193DE to give effect to Article 16.9.22 of the USSFTA.

The new section 193A —

- (a) defines “electronic copy”, “material”, “monetary relief”, “network service provider”, “primary network” and “routing” as those words are used in Part IXA; and
- (b) clarifies that Part IXA does not limit the operation of the other provisions of the Act in relation to determining whether copyright has been infringed.

The new section 193B gives effect specifically to Article 16.9.22(b)(i)(A) and (ii) of the USSFTA by restricting the remedies available against a network service provider for any copyright infringement that occurs by reason of the transmission or routing of, or the provision of connections for, copyright material through the network service provider’s primary network, if certain conditions are satisfied.

The new section 193C gives effect specifically to Article 16.9.22(b)(i)(B) and (iv) of the USSFTA by restricting the remedies available against a network service provider for any copyright infringement that occurs by reason of the making of a cached copy of copyright material on the network service provider’s primary network, if certain conditions are satisfied.

The new section 193D gives effect specifically to Article 16.9.22(b)(i)(C) and (D) and (v) of the USSFTA by restricting the remedies available against a network service provider for any copyright infringement that occurs by reason of —

- (a) the storage, at the direction of a user of the network service provider’s primary network, of any copyright material on the network service provider’s primary network; or
- (b) the network service provider referring or linking a user of any network to an online location by the use of an information location tool such as a hyperlink or directory, or an information location service such as a search engine,

if certain conditions are satisfied.

The new section 193DA gives effect specifically to Article 16.9.22(b)(ix) and (x) of the USSFTA by providing that a network service provider will not be liable for any action taken in good faith in relation to —

- (a) the removal of an electronic copy of any material from the network service provider’s primary network, or the disabling of access to an electronic copy of any material on any network, pursuant to a prescribed notice under section 193C(2)(b) or 193D(2)(b)(iii) or (4)(b)(iii) or any knowledge under section 193D(2)(b)(i) or (ii) or (4)(b)(i) or (ii); or

- (b) the restoration of, or of access to, the electronic copy of the material pursuant to a prescribed notice under subsection (2)(b),

if certain conditions are satisfied. It also provides that a network service provider will not be treated as having authorised an infringement of copyright by reason only that the network service provider had provided a facility which was used by another person to do the act constituting the infringement, or had received any notice or acquired any knowledge of that act.

The new section 193DB gives effect specifically to Article 16.9.22(b)(viii) of the USSFTA by setting out the types of relief that the court may grant against a network service provider that has complied with the conditions under new section 193B(2), 193C(2) or 193D(2) or (4), as the case may be, and the matters which the court shall have regard to when deciding on the appropriate type of relief.

The new section 193DC provides that if a network service provider adduces the prescribed evidence to show that he has complied with a condition under new section 193B(2), 193C(2) or 193D(2) or (4), as the case may be, or prescribed in any regulations made under new section 193DE, the court will presume, in the absence of evidence to the contrary, that the network service provider has complied with the condition.

The new section 193DD gives effect specifically to Article 16.9.22(b)(ix) of the USSFTA by providing that a person who, in making a prescribed notice under section 193C(2)(b), 193D(2)(b)(iii) or (4)(b)(iii) or 193DA(2)(b), makes any material false statement which he knows is false or does not believe to be true —

- (a) will be guilty of an offence; and
- (b) will also be liable in damages to any person who suffers loss or damage as a result of the making of the notice for any reasonably foreseeable loss.

The new section 193DE empowers the Minister to make regulations prescribing any thing required to be prescribed under Part IXA.

Clause 48 introduces a new subsection (7) to clarify that a reference in section 199(3) to the inclusion of a work or a cinematograph film in a cable programme service will not include the making available of the work or film on the Internet. The clause also makes a technical amendment to section 199(3).

Clause 49 amends section 236 to clarify that Part IX will only apply to acts relating to the false attribution of the performer of a performance which are done on or after 1st January 2005.

Clause 50 amends section 246(1) —

- (a) by amending the definition of “electronic recording” and introducing new definitions for “monetary relief”, “network service provider”, “primary network” and “routing”, as those words are used in new sections 252A to 252CF; and
- (b) by amending the definition of “exempt recording” —

- (i) to include a reference to an indirect recording of a performance which is consequential to the inclusion of the act of making an indirect recording of a performance as an unauthorised use of the performance under the amended section 252(1); and
- (ii) to substitute the reference to “private study” in paragraph (f) of the definition with a reference to “study” for consistency with the amendment to section 35.

Clause 51 amends section 252(1) to expand the scope of unauthorised acts in respect of a performance to include the making of an indirect recording of the performance, the publication of an unpublished performance, the communication of the live performance to the public and the making available to the public of a recording of the performance.

Clause 52 repeals and re-enacts sections 252A, 252B and 252C and introduces new sections 252CA to 252CF to give effect to Article 16.9.22 of the USSFTA.

The new section 252A gives effect specifically to Article 16.9.22(b)(i)(A) and (ii) of the USSFTA by restricting the remedies available against a network service provider for any unauthorised use of a performance that occurs by reason of the transmission or routing of, or the provision of connections for, an electronic recording of the performance through the network service provider’s primary network, if certain conditions are satisfied.

The new section 252B gives effect specifically to Article 16.9.22(b)(i)(B) and (iv) of the USSFTA by restricting the remedies available against a network service provider for any unauthorised use of a performance that occurs by reason of the making of a cached copy of an electronic recording of the performance on the network service provider’s primary network, if certain conditions are satisfied.

The new section 252C gives effect specifically to Article 16.9.22(b)(i)(C) and (D) and (v) of the USSFTA by restricting the remedies available against a network service provider for any unauthorised use of a performance that occurs by reason of —

- (a) the storage, at the direction of a user of the network service provider’s primary network, of an electronic recording of the performance on the network service provider’s primary network; or
- (b) the network service provider referring or linking a user of any network to an online location by the use of an information location tool such as a hyperlink or directory, or an information location service such as a search engine,

5 if certain conditions are satisfied.

The new section 252CA gives effect specifically to Article 16.9.22(b)(ix) and (x) of the USSFTA by providing that a network service provider will not be liable for any action taken in good faith in relation to —

- (a) the removal of an electronic recording of a performance from the network service provider’s primary network, or the disabling of access to an electronic recording of a performance on any network, pursuant to a prescribed notice under section 252B(2)(b) or 252C(2)(b)(iii) or (4)(b)(iii) or any knowledge under section 252C(2)(b)(i) or (ii) or (4)(b)(i) or (ii); or

- (b) the restoration of, or of access to, the electronic copy of the material pursuant to a prescribed notice under section 252CA(2)(b),

if certain conditions are satisfied. It also provides that a network service provider will not be treated as having authorised an unauthorised use of a performance by reason only that the network service provider had provided a facility which was used by another person to do the act constituting the unauthorised use of the performance, or had received any notice or acquired any knowledge of that act.

The new section 252CB gives effect specifically to Article 16.9.22(b)(viii) of the USSFTA by setting out the types of relief that the court may grant against a network service provider that has complied with the conditions under new section 252A(2), 252B(2) or 252C(2) or (4), as the case may be and the matters which the court will have regard to when deciding on the appropriate type of relief.

The new section 252CC provides that if a network service provider adduces the prescribed evidence to show that he has complied with a condition under new section 252A(2), 252B(2) or 252C(2) or (4), as the case may be, or prescribed in any regulations made under section 252CE, the court will presume, in the absence of evidence to the contrary, that the network service provider has complied with the condition.

The new section 252CD gives effect specifically to Article 16.9.22(b)(ix) of the USSFTA by providing that a person who, in making a prescribed notice under section 252B(2)(b), 252C(2)(b)(iii) or (4)(b)(iii) or 252CA(2)(b) makes any material false statement which he knows is false or does not believe to be true —

- (a) will be guilty of an offence; and
- (b) will also be liable in damages to any person who suffers loss or damage as a result of the making of the notice for any reasonably foreseeable loss.

The new section 252CE empowers the Minister to make regulations prescribing any thing required to be prescribed under sections 252A to 252CD.

The new section 252CF clarifies that sections 252A to 252CD do not limit the operation of the other provisions of Part XII in relation to determining whether there has been an unauthorised use of a performance.

Clause 53 amends section 253 to give effect to Articles 16.9.8 and 16.9.9 of the USSFTA —

- (a) by restating the types of relief that the court may grant in an action for an unauthorised use of a performance;
- (b) by stating the circumstances in which the court may make an order for an account of profits in addition to an award of damages; and
- (c) by introducing the remedy of statutory damages.

Clause 54 introduces a new section 253A to give effect to Article 16.9.6 of the USSFTA by creating a presumption that the person whose name appears on a copy of a recording of a performance is the performer of the performance, unless the contrary is established.

Clause 55(a) and (b) amends section 254A to give effect to Article 16.9.21 of the USSFTA by introducing new subsections (3A), (6A) and (6B). Under the new section 254A(3A), it is an offence for a person to engage in wilful unauthorised use of a performance (other than any unauthorised use referred to in subsection (1), (2), (3), (5) or (6)) if the extent of the unauthorised use is significant or the unauthorised use was carried out to obtain a commercial advantage. The new section 254A(6A) states the factors which the court will have regard to in determining whether the extent of the unauthorised use is significant. The new section 254A(6B) explains when a person does an act for the purpose of obtaining a commercial advantage.

Clause 55(c) makes an amendment to section 254A(7) that is consequential to the introduction of new section 254A(3A).

Clause 55(d) amends section 254A(8) to give effect to Article 16.9.12(b) of the USSFTA.

Clause 55(e) amends section 254A(9) to give effect to Article 16.9.21(a)(ii) of the USSFTA and to make an amendment that is consequential to the introduction of new section 254A(3A).

Clause 56 introduces a new section 254B to apply the border enforcement measures set out in sections 140A to 141 to acts done in relation to an unauthorised recording of a performance.

Clause 57 repeals and re-enacts section 258 to include a definition for “rights management information”. The definition for “rights management information” has been moved from section 260 as those words now also appear in the new section 261A.

Clause 58 —

- (a) repeals and re-enacts section 260 to give effect to Article 16.4.8 of the USSFTA;
- (b) repeals and re-enacts section 261 to give effect to Article 16.9.5 of the USSFTA; and
- (c) introduces a new section 261A.

The new section 260 seeks to give effect to Article 16.4.8 of the USSFTA —

- (a) by giving the owner of copyright in a work or other subject-matter or his exclusive licensee or the performer of a performance the right to bring an action against a person who —
 - (i) knowingly removes or alters the rights management information relating to the work or other subject-matter or a recording of the performance (section 260(2));
 - (ii) distributes or imports for distribution the rights management information relating to the work or other subject-matter or a recording of the performance, which has been altered without the consent of the owner or exclusive licensee of the copyright or the performer of the performance (section 260(3)); or

- (iii) distributes, imports for distribution, communicates or makes available to the public copies of the work or other subject-matter or recording of the performance in respect of which the rights management information has been removed (section 260(4)); and
- (b) by making it an offence for a person to do any of the acts referred to in section 260(2), (3) or (4) wilfully and for the purpose of obtaining a commercial advantage (section 260(6)).

The new section 261 seeks to give effect to Article 16.9.5 of the USSFTA —

- (a) by restating the types of relief that the court may grant in an action brought in respect of an act referred to in section 260(2), (3) or (4);
- (b) by stating the circumstances in which the court may make an order for an account of profits in addition to an award of damages; and
- (c) by introducing the remedy of statutory damages.

The new section 261A sets out the types of enforcement measures that can be taken —

- (a) where a person is charged with an offence under section 260(6); or
- (b) where there is reasonable cause for suspecting that there is in any premises any article or document which is evidence that such an offence has been committed.

Clause 59 introduces a new Part XIII A (comprising sections 261B to 261G) to give effect to Articles 16.4.7 and 16.9.5 of the USSFTA.

The new section 261B —

- (a) introduces definitions for various words used in new Part XIII A;
- (b) clarifies that nothing in Part XIII A will affect any act done in relation to a work or other subject-matter in which copyright no longer subsists, or in relation to a performance the protection period of which has expired; and
- (c) clarifies that nothing in Part XIII A will affect —
 - (i) any copyright or right in relation to a performance or recording;
 - (ii) any limitation on copyright or on a right in relation to a performance or recording; or
 - (iii) any defence to an action for infringement of copyright, or for an unauthorised use of a performance,

under any provision of the Act.

The new section 261C gives effect to Article 16.4.7(a) of the USSFTA by providing that where a technological measure is applied to a work or other subject-matter or performance in connection with the exercise of the copyright in the work or other subject-matter or any right in the performance, no person shall —

- (a) if the technological measure is a technological access control measure, do any act to circumvent the technological measure (section 261C(1)(a));
- (b) manufacture, import, distribute, offer to the public, provide or otherwise traffic in any device, product or component which —
 - (i) is promoted, advertised or marketed for the purpose of circumventing the technological measure;
 - (ii) has only a limited commercially significant purpose or use other than to circumvent the technological measure; or
 - (iii) is designed or made primarily for the purpose of circumventing the technological measure (section 261C(1)(b));
- (c) offer to the public or provide any service which —
 - (i) is promoted, advertised or marketed for the purpose of circumventing the technological measure;
 - (ii) has only a limited commercially significant purpose or use other than to circumvent the technological measure; or
 - (iii) is performed primarily for the purpose of circumventing the technological measure (section 261C(1)(c)),

without the authorisation of the owner of the copyright or the performer of the performance.

The new section 261C also gives the owner of the copyright or the performer of the performance the right to bring an action against a person who contravenes section 261C(1) (section 261C(2)), and makes it an offence for a person to contravene section 261C(1) wilfully and for the purpose of obtaining a commercial advantage (section 261C(4) and (5)).

The new section 261D gives effect specifically to Article 16.4.7(e), (f) and (g) of the USSFTA by enumerating the circumstances when section 261C(1)(a) is not contravened by the doing of an act to circumvent a technological measure.

The new section 261E gives effect specifically to Article 16.4.7(e) and (g) of the USSFTA by enumerating the circumstances when section 261C(1)(b) and (c) is not contravened by the doing of certain acts.

The new section 261F seeks to give effect to Article 16.9.5 of the USSFTA —

- (a) by restating the types of relief that the court may grant in an action brought under section 261C(2) in respect of an act referred to in section 261C(1); and
- (b) by introducing the remedy of statutory damages.

The new section 261G sets out the types of enforcement measures that can be taken —

- (a) where a person is charged with an offence under section 261C(4) or (5); or
- (b) where there is reasonable cause for suspecting that there is in any premises any article or document which is evidence that such an offence has been committed.

Clause 60 contains savings and transitional provisions.

EXPENDITURE OF PUBLIC MONEY

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