

Copyright (Amendment) Bill

Bill No. 12/2005.

Read the first time on 16th May 2005.

A BILL

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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 2005 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Repeal and re-enactment of section 38A

2. Section 38A of the Copyright Act is repealed and the following section substituted therefor:

“Temporary reproduction made in course of communication

10 **38A.**—(1) Subject to subsection (3), the copyright in a work is not infringed by the making of a temporary or transient reproduction of the work if—

- (a) the reproduction is made incidentally as part of the technical process of making or receiving a communication; and
 - (b) the act of making the communication itself does not
- 15 constitute an infringement.

(2) Subject to subsection (3), the copyright in an adaptation of a work is not infringed by the making of a temporary or transient reproduction of the adaptation if—

- (a) the reproduction is made incidentally as part of the technical
- 20 process of making or receiving a communication; and
- (b) the act of making the communication itself does not
- constitute an infringement.

(3) Subsections (1) and (2) shall not apply to the making of a temporary or transient reproduction of a work, or an adaptation of a

25 work, if the reproduction of the work or adaptation that is communicated—

- (a) is an infringing copy of the work or adaptation; or
 - (b) is a reproduction that, if it had been made in Singapore,
- 30 would have been an infringing copy of the work or adaptation.

(4) Nothing in subsections (1) and (2) shall be construed as authorising any subsequent use of the temporary or transient reproduction of the work or adaptation.”

Amendment of section 52

3. Section 52(8) of the Copyright Act is amended by deleting the words “subsections (6) and (7), a record of the copying” and substituting the words “subsections (6), (7), (7C) and (7D), a record of the copying or communication, as the case may be,”.

Repeal and re-enactment of section 107E

4. Section 107E of the Copyright Act is repealed and the following section substituted therefor:

“Temporary copy made in course of communication

10 **107E.**—(1) Subject to subsection (2), the copyright in an audio-visual item is not infringed by the making of a temporary or transient copy of the audio-visual item if —

- (a) the copy is made incidentally as part of the technical process of making or receiving a communication; and
- 15 (b) the act of making the communication itself does not constitute an infringement.

(2) Subsection (1) shall not apply to the making of a temporary or transient copy of an audio-visual item if the copy of the audio-visual item that is communicated —

- 20 (a) is an infringing copy of the audio-visual item; or
- (b) is a copy that, if it had been made in Singapore, would have been an infringing copy of the audio-visual item.

(3) Nothing in subsection (1) shall be construed as authorising any subsequent use of the temporary or transient copy of the audio-visual item.”.

Amendment of section 193A

5. Section 193A of the Copyright Act is amended —

- (a) by deleting the full-stop at the end of the definition of “routing” in subsection (1) and substituting a semi-colon, and by inserting immediately thereafter the following definition:

““standard technical measure” means any technical measure accepted in Singapore that —

- (a) is used to identify or protect material;
- (b) has been developed through an open, voluntary process by a broad consensus of copyright owners and network service providers;
- 5 (c) is available to any person on reasonable and non-discriminatory terms; and
- (d) does not impose substantial costs on network service providers or substantial burdens on their primary networks.”; and
- 10 (b) by inserting, immediately after subsection (2), the following subsection:

“(3) Nothing in this Part shall be construed as making the applicability of sections 193B, 193C, 193D and 193DB conditional on —

- 15 (a) a network service provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with any standard technical measure; or
- (b) a network service provider gaining access to, removing or disabling access to any electronic copy of any material in any case in which such conduct is prohibited by law.”.
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Amendment of section 193C

- 25 **6.** Section 193C(2) of the Copyright Act is amended by inserting, immediately after the words “notice in” in paragraph (b), the words “, or substantially in accordance with,”.

Amendment of section 193D

- 7.** Section 193D of the Copyright Act is amended —
- 30 (a) by inserting, immediately after the words “notice in” in subsection (2)(b)(iii), the words “, or substantially in accordance with,”;
- (b) by deleting subsection (3) and substituting the following subsection:

“(3) For the purposes of subsection (2), a notice purportedly made by the owner of the copyright in the material or under the owner’s authority which is not a notice referred to in subsection (2)(b)(iii) shall not be considered in determining whether the network service provider has acquired any knowledge referred to in subsection (2)(b)(i) or (ii).”;

(c) by inserting, immediately after the words “notice in” in subsection (4)(b)(iii), the words “, or substantially in accordance with,”; and

(d) by deleting subsections (5) and (6) and substituting the following subsections:

“(5) For the purposes of subsection (4), a notice purportedly made by the owner of the copyright in the material or under the owner’s authority which is not a notice referred to in subsection (4)(b)(iii) shall not be considered in determining whether the network service provider has acquired any knowledge referred to in subsection (4)(b)(i) or (ii).

(6) For the purposes of subsections (2)(a) and (4)(a), in determining whether a financial benefit is directly attributable to the infringement of copyright in the material, the court shall have regard to —

(a) industry practice in relation to the charging of services by network service providers;

(b) whether the financial benefit was greater than the benefit that would usually result from charging in accordance with accepted industry practices; and

(c) all other matters that the court considers relevant.”.

Amendment of section 193DA

8. Section 193DA of the Copyright Act is amended —

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

“(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 —

(i) to notify the person who made available the electronic copy of the material on the network of this; 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), to provide that person with a copy of that notice; and

(b) where the network service provider is furnished in the prescribed manner, within the prescribed time, with a notice in, or substantially in accordance with, 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 (referred to in this section as the counter notice) —

(i) 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) —

(A) subject to any other written law relating to privacy or data protection, the network service provider expeditiously provides the person who furnished the notice referred to in section 193D(2)(b)(iii) or (4)(b)(iii) with a copy of the counter notice;

(B) the network service provider expeditiously notifies the person who furnished the notice referred to in section 193D(2)(b)(iii) or (4)(b)(iii) that the network service provider will take 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, unless, within 10 working days after the date of such notification —

- 5 (BA) court proceedings are commenced by the owner of the copyright in the material, or under the owner's authority, to prevent that electronic copy or the access to that electronic copy, as the case may be, from being restored; and
- 10 (BB) the network service provider is informed in writing of the court proceedings; and
- 15 (C) the network service provider 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, not less than 10, nor more than 14, working days after the date of the notification referred to in sub-paragraph (B), unless, within 10
- 20 working days after that date —
- 25 (CA) court proceedings are commenced by the owner of the copyright in the material, or under the owner's authority, to prevent that electronic copy or the access to that electronic copy, as the case may be, from being restored; and
- 30 (CB) the network service provider is informed in writing of the court proceedings; or
- 35 (ii) in the case of any removal or disabling done in reliance on any knowledge referred to in section 193D(2)(b)(i) or (ii) or (4)(b)(i) or (ii), the network service provider 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, not less than 10, nor more than 14, working days after the date the network service provider is furnished with the counter notice, unless, within 10 working days after that date —

(A) court proceedings are commenced by the owner of the copyright in the material, or under the owner’s authority, to prevent that electronic copy or the access to that electronic copy, as the case may be, from being restored; and

(B) the network service provider is informed in writing of the court proceedings.”;

(b) by inserting, immediately before the word “notice” in the penultimate line of subsection (4), the word “counter”; and

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

“(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 solely by reason of the occurrence of only one of the following matters:

(a) the network service provider has provided a facility which was used by another person to do that act;

(b) the network service provider 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;

(c) the network service provider 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.”.

Amendment of section 193E

9. Section 193E of the Copyright Act is amended by deleting the words “transient or incidental” and substituting the words “transient and incidental”.

Amendment of section 202

10. Section 202 of the Copyright Act is amended by deleting subsection (2) and substituting the following subsection:

5 “(2) Without prejudice to the generality of subsection (1), the regulations made under this Act may provide for —

- (a) the keeping and retention of records and declarations in relation to copies of works made by libraries, archives or institutions;
- 10 (b) the deposit of such records and declarations with persons appointed by the Minister; and
- (c) the fees payable in respect of any application or matter under this Act.”.

Amendment of section 252B

15 **11.** Section 252B(2) of the Copyright Act is amended by inserting, immediately after the words “notice in” in the 2nd line of paragraph (b), the words “, or substantially in accordance with,”.

Amendment of section 252C

12. Section 252C of the Copyright Act is amended —

- 20 (a) by inserting, immediately after the words “notice in” in subsection (2)(b)(iii), the words “, or substantially in accordance with,”;
- (b) by deleting subsection (3) and substituting the following subsection:

25 “(3) For the purposes of subsection (2), a notice purportedly made by the performer of the performance or under the performer’s authority which is not a notice referred to in subsection (2)(b)(iii) shall not be considered in determining whether the network service provider has acquired any knowledge referred to in subsection (2)(b)(i) or (ii).”;
- 30 (c) by inserting, immediately after the words “notice in” in subsection (4)(b)(iii), the words “, or substantially in accordance with,”; and

(d) by deleting subsections (5) and (6) and substituting the following subsections:

“(5) For the purposes of subsection (4), a notice purportedly made by the performer of the performance or under the performer’s authority which is not a notice referred to in subsection (4)(b)(iii) shall not be considered in determining whether the network service provider has acquired any knowledge referred to in subsection (4)(b)(i) or (ii).

(6) For the purposes of subsections (2)(a) and (4)(a), in determining whether a financial benefit is directly attributable to the unauthorised use of the performance, the court shall have regard to —

(a) industry practice in relation to the charging of services by network service providers;

(b) whether the financial benefit was greater than the benefit that would usually result from charging in accordance with accepted industry practices; and

(c) all other matters that the court considers relevant.”.

Amendment of section 252CA

13. Section 252CA of the Copyright Act is amended —

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

“(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 —

(i) to notify the person who made available the electronic recording of the performance on the network of this; 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), to provide that person with a copy of that notice; and

(b) where the network service provider is furnished in the prescribed manner, within the prescribed time, with a notice in, or substantially in accordance with, 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 (referred to in this section as the counter notice) —

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(i) 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) —

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(A) subject to any other written law relating to privacy or data protection, the network service provider expeditiously provides the person who furnished the notice referred to in section 252C(2)(b)(iii) or (4)(b)(iii) with a copy of the counter notice;

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(B) the network service provider expeditiously notifies the person who furnished the notice referred to in section 252C(2)(b)(iii) or (4)(b)(iii) that the network service provider will take 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, unless, within 10 working days after the date of such notification —

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(BA) court proceedings are commenced by the performer of the performance, or under the performer's authority, to prevent that electronic recording or the access to that electronic recording, as the case may be, from being restored; and

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(BB) the network service provider is informed in writing of the court proceedings; and

5 (C) the network service provider 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, not less than 10, nor more than 14, working days after the date of the notification referred to in sub-paragraph (B), unless, within 10 working days after that date —

15 (CA) court proceedings are commenced by the performer of the performance, or under the performer's authority, to prevent that electronic recording or the access to that electronic recording, as the case may be, from being restored; and

20 (CB) the network service provider is informed in writing of the court proceedings; or

25 (ii) in the case of any removal or disabling done in reliance on any knowledge referred to in section 252C(2)(b)(i) or (ii) or (4)(b)(i) or (ii), the network service provider 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, not less than 10, nor more than 14, working days after the date the network service provider is furnished with the counter notice, unless, within 30 35 10 working days after that date —

- 5 (A) court proceedings are commenced by the performer of the performance, or under the performer's authority, to prevent that electronic recording or the access to that electronic recording, as the case may be, from being restored; and
- (B) the network service provider is informed in writing of the court proceedings.”;
- 10 (b) by inserting, immediately before the word “notice” in the penultimate line of subsection (4), the word “counter”; and
- (c) by deleting subsection (5) and substituting the following subsection:
- 15 “(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 solely by reason of the occurrence of only one of the following matters:
- (a) the network service provider has provided a facility which was used by another person to do that act;
- 20 (b) the network service provider 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;
- (c) the network service provider 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.”.

25 **Amendment of section 252CF**

14. The Copyright Act is amended by renumbering section 252CF as subsection (1) of that section, and by inserting immediately thereafter the following subsections:

- 30 “(2) Nothing in sections 252A to 252CD shall be construed as making the applicability of sections 252A, 252B, 252C and 252CB conditional on —
- (a) a network service provider monitoring its service or affirmatively seeking facts indicating any unauthorised use of any performance, except to the extent consistent with any standard technical measure; or
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(b) a network service provider gaining access to, removing or disabling access to any electronic recording of any performance in any case in which such conduct is prohibited by law.

5 (3) In subsection (2), “standard technical measure” means any technical measure accepted in Singapore that —

- (a) is used to identify or protect recordings or performances;
- (b) has been developed through an open, voluntary process by a broad consensus of performers and network service providers;
- 10 (c) is available to any person on reasonable and non-discriminatory terms; and
- (d) does not impose substantial costs on network service providers or substantial burdens on their primary networks.”.
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Amendment of section 252D

15 **15.** Section 252D of the Copyright Act is amended by deleting the words “transient or incidental” and substituting the words “transient and incidental”.

Amendment of section 260

20 **16.** Section 260(6) of the Copyright Act is amended by inserting, immediately after the words “commercial advantage” in paragraph (b), the words “or private financial gain”.

Amendment of section 261C

25 **17.** Section 261C of the Copyright Act is amended by inserting, immediately after the words “commercial advantage” in subsections (4) and (5), the words “or private financial gain”.

EXPLANATORY STATEMENT

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

- (a) to modify the manner of implementing certain obligations 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 repeals and re-enacts section 38A to provide that the copyright in a work, or an adaptation of a work, is not infringed by the making of a temporary or transient reproduction of the work or adaptation, as the case may be, if the reproduction is made incidentally as part of the technical process of making or receiving a communication and the act of making the communication itself does not constitute an infringement of copyright.

Clause 3 makes a technical amendment to section 52(8).

Clause 4 repeals and re-enacts section 107E to provide that the copyright in an audio-visual item (i.e. a sound recording, cinematograph film, sound broadcast, television broadcast or cable programme) is not infringed by the making of a temporary or transient copy of the audio-visual item, if the copy is made incidentally as part of the technical process of making or receiving a communication and the act of making the communication itself does not constitute an infringement of copyright.

Clause 5 amends section 193A —

- (a) by inserting, in subsection (1), a definition for “standard technical measure” as used in Part IXA; and
- (b) by inserting a new subsection (3) to clarify, in accordance with Article 16.9.22(b)(vii) of the USSFTA, the scope of a network service provider’s obligations under Part IXA.

Clause 6 amends section 193C(2)(b) to clarify that the notice referred to therein must be in, or substantially in accordance with, the prescribed form.

Clause 7 amends section 193D —

- (a) by inserting, in subsections (2)(b)(iii) and (4)(b)(iii), words to clarify that the notices referred to in those provisions must be in, or substantially in accordance with, the corresponding prescribed forms;
- (b) by deleting and substituting subsections (3) and (5) to give the court a wider discretion to determine whether a network service provider should be treated as having acquired the knowledge referred to in subsections (2)(b)(i) and (ii) and (4)(b)(i) and (ii), respectively; and

- (c) by deleting and substituting subsection (6) to restate the matters which the court will have regard to in determining whether, for the purposes of subsections (2)(a) and (4)(a), a financial benefit is to be regarded as directly attributable to an infringing activity.

Clause 8 amends section 193DA —

- (a) by deleting and substituting subsection (2) to require a network service provider —
 - (i) if the network service provider has acted on a notice referred to in section 193D(2)(b)(iii) or (4)(b)(iii), to provide the person who made available the electronic copy of material referred to in that notice with a copy of that notice; and
 - (ii) if the network service provider has received a counter notice in, or substantially in accordance with, the prescribed form —
 - (A) in the case of any removal or disabling done in reliance on a notice referred to in section 193D(2)(b)(iii) or (4)(b)(iii) —
 - (AA) subject to any other written law relating to privacy or data protection, to expeditiously provide the person who furnished that notice with a copy of the counter notice; and
 - (AB) to notify that person that the network service provider will take reasonable steps to restore, or to restore access to, the electronic copy of material referred to in the counter notice, unless court proceedings are commenced to prevent that restoration and the network service provider is informed in writing of those proceedings; and
 - (B) to take reasonable steps to restore, or to restore access to, the electronic copy of material referred to in the counter notice, unless court proceedings are commenced to prevent that restoration and the network service provider is informed in writing of those proceedings;
- (b) by making a technical amendment to subsection (4) that is consequential to the amendment to subsection (2)(b); and
- (c) by deleting and substituting subsection (5) to clarify the extent of the court's discretion to determine whether a network service provider should be treated as having authorised the doing of any act which is an infringement of copyright.

Clause 9 amends section 193E to provide that the electronic copy first-mentioned in that section must be both transient and incidental in order for the defence under that section to apply.

Clause 10 amends section 202(2) to expressly empower the Minister to make regulations providing for the fees payable in respect of any application or matter under the Act.

Clause 11 amends section 252B(2)(b) to clarify that the notice referred to therein must be in, or substantially in accordance with, the prescribed form.

Clause 12 amends section 252C —

- (a) by inserting, in subsections (2)(b)(iii) and (4)(b)(iii), words to clarify that the notices referred to in those provisions must be in, or substantially in accordance with, the corresponding prescribed forms;
- (b) by deleting and substituting subsections (3) and (5) to give the court a wider discretion to determine whether a network service provider should be treated as having acquired the knowledge referred to in subsections (2)(b)(i) and (ii) and (4)(b)(i) and (ii), respectively; and
- (c) by deleting and substituting subsection (6) to restate the matters which the court will have regard to in determining whether, for the purposes of subsections (2)(a) and (4)(a), a financial benefit is to be regarded as directly attributable to an unauthorised use of a performance.

Clause 13 amends section 252CA —

- (a) by deleting and substituting subsection (2) to require a network service provider —
 - (i) if the network service provider has acted on a notice referred to in section 252C(2)(b)(iii) or (4)(b)(iii), to provide the person who made available the electronic recording of performance referred to in that notice with a copy of that notice; and
 - (ii) if the network service provider has received a counter notice in, or substantially in accordance with, the prescribed form —
 - (A) in the case of any removal or disabling done in reliance on a notice referred to in section 252C(2)(b)(iii) or (4)(b)(iii) —
 - (AA) subject to any other written law relating to privacy or data protection, to expeditiously provide the person who furnished that notice with a copy of the counter notice; and
 - (AB) to notify that person that the network service provider will take reasonable steps to restore, or to restore access to, the electronic recording of performance referred to in the counter notice, unless court proceedings are commenced to prevent that restoration and the network service provider is informed in writing of those proceedings; and

- (B) to take reasonable steps to restore, or to restore access to, the electronic recording of performance referred to in the counter notice, unless court proceedings are commenced to prevent that restoration and the network service provider is informed in writing of those proceedings;
- (b) by making a technical amendment to subsection (4) that is consequential to the amendment to subsection (2)(b); and
- (c) by deleting and substituting subsection (5) to clarify the extent of the court’s discretion to determine whether a network service provider should be treated as having authorised the doing of any act which is an unauthorised use of a performance.

Clause 14 amends section 252CF —

- (a) by renumbering the section as subsection (1) of that section;
- (b) by inserting a new subsection (2) to clarify, in accordance with Article 16.9.22(b)(vii) of the USSFTA, the scope of a network service provider’s obligations under sections 252A to 252CD; and
- (c) by inserting a new subsection (3) to define “standard technical measure” as used in the new subsection (2).

Clause 15 amends section 252D to provide that the electronic copy referred to in that section must be both transient and incidental in order for the defence under that section to apply.

Clause 16 amends section 260(6)(b) to make 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 or private financial gain.

Clause 17 amends section 261C(4) and (5) to make it an offence for a person to contravene section 261C(1) wilfully and for the purpose of obtaining a commercial advantage or private financial gain.

EXPENDITURE OF PUBLIC MONEY

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