

# Copyright (Amendment) Bill

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**Bill No. 16/2014.**

*Read the first time on 29th May 2014.*

A BILL

*intituled*

An Act to amend the Copyright Act (Chapter 63 of the 2006 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 2014 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 before the definition of “accessory” in subsection (1), the following definitions:

““accessible format” means any format that —

10 (a) is accessible to a person with a reading disability, including (but not limited to) a large print version, an electronic book, a sound recording, and the format known as Digital Accessible Information System (DAISY); or

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(b) is specifically designed to meet the needs of a person with a reading disability, including (but not limited to) a Braille version and photographic version;

20 “accessible format copy” —

(a) in relation to any work to which section 54 applies, means a copy (whether in an electronic or a physical form) of the work or part of the work in an accessible format;

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(b) in relation to any subject-matter to which section 115C applies, means —

(i) in the case of a sound recording, a copy (whether in an electronic or a physical form) of the sound recording or part of that sound recording in an accessible format;

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- (ii) in the case of a sound broadcast, a sound recording or a copy of a sound recording (whether in an electronic or a physical form) of the sound broadcast or part of that sound broadcast, in an accessible format;”;
- (b) by inserting, immediately after the definition of “exclusive licence” in subsection (1), the following definition:
- “ “foreign institution assisting persons with reading disabilities” means an institution —
- (a) that has as its principal function, or one of its principal functions, the provision of works or other subject-matter to persons with reading disabilities; and
- (b) that is formed, incorporated or established outside Singapore;”;
- (c) by deleting the definitions of “handicapped reader” and “institution assisting handicapped readers” in subsection (1);
- (d) by inserting, immediately after the definition of “institution assisting intellectually handicapped readers” in subsection (1), the following definition:
- “ “institution assisting persons with reading disabilities” means an institution —
- (a) that has as its principal function, or one of its principal functions, the provision of works or other subject-matter to persons with reading disabilities;
- (b) that is formed, incorporated or established in Singapore; and
- (c) that is declared by regulations made under this Act to be an institution for assisting persons with reading disabilities;”;

(e) by inserting, immediately after the definition of “Office” in subsection (1), the following definition:

““person with a reading disability” means —

(a) a blind person;

(b) a person whose sight is severely impaired;

(c) a person unable to hold or manipulate books or to focus or move his eyes; or

(d) a person with a perceptual handicap;”;

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

“(1B) For the purposes of paragraph (b) of the definition of “accessible format” in subsection (1), something is in photographic version if it is produced as a film-strip or series of separate transparencies designed to meet the needs of persons with a reading disability.”;

(g) by deleting the words “an institution assisting handicapped readers” in subsection (3)(a), (d) and (e) and substituting in each case the words “an institution assisting persons with reading disabilities”;

(h) by deleting paragraph (g) of subsection (3) and substituting the following paragraph:

“(g) a reference to a copy of a work or other subject-matter, or of a part of a work or other subject-matter, for a person with a reading disability shall be read as a reference to an accessible format copy of the work or subject-matter —

(i) made, on a non-profit basis, by or on behalf of the body administering an institution assisting persons with reading disabilities or an educational institution, for use by a person with a

reading disability for a permitted purpose within the meaning of section 54; and

- (ii) made available or distributed, on a non-profit basis, to a person with a reading disability for use by him for any of those permitted purposes;”;

- (i) by deleting sub-paragraph (i) of subsection (3)(l) and substituting the following sub-paragraph:

“(i) of a copy, a copy for a person with a reading disability, or an intellectually handicapped reader’s copy, of the whole or a part of a work or other subject-matter; or”;

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

“(6) In this Act, an accessible format copy is made available to a person with a reading disability or a foreign institution assisting persons with reading disabilities if the copy is made available to —

- (a) the person with a reading disability; or
- (b) a person having responsibility for the day-to-day administration of the institution or another person authorised by the person having such responsibility,

on a network or otherwise, in such a way that the copy may be accessed by the person referred to in paragraph (a) or (b) (as the case may be) from a place and at a time chosen by the person.”.

### **Repeal and re-enactment of section 54**

- 3.** Section 54 of the Copyright Act is repealed and the following section substituted therefor:

**“Copying, etc., under statutory licence for persons with reading disabilities**

5       **54.**—(1) Where all of the conditions in subsection (4) are satisfied, the copyright in a relevant work that has been published is not infringed by the making, on a non-profit basis, by or on behalf of the body administering an institution assisting persons with reading disabilities or an educational institution, of an accessible format copy of the work for use by a local person with a reading disability for a permitted purpose.

10       (2) Where all of the conditions in subsection (4) are satisfied, the copyright in a relevant work that has been published is not infringed by the distribution, on a non-profit basis, by or on behalf of the body administering an institution assisting persons with reading disabilities or an educational institution, of an accessible format copy in a physical form of the work to a local person with a reading disability, for use by that person for a permitted purpose.

15       (3) Where all of the conditions in subsection (4) are satisfied, the copyright in a relevant work that has been published is not infringed by the making available, on a non-profit basis, by or on behalf of the body administering an institution assisting persons with reading disabilities or an educational institution, of an accessible format copy in an electronic form of the work to a local person with a reading disability, for use by that person for a permitted purpose.

20       (4) The conditions referred to in subsections (1), (2) and (3) are as follows:

25           (a) as soon as practicable after the making, distribution or making available of the accessible format copy, as the case may be, the body administering the institution assisting persons with reading disabilities or the educational institution, or the person acting on behalf of that body, makes a record of that act setting out such particulars as may be prescribed in regulations;

30           (b) the body administering the institution assisting persons with reading disabilities or the educational institution, or

the person acting on behalf of that body, is satisfied after reasonable investigation that no new accessible format copy of the relevant work that has been separately published and is in the same format as the copy which is to be made, distributed or made available, can be obtained within a reasonable time at an ordinary commercial price; 5

(c) in the case of an educational institution, the local person with a reading disability for or to whom the accessible format copy is made, made available or distributed is a student of the institution; 10

(d) such other conditions as may be prescribed in regulations.

(5) Where the conditions in subsection (6) are satisfied, the copyright in a relevant work that has been published is not infringed by — 15

(a) the making, on a non-profit basis, of an accessible format copy in a physical form of the work for the purpose of export; or

(b) the making available, on a non-profit basis, of an accessible format copy in an electronic form of the work, 20

by or on behalf of a body administering an institution assisting persons with reading disabilities or an educational institution, for or to —

(i) a foreign institution assisting persons with reading disabilities; or 25

(ii) a person with a reading disability who is not resident in Singapore.

(6) The conditions referred to in subsection (5) are as follows:

(a) the body administering the institution assisting persons with reading disabilities or the educational institution, or the person acting on behalf of that body, complies with such requirements at such time as may be prescribed in 30

regulations, for the purpose of ascertaining or verifying the identity of, and other information concerning —

(i) the foreign institution assisting persons with reading disabilities; or

5 (ii) the person with a reading disability who is not resident in Singapore;

(b) as soon as practicable after the making, or the making available, of the accessible format copy, as the case may be, the body administering the institution assisting persons with reading disabilities or the educational institution, or the person acting on behalf of that body makes a record of the act, setting out such particulars as may be prescribed in regulations;

10 (c) such other conditions as may be prescribed in regulations.

(7) Where all of the conditions in subsection (10) are satisfied, the copyright in a relevant work that has been published is not infringed by the making, by or on behalf of the body administering an institution assisting persons with reading disabilities or an educational institution, of a temporary or transient reproduction of an accessible format copy in an electronic form of the work that is received from a foreign institution assisting persons with reading disabilities, being a reproduction that is made incidentally as part of the technical process of such receipt.

20 (8) Where all of the conditions in subsection (10) are satisfied, the copyright in a relevant work that has been published is not infringed by the importation, by or on behalf of the body administering an institution assisting persons with reading disabilities or an educational institution, of an accessible format copy in a physical form of a relevant work that originated from a foreign institution assisting persons with reading disabilities.

30 (9) Where all of the conditions in subsection (10) are satisfied, the copyright in a relevant work that has been published is not

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infringed by the distribution, on a non-profit basis, by or on behalf of the body administering an institution assisting persons with reading disabilities or an educational institution, of an accessible format copy in a physical form of the work to a local person with a reading disability for use by him for a permitted purpose, being an accessible format copy that originated from a foreign institution assisting persons with reading disabilities. 5

(10) The conditions referred to in subsections (7), (8) and (9) are as follows:

- (a) the body administering the institution assisting persons with reading disabilities or the educational institution made a request to the foreign institution assisting persons with reading disabilities for the accessible format copy for use by a person with a reading disability for a permitted purpose, or for the purpose of distributing that copy on a non-profit basis to a person with a reading disability for use by the person for a permitted purpose; 10 15
- (b) in the case of an educational institution, the person with a reading disability referred to in paragraph (a) and in subsection (9) is a student of that institution; 20
- (c) as soon as practicable after receiving the accessible format copy, the body, or a person acting on its behalf, makes a record setting out such particulars as may be prescribed in regulations; 25
- (d) the body, or the person acting on its behalf, is satisfied after reasonable investigation that no new accessible format copy of the relevant work that has been separately published and is in the same format as the copy requested for, can be obtained within a reasonable time at an ordinary commercial price; 30
- (e) such other conditions as may be prescribed in regulations.

(11) Where all of the conditions in subsection (12) are satisfied, the copyright in a relevant work that has been published is not infringed by the making by —

(a) a local person with a reading disability; or

(b) a person acting on behalf of a local person with a reading disability, not being the body administering —

(i) an institution assisting persons with reading disabilities; or

(ii) an educational institution of which the person with a reading disability is a student,

of an accessible format copy of the work for use by the person with a reading disability for a permitted purpose.

(12) The conditions referred to in subsection (11) are as follows:

(a) the local person with a reading disability, or the person acting on his behalf, is satisfied after reasonable investigation that no new accessible format copy of the relevant work that has been separately published and is in the same format as the copy which is to be made, can be obtained within a reasonable time at an ordinary commercial price;

(b) such other conditions as may be prescribed in regulations.

(13) For the purposes of subsections (4)(a), (6)(b) and (10)(c), a record —

(a) shall be kept in writing or in any other manner prescribed by the regulations; and

(b) if it is kept in writing, shall be in accordance with the prescribed form.

(14) For the purposes of subsections (4)(b), (10)(d) and (12)(a), “new accessible format copy”, in relation to a relevant work, means —

- (a) if the accessible format copy of the work is a physical copy, a copy that is not secondhand;
- (b) if the accessible format copy of the work is a sound recording or an electronic copy of the work that is embodied or stored in a record or other article, a copy that is embodied or stored in a record or other article that is not secondhand; or
- (c) where the accessible format copy of the work is a sound recording or an electronic copy of the work that is not embodied or stored in a record or other article, a copy that is fit for use.

(15) Where —

- (a) by virtue of subsection (1), (2), (3) or (9), the making, or the making available or distribution to a person, of an accessible format copy of a relevant work does not infringe the copyright in a relevant work; and
- (b) the owner of the copyright in the relevant work makes a request in writing, at any time during the period prescribed by regulations after that act for payment for the copy so made, made available or distributed,

then the body administering the institution assisting persons with reading disabilities or the educational institution shall pay to the owner such amount by way of equitable remuneration for that act —

- (i) as is agreed upon between the owner and the body; or
- (ii) in default of agreement, such amount as is determined by a Copyright Tribunal under section 158(3) on the application of either the owner or the body.

(16) Where a Copyright Tribunal has determined the amount of equitable remuneration payable to the owner of the copyright by the body administering the institution assisting persons with reading disabilities or the educational institution, the owner may recover that amount from the body in a court of competent jurisdiction as a debt due to him.

(17) Notwithstanding any other provision of this Act, copyright shall not vest in the maker of a copy of a relevant work for a person with a reading disability by reason of the maker making that copy.

5 (18) Nothing in this section shall affect the right of the owner of the copyright in a relevant work to grant a licence authorising a body administering an institution assisting persons with reading disabilities or an educational institution to make, make available or distribute, or cause to be made, made available or distributed, an accessible format copy of the relevant work  
10 without infringement of that copyright.

(19) In this section —

“local person with a reading disability” means a person with a reading disability who is resident in Singapore;

15 “permitted purpose”, in relation to a person with a reading disability, means —

(a) the purpose of research or study undertaken or to be undertaken by the person; or

(b) the purpose of otherwise instructing himself in any matter;

20 “relevant work” means —

(a) a literary work;

(b) a dramatic work; or

(c) an artistic work.”.

25 **New section 115C**

**4.** The Copyright Act is amended by inserting, immediately after section 115B, the following section:

**“Copying, etc., under statutory licence by institutions for reading disabilities**

30 **115C.**—(1) Subject to the modifications in subsection (2), section 54 shall apply in relation to each of the following

subject-matter as it applies in relation to a relevant work that has been published within the meaning of that section:

- (a) a sound recording that has been published, other than one that comprises only of the performance of a musical work, or of a musical work in which words are sung, or are spoken incidentally to or in association with the music; 5
- (b) a sound broadcast, other than one that comprises only of the performance of a musical work, or of a musical work in which words are sung, or are spoken incidentally to or in association with the music. 10

(2) The modifications referred to in subsection (1) are as follows:

- (a) a reference to an accessible format copy of a work shall be read as a reference to an accessible format copy of the subject-matter in question; 15
- (b) a reference to the making available to any person of an accessible format copy in an electronic form of a work shall, in the case of an accessible format copy of the sound recording referred to in subsection (1)(a), be read as a reference to the making available to that person by means of or as part of a digital audio transmission; and 20
- (c) such other modifications as may be prescribed by regulations.”.

### **Amendment of section 158**

5. Section 158 of the Copyright Act is amended —

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

“(1) This section shall apply where application is made to a Tribunal under section 52(11) or (11C), 54(15) (including that provision as applied by section 115C) or 54A(7) for the determination of an equitable remuneration to be paid to the owner of the copyright in a work or other subject-matter for the making of, or 30

the making available or distribution to a person of (as the case requires) —

(a) copies;

(b) a copy for a person with reading disability; or

(c) an intellectually handicapped reader’s copy,

of the whole or of a part of that work or subject-matter.”;

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

“(b) the body by which, or on behalf of which, the copies or copy referred to in subsection (1) were or was made, made available or distributed (as the case requires).”; and

(c) by deleting paragraph (a) of subsection (3) and substituting the following paragraph:

“(a) shall make an order determining the amount that it considers to be equitable remuneration to the owner of the copyright for the making, making available or distribution (as the case requires) of the copies or copy; and”.

## **Amendment of section 193A**

**6.** Section 193A(1) of the Copyright Act is amended —

(a) by inserting, immediately after the definition of “electronic copy”, the following definition:

““flagrantly infringing online location” means an online location which is determined by the High Court under section 193DDA to have been or is being used to flagrantly commit or facilitate infringement of copyright in materials;”; and

(b) by deleting the words “section 193B” in paragraphs (a) and (b) of the definition of “network service provider” and substituting in each case the words “sections 193B, 193DDA and 193DDB”.

### **Amendment of section 193D**

7. Section 193D of the Copyright Act is amended —

- (a) by inserting, immediately after the words “subsection (2)(b)(iii)” in subsection (3), the words “, or a notice under section 193DDB(1)(b),”; and
- (b) by inserting, immediately after the words “subsection (4)(b)(iii)” in subsection (5), the words “, or a notice under section 193DDB(1)(b),”.

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### **Amendment of section 193DA**

8. Section 193DA(5) of the Copyright Act is amended by deleting the words “or 193D(2)(b)(iii) or (4)(b)(iii)” in paragraph (b) and substituting the words “, 193D(2)(b)(iii) or (4)(b)(iii) or 193DDB(1)(b)”.

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### **Amendment of section 193DB**

9. Section 193DB(3) of the Copyright Act is amended by inserting, immediately after the words “subsection (1) or (2)”, the words “or section 193DDA(1)”.

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### **New sections 193DDA, 193DDB and 193DDC**

10. The Copyright Act is amended by inserting, immediately after section 193DD, the following sections:

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#### **“Order to disable access to flagrantly infringing online location**

**193DDA.**—(1) Where the High Court is satisfied, on an application made by the owner or exclusive licensee of copyright in a material against a network service provider, that —

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- (a) the services of the network service provider have been or are being used to access an online location, which is the subject of the application, to commit or facilitate infringement of copyright in that material; and

(b) the online location is a flagrantly infringing online location,

5 the High Court may, after having regard to the factors referred to in section 193DB(3), make an order requiring the network service provider to take reasonable steps to disable access to the flagrantly infringing online location.

10 (2) For the purpose of determining under subsection (1)(b) whether an online location has been or is being used to flagrantly commit or facilitate infringement of copyright in materials, the High Court shall have regard to, and give such weight as the High Court considers appropriate to, all of the following matters:

(a) whether the primary purpose of the online location is to commit or facilitate copyright infringement;

15 (b) whether the online location makes available or contains directories, indexes or categories of the means to commit or facilitate copyright infringement;

(c) whether the owner or operator of the online location demonstrates a disregard for copyright generally;

20 (d) whether access to the online location has been disabled by orders from any court of another country or territory on the ground of or related to copyright infringement;

25 (e) whether the online location contains guides or instructions to circumvent measures, or any order of any court, that disables access to the online location on the ground of or related to copyright infringement;

(f) the volume of traffic at or frequency of access to the online location.

30 (3) For the avoidance of doubt, the High Court shall not be confined to consideration of matters specified in subsection (2) and may take into account such other matters and evidence as may be relevant.



### **Application for order under section 193DDA**

**193DDB.**—(1) Subject to subsection (3), the owner or exclusive licensee of copyright in a material must, before applying for an order under section 193DDA(1) —

- (a) send a notice to the owner of the online location that is intended to be the subject of the order (referred to in this section as the relevant online location owner) stating that the online location has been or is being used to commit or facilitate infringement of copyright in the material, and the intention of the owner or the exclusive licensee, as the case may be, to apply for that order if the relevant online location owner does not, within the prescribed period, cease the use of the online location to commit or facilitate infringement of copyright in the material; and
- (b) send, upon or after the end of the prescribed period referred to in paragraph (a) or after reasonable efforts are made to send the notice referred to in paragraph (a) to the relevant online location owner, a notice to the network service provider that is to be the defendant in an action under that section stating the intention of the owner or exclusive licensee, as the case may be, to apply for that order.

(2) Every application for an order under section 193DDA(1) must be served on the network service provider who is the defendant in the action under that section, and notice of the making of the application must be given to the relevant online location owner.

(3) At the hearing of an application for an order under section 193DDA(1), the High Court may dispense with the notice required to be sent under subsection (1)(a) and the notice under subsection (2) if the High Court is satisfied that the plaintiff, despite reasonable efforts to do so, is unable to determine the identity or address of the relevant online location owner or to send the notices to the relevant online location owner.

(4) The relevant online location owner shall —

(a) have the right to be heard on an application for an order under section 193DDA(1); and

(b) have the same right of appeal as a party to the application.

(5) All provisions in Division 4 of Part V shall apply, with the necessary modifications, to any application for an order under section 193DDA(1).

### **Variation or revocation of order**

**193DDC.**—(1) The High Court may, on the application of a party to an order made under section 193DDA(1), vary the order as it thinks just if the High Court is satisfied that there has been a material change in the circumstances or that it is otherwise appropriate in the circumstances to do so.

(2) The High Court may, on the application of a party to an order made under section 193DDA(1), revoke the order if the High Court is satisfied —

(a) upon further evidence, that the order ought not to have been made;

(b) that the online location has ceased to be a flagrantly infringing online location; or

(c) that it is otherwise appropriate in the circumstances to do so.

(3) In this section, a reference to a party to an order made under section 193DDA(1) includes a reference to the owner of the online location that is the subject of the order.”.

### **Amendment of section 193DE**

**11.** Section 193DE(2) of the Copyright Act is amended —

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

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

“(c) prescribe the reasonable efforts required to be made by an owner or exclusive licensee of copyright in any material, for the purposes of section 193DDB(3).”.

## **Amendment of section 201**

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**12.** Section 201 of the Copyright Act is amended —

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

“(1) In proceedings against a person or body for infringement of copyright in a work or other subject-matter in connection with the making, by or on behalf of an institution, of a copy of the whole or a part of that work or other subject-matter, the person or body is not entitled to rely on section 45, 46, 48, 52, 54(1) or (5)(a) (including those provisions as applied by section 115C) or 54A as justification for the making of that copy unless, at or about the time the copy was made, there was made on the copy a notation stating that the copy was made on behalf of that institution and the date on which it was made.”;

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(b) by deleting subsection (3) and substituting the following subsection:

“(3) In proceedings against a person or body for infringement of copyright in a work or other subject-matter in connection with the making, by or on behalf of an institution, of a record embodying a sound recording of the whole or a part of that work or other subject-matter, the person or body is not entitled to rely on section 54(1) or (5)(a) (including those provisions as applied by section 115C) unless, at the time the record was made, there was embodied on the record, immediately before the commencement of that sound recording, a sound recording of a prescribed message.”;

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- (c) by inserting, immediately after the word “work” wherever it appears in subsections (4)(a), (5), (6), (7), (8) and (9), the words “or other subject-matter”;
- (d) by deleting “54(10)” in subsection (6)(b) and substituting “54(15)”; and
- (e) by deleting subsection (12) and substituting the following subsection:

“(12) In this section, “copy”, in relation to a work or other subject-matter or a part of a work or other subject-matter, includes a microform copy, a copy in an accessible format, of the work or other subject-matter or of the part thereof.”.

### **Amendment of section 246**

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

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

““flagrantly infringing online location” means an online location which is determined by the High Court under section 252CDA to have been or is being used to flagrantly make or facilitate unauthorised use of performances;”;

- (b) by deleting the words “section 252A” in paragraph (a) of the definition of “network service provider” and substituting the words “sections 252A, 252CDA and 252CDB”.

### **Amendment of section 252C**

**14.** Section 252C of the Copyright Act is amended —

- (a) by inserting, immediately after the words “subsection (2)(b)(iii)” in subsection (3), the words “, or a notice under section 252CDB(1)(b),”; and
- (b) by inserting, immediately after the words “subsection (4)(b)(iii)” in subsection (5), the words “, or a notice under section 252CDB(1)(b),”.

### **Amendment of section 252CA**

**15.** Section 252CA(5) of the Copyright Act is amended by inserting, immediately after the words “or (4)(b)(iii)” in paragraph (b), the words “or 252CDB(1)(b)”.

### **Amendment of section 252CB**

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**16.** Section 252CB(3) of the Copyright Act is amended by inserting, immediately after the words “subsection (1) or (2)”, the words “or section 252CDA(1)”.

### **New sections 252CDA, 252CDB and 252CDC**

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

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#### **“Order to disable access to flagrantly infringing online location**

**252CDA.**—(1) Where the High Court is satisfied, on an application made during the protection period of a performance by the performer of the performance against a network service provider, that —

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- (a) the services of the network service provider have been or are being used to access an online location, which is the subject of the application, to make or facilitate any unauthorised use of that performance; and
- (b) the online location is a flagrantly infringing online location,

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the High Court may, after having regard to the factors referred to in section 252CB(3), make an order requiring the network service provider to take reasonable steps to disable access to the flagrantly infringing online location.

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(2) For the purpose of determining under subsection (1)(b) whether an online location has been or is being used to make or facilitate an unauthorised use of any performance, the High Court shall have regard to, and give such weight as the High Court considers appropriate to, all of the following matters:

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- (a) whether the primary purpose of the online location is to make or facilitate unauthorised use of performances;
- (b) whether the online location makes available or contains directories, indexes or categories of the means to make or facilitate unauthorised use of performances;
- (c) whether the owner or operator of the online location demonstrates a disregard for the authorised use of performances generally;
- (d) whether access to the online location has been disabled by orders from any court of another country or territory on the ground of or related to the unauthorised use of performances;
- (e) whether the online location contains guides or instructions to circumvent measures, or any order of any court, that disables access to the online location on the ground of or related to the unauthorised use of performances;
- (f) the volume of traffic at or frequency of access to the online location.

(3) For the avoidance of doubt, the High Court shall not be confined to consideration of matters specified in subsection (2) and may take into account such other matters and evidence as may be relevant.

### **Application for order under section 252CDA**

**252CDB.**—(1) Subject to subsection (3), the performer of a performance, the protection period of which has not expired, must before applying for an order under section 252CDA(1) —

- (a) send a notice to the owner of the online location that is intended to be the subject of the order (referred to in this section as the relevant online location owner) stating that the online location has been or is being used to make or facilitate an unauthorised use of the performance and the intention of the performer, to apply for that order if the relevant online location owner does not, within a

prescribed period, cease the use of the online location to make or facilitate an unauthorised use of the performance; and

- (b) send, upon or after the end of the prescribed period referred to in paragraph (a) or after reasonable efforts are made to send the notice referred to in paragraph (a) to the relevant online location owner, a notice to the network service provider that is to be the defendant in an action under that section stating the intention of the performer to apply for that order.

(2) Every application for an order under section 252CDA(1) must be served on the network service provider who is the defendant in the action under that section, and notice of the making of the application must be given to the relevant online location owner.

(3) At the hearing of an application for an order under section 252CDA(1), the High Court may dispense with the notice required to be sent under subsection (1)(a) and the notice under subsection (2) if the High Court is satisfied that the plaintiff, despite reasonable efforts to do so, is unable to determine the identity or address of the relevant online location owner or to send the notices to the relevant online location owner.

(4) The relevant online location owner shall —

- (a) have the right to be heard on an application for an order under section 252CDA(1); and
- (b) have the same right of appeal as a party to the application.

### **Variation or revocation of order**

**252CDC.**—(1) The High Court may, on the application of a party to an order made under section 252CDA(1), vary the order as the High Court thinks just if the High Court is satisfied that there has been a material change in the circumstances or that it is otherwise appropriate in the circumstances to do so.

(2) The High Court may, on the application of a party to an order made under section 252CDA(1), revoke the order if the High Court is satisfied —

- (a) upon further evidence, that the order ought not to have been made;
- (b) that the online location has ceased to be a flagrantly infringing online location; or
- (c) that it is otherwise appropriate in the circumstances to do so.

(3) In this section, a reference to a party to an order made under section 252CDA(1) includes a reference to the owner of the online location that is the subject of the order.”.

### **Amendment of section 252CE**

**18.** Section 252CE of the Copyright Act is amended —

- (a) by deleting the words “to 252CD” in subsection (1) and substituting the words “to 252CDC”;
- (b) by deleting the words “and 252CA(2)(b)” in subsection (2)(a) and substituting the words “, 252CA(2)(b) and 252CDB(1)(a) and (b) and (2)”;
- (c) by deleting the word “and” at the end of subsection (2)(a); and
- (d) by deleting the full-stop at the end of paragraph (b) of subsection (2) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:
  - “(c) prescribe the reasonable efforts required to be made by a performer of a performance for the purposes of section 252CDB(3).”.

### **Miscellaneous amendments**

**19.** The Copyright Act is amended —

- (a) by deleting the words “*Institutions Assisting Handicapped Readers*” in the heading of Division 7 of Part III and substituting the words “*Institutions Assisting Persons with Reading Disabilities*”;



- (b) by deleting the words “a handicapped reader’s copy” in section 116(a)(ii) and (b)(ii) and substituting in each case the words “a copy for a person with a reading disability”;
- (c) by deleting the words “the handicapped reader’s copies” in section 116(b)(ii) and substituting the words “the copies for persons with reading disabilities”;
- (d) by deleting the words “institution assisting handicapped readers solely for use by a handicapped reader” in paragraph (f) of the definition of “exempt recording” in section 246(1) and substituting the words “institution assisting persons with reading disabilities solely for use by a person with a reading disability”; and
- (e) by deleting the words “institution assisting handicapped readers” in sections 260(7), 261C(9) and 261D(1)(a) and substituting in each case the words “institution assisting persons with reading disabilities”.

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## EXPLANATORY STATEMENT

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

- (a) to implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled, adopted by Member States of the World Intellectual Property Organization (WIPO) on 27th June 2013. The Treaty requires its contracting Parties to adopt laws that permit the reproduction, distribution and making available of published works in accessible formats through limitations and exceptions to the rights of copyright holders. It also provides for the exchange of these accessible format works by organisations in different countries that serve the people who are blind, visually impaired or print disabled;
- (b) to recast in a technologically neutral manner, the exceptions under the Copyright Act in respect of acts done for the benefit of persons with a reading disability; and
- (c) to provide a process whereby copyright owners, exclusive licensees and performers can apply for court orders (called blocking orders) directing

network service providers to block access to flagrantly infringing online locations.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 7 —

- (a) to introduce definitions for “accessible format” and “accessible format copy”. An accessible format copy of a work or other subject-matter is one that is in a format that is accessible to a person with a reading disability or is specifically designed to meet his needs;
- (b) to replace definitions for “handicapped reader” and “institution assisting handicapped readers” with definitions for “person with a reading disability” and “institution assisting persons with reading disabilities”, respectively;
- (c) to define “foreign institution assisting persons with reading disabilities” and the making available of an accessible format copy to certain persons, for the purposes of the amended section 7 and the re-enacted section 54; and
- (d) to make various other consequential amendments resulting from paragraphs (a) and (b) above, the re-enacted section 54 and the new section 115C.

Clause 3 repeals and re-enacts section 54. The new section 54 creates statutory licences for the following acts in respect of certain types of published works:

- (a) the making by an institution assisting persons with reading disabilities, or an educational institution, of an accessible format copy of the work for use by a local visually impaired person for use by him for research or study, or instructing himself on any matter (referred to in the section as a permitted purpose) (subsection (1));
- (b) the distribution by an institution assisting persons with reading disabilities, or an educational institution, of a physical accessible format copy of the work to a local visually impaired person for use by him for a permitted purpose (subsection (2));
- (c) the making available (on a network or otherwise) by an institution assisting persons with reading disabilities, or an educational institution, of an electronic accessible format copy of the work to a local visually impaired person for a permitted purpose (subsection (3));
- (d) the making by an institution assisting persons with reading disabilities, or an educational institution, of a physical accessible format copy of the work for export to, or making available an electronic accessible format copy of the work to, a foreign institution assisting persons with reading disabilities or a foreign visually impaired person (subsection (5));

- (e) the making by an institution assisting persons with reading disabilities, or an educational institution, of a temporary reproduction of an electronic accessible format copy of the work incidentally as part of the technical process of receiving the copy from a foreign institution assisting persons with reading disabilities (subsection (7)); the importation by such institution of a physical accessible format copy of the work originating from a foreign institution assisting persons with reading disabilities (subsection (8)), and the distribution by such institution of the same (subsection (9)) to a local visually impaired person for use by him for a permitted purpose. Each of these is predicated by a request by the institution carrying out the act to the foreign institution for that copy; and
- (f) making by or on behalf of a local visually impaired person of an accessible format copy of the work for use by him for a permitted purpose (subsection (11)).

In the cases referred to in subsections (1), (2), (3) and (9), the owner of the copyright is entitled on request to remuneration for copies made for use by a person with a reading disability, or made available to or distributed to him. The amount of remuneration is to be agreed between the owner and the body administering the institution, or determined by a Copyright Tribunal (subsection (15)).

Clause 4 inserts a new section 115C to apply with modifications the new section 54 to a sound recording (other than one of the performance of a musical work or a song) and a sound broadcast (other than one of the performance of a musical work or a song).

Clauses 5, 12 and 19 make consequential amendments to section 158 (in the case of clause 5), section 201 (in the case of clause 12), and the heading of Division 7 of Part III and sections 116, 246(1), 260(7), 261C(9) and 261D(1)(a) (in the case of clause 19), arising from the amendments in clauses 2, 3 and 4.

Clauses 6 to 11 provide copyright owners and exclusive licensees with a judicial process to apply for court orders directing network service providers to block access to flagrantly infringing online locations.

Clause 6 amends section 193A to introduce a new definition for “flagrantly infringing online location”. Clause 6 also amends paragraphs (a) and (b) of the definition of “network service provider” so that the term “network service provider” as used in the new sections 193DDA and 193DDB will also apply to a person who provides services relating to, or provides connections for, the transmission or routing of data.

Clause 7 amends section 193D(3) and (5) to make it clear that the notice referred to in the new section 193DDB(1)(b) is not to be considered in determining whether a network service provider has acquired any knowledge referred to in section 193D(2)(b)(i) or (ii) or (4)(b)(i) or (ii).

Clause 8 amends section 193DA(5)(b) to make it clear that a network service provider is not to be treated as having authorised the doing of any act of copyright infringement by reason of the network service provider's receipt of a notice referred to in the new section 193DDB(1)(b).

Clause 9 amends section 193DB(3) to require the High Court to have regard to the factors currently referred to in section 193DB(3) when considering whether to issue a blocking order under the new section 193DDA directing a network service provider to block access to a flagrantly infringing online location.

Clause 10 inserts new sections 193DDA, 193DDB and 193DDC.

The new section 193DDA provides that a copyright owner or exclusive licensee may apply to the High Court for a blocking order directing a network service provider to prevent access to a flagrantly infringing online location. The plaintiff must satisfy the High Court of 2 requirements. The first requirement is that the network service provider's services have been or are being used to access an online location to commit or facilitate infringement of the plaintiff's material. The second requirement is that the online location is a flagrantly infringing online location. A flagrantly infringing online location is defined as an online location which flagrantly infringes or facilitates infringement of copyright materials. In determining whether an online location is a flagrantly infringing online location, the High Court is required to have regard to a list of non-exhaustive factors as set out in subsection (2) of the new section 193DDA.

The new section 193DDB sets out the procedure for applying for the order under the new section 193DDA. Notices must be sent to the owner of the online location that is intended to be the subject of the blocking order and the network service provider. The blocking order application is only required to be served on the network service provider. The online location owner needs to be notified of the application. Notices to the owner of the online location may be dispensed if the High Court is satisfied that reasonable effort has been made to ascertain the identity or address of the online location owner or to send the notices to the online location owner. The online location owner may appear in the High Court during an application for such an order and appeal against the order in the Court of Appeal as if the online location owner is a party to the proceeding. The applicability of certain presumptions in copyright proceedings under Division 4 of Part V of the Act has also been provided.

The new section 193DDC provides that a party to the blocking order may apply to the High Court to vary or revoke such an order made under the new section 193DDA.

Clause 11 amends section 193DE(2) so that regulations may be made as to the reasonable efforts that must be made by the copyright owner or exclusive licensee to ascertain the identity or address of the online location owner or to send the notice to the online location owner for the purpose of the new section 193DDB(3).

Clauses 13 to 18 provide performers with a judicial process to apply for court orders directing network service providers to block access to flagrantly infringing online locations.

Clause 13 amends section 246 to insert a new definition for “flagrantly infringing online location” for the purpose of performer’s protection. The clause also amends paragraph (a) of the definition of “network service provider” so that “network service provider” as used in the new sections 252CDA and 252CDB will also apply to a person who provides services relating to, or provides connections for, the transmission or routing of data.

Clause 14 amends section 252C(3) and (5) to make it clear that the notice referred to in the new section 252CDB(1)(b) is not to be considered in determining whether a network service provider has acquired any knowledge referred to in section 252C(2)(b)(i) or (ii) or (4)(b)(i) or (ii).

Clause 15 amends section 252CA(5)(b) to make it clear that a network service provider is not to be treated as having authorised the doing of any act of unauthorised use of a performance by reason of the network service provider’s receipt of a notice referred to in the new section 252CDB(1)(b).

Clause 16 amends section 252CB(3) to require the High Court to have regard to the factors currently referred to in section 252CB(3) when considering whether to issue a blocking order under new section 252CDA directing a network service provider to block access to a flagrantly infringing online location.

Clause 17 inserts new sections 252CDA, 252CDB and 252CDC.

The new section 252CDA provides that a performer of a performance may apply to the High Court for a blocking order directing a network service provider to prevent access to a flagrantly infringing online location. The plaintiff must satisfy the High Court of 2 requirements. The first requirement is that the network service provider’s services have been or are being used to access an online location to make or facilitate any unauthorised use of the plaintiff’s performance. The second requirement is that the online location is a flagrantly infringing online location. A flagrantly infringing online location is defined as an online location which flagrantly makes or facilitates unauthorised use of performances. In determining whether an online location is a flagrantly infringing online location, the High Court is required to have regard to certain non-exhaustive factors as set out in subsection (2) of new section 252CDA.

The new section 252CDB sets out the procedure for applying for the blocking order under the new section 252CDA. Notices must be sent to the owner of the online location that is intended to be the subject of the blocking order and the network service provider. The blocking order application is only required to be served on the network service provider. The online location owner needs to be notified of the application. Notices to the owner of the online location may be dispensed if the High Court is satisfied that reasonable effort has been made to

ascertain the identity or address of the online location owner or to send the notices to the online location owner. The online location owner may appear in the High Court during an application for such an order and appeal against the order in the Court of Appeal as if the online location owner is a party to the proceeding.

The new section 252CDC provides that a party to the blocking order may apply to the High Court to vary or revoke such an order made under the new section 252CDA.

Clause 18 amends section 252CE so that regulations may be made to prescribe —

- (a) the procedures or requirements for the notices to be furnished under the new section 252CDB; and
- (b) the sort of reasonable efforts that must be made by the performer to ascertain the identity or address of the online location owner or to send the notice to the online location owner for the purpose of the new section 252CDB(3).

## EXPENDITURE OF PUBLIC MONEY

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

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