

Copyright (Amendment) Bill

Bill No. 16/2009.

Read the first time on 18th August 2009.

A BILL

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An Act to amend the Copyright Act (Chapter 63 of the 2006 Revised Edition) and to make consequential amendments to the Intellectual Property Office of Singapore Act (Chapter 140 of the 2002 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 2009 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 149

2. Section 149 of the Copyright Act is amended —

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

“(1) In this Part, unless the context otherwise requires —

10 “deputy president” means a deputy president of the Tribunals appointed by the Minister under section 151A(1)(b);

15 “licence” means a licence granted by or on behalf of the owner or prospective owner of the copyright in a work or other subject-matter to do an act comprised in the copyright;

20 “licence scheme” means a scheme (including anything in the nature of a scheme, whether called a scheme or tariff or called by any other name) formulated by a licensor and setting out the classes of cases in which the licensor is willing to grant licences and the charges (if any) subject to payment of which, and the conditions subject to which, licences would be granted in those classes of cases;

25 “licensor” means any association, body or organisation (whether incorporated or unincorporated) which —

30 (a) carries on the business of negotiating, granting or otherwise collectively administering licences in relation to a repertoire of works or other subject-matter by different authors, makers or publishers who are not affiliated with that association, body or organisation within the meaning of subsection (3); and

35 (b) negotiates, grants or otherwise collectively administers such licences either as the owner or

prospective owner of the copyrights in such works or other subject-matter or as the agent or representative of the owners or prospective owners of the copyrights in such works or other subject-matter;

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“member” means a member of a Tribunal and includes the president or deputy president presiding over the Tribunal;

“order” includes an interim order;

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“organisation” means an organisation or association of persons whether corporate or unincorporate;

“panel” means the panel appointed by the Minister under section 151A(4);

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“party” includes a person or an organisation making representations to a Tribunal at an inquiry under section 157;

“president” means the president of the Tribunals appointed by the Minister under section 151A(1)(a);

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“proceeding”, in relation to a Tribunal, includes an inquiry by the Tribunal under section 157.”; and

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

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“(3) For the purpose of the definition of “licensor” in subsection (1), the author, maker or publisher of any work or other subject-matter is affiliated with the association, body or organisation which carries on the business of negotiating, granting or otherwise collectively administering licences in relation to that work or other subject-matter if such author, maker or publisher produced or published that work or other subject-matter in the course of his employment with, or under a commission from —

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(a) that association, body or organisation; or

(b) any other association, body or organisation which is related, in such manner as may be prescribed, to the first-mentioned association, body or organisation.”.

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Repeal and re-enactment of section 151 and new sections 151A and 151B

3. Section 151 of the Copyright Act is repealed and the following sections substituted therefor:

5 **“Establishment of Tribunals**

151.—(1) There shall be established one or more Copyright Tribunals for the purposes of this Part.

 (2) Subject to subsection (3), each Tribunal shall be constituted by —

- 10 (a) the president or a deputy president designated by the president, who shall preside over the Tribunal; and
- (b) 2 other members selected by the president from amongst the members of the panel.

15 (3) Notwithstanding subsection (2), the president or a deputy president presiding over a Tribunal may preside alone at any preliminary hearing of an application or a reference to deal with any matter connected with the application or reference.

Appointment of president, deputy president and members of Tribunal

20 **151A.**—(1) The Minister shall appoint —

- (a) the president of the Tribunals; and
- (b) not more than 2 deputy presidents of the Tribunals.

25 (2) No person shall be appointed as the president of the Tribunals unless he possesses the qualifications required for a District Judge under section 9(3) of the Subordinate Courts Act (Cap. 321).

 (3) No person shall be appointed as a deputy president of the Tribunals unless he is a qualified person (as defined in section 2 of the Legal Profession Act (Cap. 161)) of not less than 5 years' standing.

30 (4) For the purpose of enabling a Tribunal to be constituted under this Part, the Minister shall appoint a panel consisting of not more than 15 persons with such qualifications as he may consider necessary and shall publish their names in the *Gazette*.

(5) The Minister may appoint a Secretary to the Tribunals and such other officers and employees of the Tribunals as the Minister may determine.

Remuneration and allowances

5 **151B.**—(1) There shall be paid to each member of a Tribunal who is not a public officer such remuneration (whether by way of salaries or fees), and such allowances, as the Minister may determine.

(2) The remuneration and allowances of the members of a Tribunal and such other expenses of a Tribunal as the Minister may determine
10 shall be paid out of moneys provided by Parliament.

(3) The remuneration of the Secretary to the Tribunals and the other officers and employees appointed under section 151A(5) shall be paid out of the funds of the Office.”.

Repeal and re-enactment of sections 152, 153 and 154

15 **4.** Sections 152, 153 and 154 of the Copyright Act are repealed and the following sections substituted therefor:

“Tenure of office

152.—(1) Subject to this section, the president, a deputy president and any member of the panel shall hold office for such period as may
20 be determined by the Minister at the time of their respective appointments and shall be eligible for re-appointment upon the expiry of their respective terms of office.

(2) The president, a deputy president or any member of the panel may at any time by notice in writing to the Minister resign his
25 appointment.

(3) The Minister may terminate the appointment of the president, a deputy president or any member of the panel on the ground of his unfitness to continue in office or his incapacity to perform the duties thereof.

Continuation of hearing on change in constitution of Tribunal

30 **153.**—(1) If during the course of any proceedings of a Tribunal being presided over by the president —

(a) the president (referred to as the former president) is, by reason of illness, absence or any other cause, unable to perform the duties of his office; and

(b) the Minister appoints a new president to replace him,

5 the Tribunal shall be reconstituted accordingly and the new president shall preside over it in place of the former president.

(2) If during the course of any proceedings of a Tribunal —

10 (a) the deputy president who has been designated by the president under section 151(2)(a) to preside over the Tribunal; or

(b) a member of the panel who has been selected by the president under section 151(2)(b) to be a member of the Tribunal,

15 is, by reason of illness, absence or any other cause, unable to perform the duties of his office in relation to those proceedings, the president may reconstitute the Tribunal by doing any of the following, as the case requires:

(i) preside over the Tribunal in place of the deputy president referred to in paragraph (a);

20 (ii) designate the other deputy president to preside over the Tribunal;

(iii) select any other member of the panel to replace that member referred to in paragraph (b).

(3) A Tribunal as reconstituted under subsection (1) or (2) —

25 (a) may hear and determine the proceedings as have not been determined and in so hearing may have regard to the evidence given, the arguments adduced and any interim order made during any previous hearing; and

30 (b) shall, if requested by all the parties to the proceedings, hear the proceedings afresh.

(4) Notwithstanding subsection (1) or (2), any president, deputy president or member of the panel whose appointment expires during the course of any proceedings of a Tribunal over which he is then presiding or of which is a member shall, for the purpose of such

proceedings and until their determination, be deemed to remain a president, deputy president or member of the Tribunal, as the case may be.

Quorum

5 **154.** Except in the case of a preliminary hearing of an application or a reference, all 3 members of a Tribunal (as stipulated in section 151(2)) must be present to form a quorum for the purposes of any proceedings before the Tribunal.”.

Amendment of section 155

10 **5.** Section 155 of the Copyright Act is amended by deleting the words “; and, in the event of an equality of votes, the President of the Tribunal shall be entitled to a second or casting vote”.

Amendment of section 156

15 **6.** Section 156 of the Copyright Act is amended by deleting subsection (1) and substituting the following subsection:

“ (1) The sittings of a Tribunal on any matter or matters before it, including any preliminary hearing, shall be held at such places and times as are determined by the president or deputy president presiding over the Tribunal.”.

Amendment of section 160

20 **7.** Section 160 of the Copyright Act is amended —

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

25 “(4) A Tribunal shall consider a scheme referred under this section and, after giving to the parties to the reference an opportunity of presenting their cases, shall make such order, either confirming or varying the scheme, or substituting the scheme with such other scheme, as the Tribunal considers reasonable in the circumstances.”; and

30 (b) by deleting the words “confirmed or varied” in subsections (7) and (8) and substituting in each case the words “confirmed, varied or substituted”.

Amendment of section 161

8. Section 161 of the Copyright Act is amended —

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

5 “(5) Subject to subsection (4), where a licence scheme is referred to a Tribunal under this section, the Tribunal shall consider the matter in dispute and, after giving to the parties to the reference an opportunity of presenting their cases, shall make such order, either confirming or varying the scheme, or
10 substituting the scheme with such other scheme, insofar as it relates to cases included in the class of cases to which the reference relates, as the Tribunal considers reasonable in the circumstances.”; and

15 (b) by deleting the words “confirmed or varied” in subsection (10) and substituting the words “confirmed, varied or substituted”.

Amendment of section 162

9. Section 162 of the Copyright Act is amended by deleting subsection (4) and substituting the following subsection:

20 “(4) Subject to subsection (5), where a licence scheme is referred to a Tribunal under this section, the Tribunal shall consider the matter in dispute and, after giving to the parties to the reference an opportunity of presenting their cases, shall make such order in relation to the scheme as previously confirmed, varied or substituted, insofar as it relates to cases included in the class of cases to which the reference
25 relates, whether by way of confirming, varying or further varying the scheme, or substituting the scheme with such other scheme, as the Tribunal considers reasonable in the circumstances.”.

Repeal and re-enactment of section 174

30 **10.** Section 174 of the Copyright Act is repealed and the following section substituted therefor:

“Mistakes or errors in orders of Tribunal

174. A Tribunal may correct any clerical mistake or any error arising from an accidental slip or omission in any order made by it.”.

Miscellaneous amendments

11. The Copyright Act is amended —

(a) by deleting the words “the Copyright Tribunal” in the definition of ““Copyright Tribunal” or “Tribunal”” in section 7(1) and substituting the words “any Copyright Tribunal”;

(b) by deleting the words “the Copyright Tribunal” in the following sections and substituting in each case the words “a Copyright Tribunal”:

Sections 43(3) and (4), 52(11) (11th and penultimate lines), (11C) (penultimate line) and (12), 54(10) (penultimate line) and (11), 54A(7) (penultimate line) and (8), 59(1), (2) and (3), 60(3)(b), 68(3) and (4), 107(3) and (4), 107D, 198(5) and 201(6)(b);

(c) by deleting the words “request the Tribunal to hold an inquiry under this section” in section 59(3) and substituting the words “request an inquiry under subsection (1)”;

(d) by deleting the words “the Tribunal” wherever they appear in the following sections and substituting in each case the words “a Tribunal”:

Sections 60(4), 155 (1st line), 156(2) (1st line), 156A(1), 156B(1), 156C(1), 157(1), 158(1) and (4), 159(1), 160(1), (3) (3rd line), (5) (1st line) and (6) (1st line), 161(1) (penultimate line), (3) (3rd line), (6) (1st line), (7) and (8) (1st line), 162(1) (1st and penultimate lines), (2), (3)(c) and (7), 163(1), (2), (3) (last line), (4) (last line), (5) (3rd line) and (6) (1st line), 165(4) and (5), 166(1), 167(1) and (2) (1st line), 168 (1st line), 169(2) (3rd line), (3) (1st line), (4) (2nd line), (5) (1st line), (6), (7) and (8), 171(1) and (2) (1st line), 172(1) and (2), 173 (1st line), 175(1) and (2)(a), (b), (c) (1st line), (d) and (e), 178 (1st line), 179(2), 180(1), (2) and (3) (1st line), 181(1)(b), (d), (e) and (f), 182(2) and (3) and 183 (2nd line);

(e) by deleting the word “TRIBUNAL” in the heading to Part VII and substituting the word “TRIBUNALS”;

(f) by deleting the words “the Tribunal,” in the following sections and substituting in each case the words “a Tribunal,”:

Sections 156A(3), 156B(3), 156C(3), 158(3) and 159(3);

- (g) by deleting the words “The Tribunal” in the following sections and substituting in each case the words “A Tribunal”:

Sections 161(4), 166(2), 169(1), 176(1), 177 and 182(1);

- 5 (h) by inserting, immediately after the words “A member” in section 176(2), the words “of a Tribunal”; and
- (i) by deleting the words “Secretary to the Tribunal” in sections 177 and 183 and substituting in each case the words “Secretary to the Tribunals”.

10 **Consequential amendments to Intellectual Property Office of Singapore Act**

12. The Intellectual Property Office of Singapore Act (Cap. 140) is amended —

- 15 (a) by deleting the words “the Copyright Tribunal” in the definition of “Copyright Tribunal” in section 2 and substituting the words “a Copyright Tribunal”;
- (b) by deleting the words “the Copyright Tribunal” in section 6(1)(b) and substituting the words “the Copyright Tribunals”; and
- 20 (c) by deleting the words “the Tribunal’s” in section 6(1)(b) and substituting the word “their”.

Savings and transitional provisions

25 **13.**—(1) The person who, immediately before the appointed day, is the President of the Tribunal shall continue to hold such office as if he were appointed under section 151A(1)(a) of the Copyright Act in force from that date.

(2) The person who, immediately before the appointed day, is the Secretary to the Tribunal shall continue to hold such office as if he were appointed under section 151A(5) of the Copyright Act in force from that date.

30 (3) Any person who, immediately before the appointed day, is an officer or employee of the Tribunal shall continue to hold office as such officer or employee as if he were appointed under section 151A(5) of the Copyright Act in force from that date.

(4) In this section, “appointed day” means the date of commencement of the Copyright (Amendment) Act 2009.

EXPLANATORY STATEMENT

This Bill seeks to amend the Copyright Act (Cap. 63) and to make consequential amendments to the Intellectual Property Office of Singapore Act (Cap. 140).

Clause 1 relates to the short title and commencement.

Clause 2 repeals and re-enacts section 149(1) to introduce certain new definitions and to make certain amendments to certain existing definitions. The clause also inserts a new subsection (3) which is related to the new definition of “licensor” in the new subsection (1).

The definitions of “deputy president”, “panel” and “president” are new and are related to the new sections 151 to 154 (see clauses 3 and 4).

The definition of “licence” is amended to widen its scope such that a “licence” will refer to a licence to do an act comprised in the copyright in any work or other subject-matter as opposed to a licence to do only certain specified acts in respect of a literary, dramatic or musical work or a computer program or sound recording, as is currently the case.

With this amendment to the definition of “licence”, the jurisdiction of the Copyright Tribunal will be enlarged such that a Copyright Tribunal will be able to hear and determine disputes in connection with licences to do any act comprised in the copyright in any work or other subject-matter.

The definition of “licence scheme” is amended to omit certain words that are no longer necessary because of the amendments made to the definition of “licensor”.

The term “licensor” is re-defined to mean any association, body or organisation (whether incorporated or unincorporated) which —

- (a) carries on the business of negotiating, granting or otherwise collectively administering licences in relation to a repertoire of works or other subject-matter by different authors, makers or publishers who are not affiliated with that association, body or organisation within the meaning of subsection (3); and
- (b) negotiates, grants or otherwise collectively administers such licences either as the owner or prospective owner of the copyrights in such works or other subject-matter or as the agent or representative of the owners or prospective owners of the copyrights in such works or other subject-matter.

Unlike in the existing definition of “licensor”, an individual person who is the owner or prospective owner of the copyright in a work will not fall within the meaning of the new definition of “licensor”. As such, he will not be subject to the jurisdiction of the Copyright Tribunal in respect of the licences he grants in respect of such copyright.

The definition of “member” is amended to incorporate certain consequential amendments necessitated by the enactment of the new sections 151 to 154 (see clauses 3 and 4).

The definitions of “order”, “organisation”, “party” and “proceeding” are the same as the existing definitions of those words.

The new subsection (3), which is related to the new definition of “licensor” in the new subsection (1) —

- (a) sets out certain of the cases in which, for the purposes of that definition, the author, maker or publisher of any work or other subject-matter is affiliated with the association, body or organisation which carries on the business of negotiating, granting or otherwise collectively administering licences in relation to that work or other subject-matter; and
- (b) provides for additional cases to be prescribed (by the Minister by way of regulations made under section 202).

Clause 3 repeals and re-enacts section 151 and inserts 2 new sections 151A and 151B.

The new section 151 provides for the establishment of one or more Copyright Tribunals. Each Copyright Tribunal will be constituted by —

- (a) the president or a deputy president designated by the president, who will preside over the Copyright Tribunal; and
- (b) 2 other members selected by the president from the panel appointed by the Minister under the new section 151A(4).

The section also makes provision for the president or a deputy president to preside alone over any preliminary hearings of an application or a reference.

The new section 151A provides for the appointment by the Minister of the president, deputy presidents, members of the panel from which members of a Copyright Tribunal are to be selected, as well as the Secretary and other officers and employees of the Copyright Tribunals.

The new section 151B provides for the remuneration of the members, Secretary and other officers and employees of the Copyright Tribunals.

Clause 4 repeals and re-enacts sections 152, 153 and 154.

The new section 152 provides for the tenure of office of the president, deputy presidents and members of the panel from which members of a Copyright Tribunal are to be selected.

The new section 153 provides for the reconstitution of a Copyright Tribunal and for the continuation of any proceedings before it in the event of any change occurring in the constitution of the Copyright Tribunal.

The new section 154 provides that except in the case of a preliminary hearing of an application or a reference, all 3 members of a Copyright Tribunal (as stipulated in the

new section 151(2)) must be present to form a quorum for the purposes of any proceedings before the Copyright Tribunal.

Clause 5 amends section 155 to remove the provision for the president to have a second or casting vote in the event of an equality of votes. Such a provision is no longer necessary since each Copyright Tribunal will consist of 3 members and all 3 members must be present to form a quorum for the purposes of any proceedings before the Copyright Tribunal.

Clause 6 repeals and re-enacts section 156(1) to incorporate a consequential amendment arising from the fact that a Copyright Tribunal will be presided over by the president or a deputy president designated by the president.

Clauses 7, 8 and 9 amend sections 160, 161 and 162, respectively, to empower a Copyright Tribunal (in addition to confirming or varying a licence scheme) to substitute an existing licence scheme with such other licence scheme as it considers reasonable in the circumstances.

Clause 10 makes certain drafting and consequential amendments to section 174, which empowers a Copyright Tribunal to correct any clerical mistake or any error arising from an accidental slip or omission in any order made by it.

Clause 11 makes miscellaneous drafting amendments to certain other provisions of the Act so as to bring those provisions in line with the amendments made by the other clauses of the Bill.

Clause 12 makes consequential amendments to sections 2 and 6(1)(b) of the Intellectual Property Office of Singapore Act (Cap. 140) arising from the amendments made by clause 3 of the Bill.

Clause 13 contains savings and transitional provisions.

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.
