

Copyright (Amendment) Bill

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Bill No: 12/2005

Read the first time: 16th May 2005

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Copyright (Amendment) Bill

Bill No. 12/2005

Read the first time on 16th May 2005.

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.

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 Section 38A of the Copyright Act is repealed and the following section substituted therefor: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

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 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 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 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, 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

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

(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 —

(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;

(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

(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 —

(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.”.

Amendment of section 193C

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 —

- (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