

**UNESCO**  
**WORLD ANTI PIRACY OBSERVATORY**

**MALAYSIA**

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## **I. Legislation**

### **1. Copyright laws**

Copyright is protected in Malaysia through international Agreements, the [Copyright Act of 1987](#), the [Intellectual Property Corporation of Malaysia Act 2002](#), as well as other legislation related to enforcement of copyright or affecting copyright protection.

### **2. Other laws**

The other laws and regulations pertaining anti-piracy measures and copyright enforcement are:

- The Consumer Protection Act, 1999
- The Trade Descriptions Act, 1972
- The Registration of Businesses Act, 1956
- The Companies Act, 1965
- The Layout-Designs of Integrated Circuits Act, 2000
- The Optical Disc Act, 2000

### **3. Latest developments and perspectives**

There are no planned amendments.

### **4. Summary of legislation**

Copyright is the exclusive right given to the owner of a copyright for a specific period of time. Copyright protection in Malaysia is governed by the [Copyright Act of 1987](#).

Copyright vests in the author initially. However, where the making of a work is made by an employee in the course of his employment, unless there is any contrary agreement, the copyright in the work shall be deemed to vest in the person who commissioned the work or the employer. The author's right is transferable by assignment, testamentary disposition or by operation of law, in which case the assignee shall be the owner.

Works eligible for protection are;

- literary works;
- musical works;
- artistic works;
- films;
- sound recordings;
- broadcasts; and
- derivative works

These works shall be protected irrespective of their quality and purpose for which they were created.

- *Exclusive rights of the authors and of the owners of neighboring rights*

Malaysian Copyright law provides copyright owners with both exclusive economic and moral rights.

#### **a) Economic Rights**

Economic rights are exercised during the period of protection. These rights are exercised by the owners while alive, and upon death, for a period of 50 years by their heirs.

Generally, owners of copyright works in literary, musical or artistic works, films and sound recordings have the exclusive rights to control:

- the reproduction of the works in any form (including photocopying, recording etc);
- the performing, showing or playing to the public;
- the communication to the public;
- the distribution of copies to the public by sale or other transfer of ownership; and
- the commercial rental to the public.

These exclusive rights apply irrespective of whether the works are copied partly or wholly. Thus, infringement of copyright occurs if the person claiming can show that the defendant has done such an act. In other words, the burden of proof lies on the person claiming that his/her work has been infringed.

#### b) Moral Rights

Besides the economic rights, copyright protection also includes moral rights. The moral rights are basically the rights to oppose changes in the copyright that could harm the reputation of the author.

#### Exclusive right of the owners of neighboring rights

For the copyright in a **broadcast**, there shall be exclusive rights to control the recording, the reproduction, and the rebroadcasting of the whole or a substantial part of the broadcast (section 15). The show or the play must be made in public and in a place where an admission fee is charged for the whole or a substantial part of the broadcast either in its original form or in any way recognizably derived from the original. The copyright in a television broadcast shall include the right to control the taking of still photographs from such broadcasts.

**Performers' right** shall be the exclusive right to control in Malaysia (section 16A):

- (a) The communication to the public of a live performance, except where the live performance used in such communication is itself a live broadcast performance;
- (b) The fixation of an unfixed performance;
- (c) The reproduction of the fixation of a live performance if-
  - (i) The fixation itself was done without the performer's consent;
  - (ii) The reproduction is made for purposes different from those for which the performer gave consent; or
  - (iii) The fixation was made in accordance with the provisions of subsection (3) , and the reproduction is made for purposes different from those referred to in those provisions;
- (d) The first making available to the public of a fixation of a live performance, or copies thereof, through sale or other transfer of ownership; and
- (e) Rental to the public of a fixation of a live performance, or copies thereof, irrespective of the ownership of the copy rented

- *Exceptions and limitations to copyright*

Section 9(4) provides that reproduction of the typographical arrangement of a published edition for the purposes of research, private study, criticism, review or the reporting of current events does not infringe the copyright subsisting by virtue of the Act if such reproduction is compatible with fair dealing: provided that if such reproduction is made public it is accompanied by an

acknowledgement of the title of the work and its authorship, except where the work is incidentally included in a broadcast.

Section 9(5) also highlights that the Government, the National Archives, or any State Archives, the National Library, or any State library, or any public libraries and educational, scientific or professional institutions as the Minister may by order prescribe, may reproduce the typographical arrangement of a published edition without infringing the copyright subsisting by virtue of this section if such reproduction is in the public interest and is compatible with fair dealing and the provisions of any regulations.

- *Protection of foreign works*

Copyright protection covers works in Malaysia or works first published in Malaysia. Foreign works, are automatically protected provided that foreign person are members of Convention or Union in respect of copyright to which Malaysia is also a member (Section 59A of the Copyright Act).

- *Period of copyright protection*

### **Literary, Musical or Artistic Works**

Generally, copyright in any literary, musical or artistic work shall subsist during the life of the author plus 50 years after his death. However, if a work has not been published during the lifetime of the author, copyright in the work continues to subsist until the expiration of 50 years, following the year in which the work was first published. In the case of a work with joint authorship, the life of the author who dies last is used for the purpose of calculating the copyright duration of the work.

### **Sound Recordings**

The copyright in sound recordings shall subsist until the expiration of a period of 50 years computed from the beginning of the calendar year following the year in which the recording was first published or, if the sound recording has not been published, from the beginning of the calendar year following the year of fixation.

### **Broadcasts**

For the copyright in broadcasts, the duration shall continue to subsist until the expiry of a period of 50 years computed from the beginning of the calendar year following the year in which the broadcasts was first made.

### **Films**

The duration of the copyright in films shall continue to subsist for a period of 50 years computed from the beginning of the calendar year following the year in which the film was first published or first made available to the public or made, whichever is the last.

### **Government Works**

Copyright in works of Government, Government organizations and international bodies shall continue to subsist until the expiry of a period of 50 years computed from the beginning of the calendar year following the year in which the work was first published.

- *Registration*

There is no system of registration for copyright in Malaysia. A work that is eligible is protected automatically upon fulfillment of the following conditions:

- sufficient effort has been expected to make the work original in character;
- the work has been written down, recorded or reduced to a material form;

- the author is a qualified person or the work is made in Malaysia or the work is first published in Malaysia

## **5. International treaties**

Malaysia is a member of the following International Convention and Treaties on Copyright and Related Rights:

- [Berne Convention on the Protection of Literary and Artistic Works](#)
- [WTO Agreement on Trade Related Aspects of Intellectual Property Rights](#) (TRIPS)

## **II. Measures and remedies**

### **1. Copyright infringement**

Infringement occurs when a person does or causes other person to do an act controlled by copyright without the consent of the owner. (Section 36 (1) of the Copyright Act)

Those acts are listed down under Section 36 of the Copyright Act which stipulates the following: Copyright is infringed by any person who, without the consent or license of the owner of the copyright, imports an article into Malaysia for the purpose of:

- (a) selling, letting for hire, or by way of trade, offering or exposing for sale or hire, the article;
- (b) distributing the article –
  - (i) for the purpose of trade; or
  - (ii) for any other purpose to an extent that it will affect prejudicially the owner of the copyright; or
- (c) by way of trade, exhibiting the article in public,  
Where he knows or ought reasonably to know that the making of the article was carried out without the consent or license of the copyright owner.

Copyright is infringed by any person who circumvents or causes any other person to circumvent any effective technological measures that are used by authors in connection with the exercise of their rights under this Act and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.

There is no specific provision on internet piracy. However, Section 36(1) of the Copyright Act states that 'copyright is infringed by any person who does, or causes any other person to do, without the license of the owner of the copyright, an act the doing of which is controlled by copyright under the Act.'. Accordingly, this section is wide enough to cover internet copyright infringement as well.

### **2. Remedies to protect copyright holders**

Remedies available for copyright holders/owners due to infringement of their copyright works are:

Civil Remedies (Section 37 of the Copyright Act 1987),

- By way of damages
- Injunctions (Anton Piller Order / Mareva Injunction)
- Account of profits
- Additional damages (in certain cases) (Section 37(2))

**Criminal Remedies (Section 41 of the Copyright Act 1987)**

- A fine of not less than 2,000 ringgit and not more than 20,000 ringgit for each infringing copy, or to imprisonment for a term not exceeding five years or to both and for any subsequent offence, to a fine of not less than 4,000 ringgit and not more than 40,000 ringgit for each infringing copy or to imprisonment for a term not exceeding 10 years or to both;
- A fine of not less than 4,000 ringgit and not more than 40,000 ringgit for each contrivance in respect of which the offence was committed or to imprisonment for a term not exceeding 10 years or to both and for any subsequent offence to a fine of not less than 8,000 ringgit and not more than 80,000 ringgit for each contrivance in respect of which the offence was committed or to imprisonment for a term not exceeding 20 years or to both;
- A fine not exceeding 250,000 ringgit or to imprisonment for a term not exceeding 5 years or to both and for any subsequent offence, to a fine not exceeding 500,000 ringgit or to imprisonment for a term not exceeding 10 years or to both.

**3. Provisional measures**

- Injunction

There are no specific provisions on provisional measures in the Copyright Act 1987, however, Section 37(1) allows a Party to seek for an injunction in the event of infringement. As one is aware, there are many types of injunctions which are;

- i) Interim injunction (pending disposal of the case)
- ii) Permanent injunction (upon disposal of the case)

To obtain orders on Mareva Injunction / Anton Piller Order, a copyright holder may obtain the same as in Civil Procedure as provided under the Rules of High Court.

- Search

The court is given power to grant search warrants by virtue of Section 44 of the Copyright Act. Only the assistant Controller or a police officer not below the rank of inspector are authorized with a search warrant to enter the house or premises in question for the purpose of a search and seizure. The items which may be searched and seized are not only infringing copies and contrivances but also include any document, vehicles, books or articles which relates to offences committed under the Act.

Remedies on damages or accounts of profits are available under Section 37 of the Copyright Act.

**4. Penalties for copyright infringement**

*In civil cases*

- Damages
- Injunctions (Anton Piller Order / Mareva Injunction)
- Account of profits
- Additional damages (in certain cases) (Section 37(2))

*For criminal offence in copyright cases*

- A fine of not less than 2,000 ringgit and not more than 20,000 ringgit for each infringing

copy, or to imprisonment for a term not exceeding five years or to both and for any subsequent offence, to a fine of not less than 4,000 ringgit and not more than 40,000 ringgit for each infringing copy or to imprisonment for a term not exceeding 10 years or to both;

- A fine of not less than 4,000 ringgit and not more than 40,000 ringgit for each contrivance in respect of which the offence was committed or to imprisonment for a term not exceeding 10 years or to both and for any subsequent offence to a fine of not less than 8,000 ringgit and not more than 80,000 ringgit for each contrivance in respect of which the offence was committed or to imprisonment for a term not exceeding 20 years or to both;

- A fine not exceeding 250,000 ringgit or to imprisonment for a term not exceeding years or to both and for any subsequent offence, to a fine not exceeding 500,000 ringgit or to imprisonment for a term not exceeding 10 years or to both.

#### *Seizure, confiscation, forfeiture and destruction of all infringing copies*

The court is given power to grant search warrants by virtue of Section 44 of the Copyright Act. Only the assistant Controller or a police officer not below the rank of inspector are authorized with a search warrant to enter the house or premises in question for the purpose of a search and seizure. The items which may be search and seized are not only infringing copies and contrivances but also include any document, vehicles, books or articles which relates to offences committed under the Act.

#### *Publication*

It is to be noted that not many decisions have been published in newspapers or magazines but a number of cases have been published in the Malaysian Law Journal (MLJ). This depends on a case by case basis.

### **5. Requirements for foreign persons**

Foreign persons are not required to obtain any special approvals, engage any special agents, or present any special documentation in order to gain access to national courts, customs officials, or police officials to obtain enforcement of their copyright.

## **III. Enforcement**

### **1. Enforcement authorities**

#### **a) Authorities responsible for enforcing the copyright law**

The authorities responsible for enforcing the copyright law are the jurisdiction of the Enforcement Division, the Ministry of Domestic Trade and the Consumer Affairs.

#### **b) Enforcement bodies entitles to act ex-officio in copyright infringement cases**

#### **c) Courts dealing with copyright cases**

The Malaysian Copyright Act provides for a Copyright Tribunal whose function is to grant licenses to produce and publish in the National Language a translation of a literary work written in any other language and arbitration of disputes relating to use of copyright works.



**2. Enforcement at the boarder**

There are no specific measures, neither specific provision for the enforcement of copyright at the border.

**IV. Public Awareness**

1. Awareness campaigns and actions
2. Promotion of legal exploitation
3. Associations and organizations with awareness-raising purpose
4. Best practices

**V. Capacity-building**

1. Training
2. Establishment of specialized units and intersectoral groups
3. Best practices

**VI. Other**

**1. TPM/DRM**

The Copyright Act protects Technological Protection Copyright by considering as infringement of copyright any person who circumvents or causes any other person to circumvent any effective technological measures that are used by authors in connection with the exercise of their rights under this Act and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law (Section 36 of the Copyright Act).

**2. Licensing Schemes**

**3. Optical Discs**

**4. Hotlines**

**5. Contact Details**

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