MALAYSIA'S NEW COPYRIGHT ACT TO MAKE OWNING A SINGLE COUNTERFEIT DVD ILLEGAL

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ABSTRAK


INTRODUCTION

The Intellectual Property Corporation of Malaysia or MyIPO is the agency responsible for the development of the intellectual property system in Malaysia. Under the purview of the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC), MyIPO also manages IP issues including copyrights, patent, trade marks, industrial designs and IC Layout designs protection in Malaysia besides providing legislation advisory services.

BACKGROUND

Malaysia, one of the 164 signatories of the Berne (Paris) Convention, out of the 192 nations worldwide, is amending the Copyright Act 1987, to fulfill the requirements for accession to the World Intellectual Property Organisation (WIPO) Copyright Treaty (WCT) and WIPO Phonograms and Performances Treaty (WPPT) (WIPO Copyright Treaty, 1996). Hence, a Malaysian IP registration can be used as a basis for priority claim for countries which are party to these conventions.

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LATEST DEVELOPMENTS ON COPYRIGHT LAWS IN MALAYSIA

The current Copyright Act 1987 provides protection for literary works, artistic works, musical works, sound recordings, films, broadcasts and performers. The Act was to be tabled for amendment in the Dewan Rakyat (Parliament) in October 2011. It would be presented to the Senate before submitting for His Royal Highness, the King’s Royal consent before coming into force by June 2012.

The amendment also enables performers to receive better protection for their exclusive rights in respect of equitable remuneration and to refer their grievances to the Copyright Tribunal, which will be activated. The MDTCC will decide the minimum rate of royalty payment to performers while Collective Management Organisers (CMOS) must obtain consent of performers (artistes) via agreement or appointment letter to act upon. The penalty of flouting the law is RM50,000.00.

With the evolution of broadcasting industry, the amendment is necessary to expand the right of reproduction of any work via broadcasting to all broadcasters other than that owned by the Government. The inclusion of a new paragraph is to accommodate fair usage through internet with the advent of information and communication technology, ICT. The amendment facilitates clarification on matters relating to back-up copy of computer programs and to deal with related internet copyright issue, providing for some limitations on the liabilities of the internet service provider. For example, the amendment seeks to introduce “technological protection measure” to prohibit the act of circumventing and removing or altering electronic rights management information.

COURT DECISIONS AND PENDING CASES ON COPYRIGHT

Malaysia’s first IP courts were launched in July 2007 in Kuala Lumpur, Penang and Johor to deal specially with copyright and other intellectual property matters (IIPA, 2011). Malaysian courts have seen a gradual increase in the number of lawsuits brought by IP owners in the past two years, with at least 10 reported decisions by the High Court and two reported decisions by the Court of Appeal. Below is an example of some of the more significant cases.

Case - Anti-Piracy

In Rock Records (M) Sdn. Bhd. v Audio One Entertainment Sdn. Bhd. ([2005] 1 CLJ 200) the plaintiff applied for summary judgment for copyright infringement by the defendant under the Copyright Act 1987. Rock Records claimed that Audio One Entertainment had infringed its copyright in sound
recordings by Malaysian artistes by incorporating them into karaoke video CDs without permission.

The court held that a licence granted by a copyright owner to reproduce sound recordings in laser disc format does not extend to the right of reproduction of the sound recordings in karaoke video CD format. Therefore, the reproduction of sound recordings in karaoke video CDs by Audio One Entertainment was a copyright infringement and the plaintiff was granted summary judgment. The court's decision in Rock Records is consistent with government efforts to enforce the Copyright Act 1987 effectively and stamp out piracy.

Pending Case on Copyright

In one remarkable exception in December last year, a trader who had been charged with possession of 6,500 copies of pirated music recordings in 2008, was found guilty by the Sessions Court in Putrajaya. He faced a fine of RM13 million (equivalent of RM2,000 per infringing copy) or a 2-year jail term in default. This huge fine is now pending on appeal to a higher court.

Other Copyright Issues

a) Hard Goods Piracy including Night Market Piracy remains a dominant concern in Malaysia;
b) Internet piracy increases due to the spike in Internet & Broadband Penetration - online infringement of all copyright content;
c) Enterprise End-User Software Piracy Harms Software Companies - new computers of pirated software (hard-disk loading) causes significant losses to business software industry;
d) Camcorder Piracy Causes Massive Losses to Film Producers - damaging in Malaysia as it can fuel rampant online piracy and threatens the growth of Malaysian theatrical box-office marketplace;
e) Internet Café Server-Based Piracy Remains an issue of concern - unauthorised use of copyright materials at Internet Cafés or Internet game rooms;
f) Book Piracy Updates - Rampant unauthorised photocopying on and around university campuses continues to plague book publishers in Malaysia. Piracy of books online is also reported on the rise, certain titles are available for download or for copying (even from University library);
g) Mobile piracy on the rise in Malaysia - Infringements over wireless mobile networks besides mobile device piracy, remains a serious problem for the music and publishing industries in Malaysia.
CONCLUSION

The proposed amendments would ensure that Malaysia's copyright law is consistent and up-to-date with the emergence of new media developments globally. It is also in tandem with the international standards in providing stiffer penalties to penalise and deter copyright infringers. Under the amended act, the enforcement officers of MDTCC are empowered to arrest copyright infringers without warrant.

Punitive measures undertaken by the relevant authority to stamp out potential infringement of the Intellectual Property Rights (IPR) is insufficient. There must be concerted efforts by all quarters to address the public's attitude towards piracy through education in creating greater awareness on the IPR issue for sustainability.

Radio Television Malaysia (RTM) is spearheading the move to acculturate the Intellectual Property issues in its broadcasting content by paying an annual fee of RM1 million to the Music Authors' Copyright Protection (MACP), a non-profit organization. MACP's main functions are to license users of music including radio and television stations, entertainment outlets, shops, online and mobile service providers etc and pay monies collected to their authors, composers and music publishers when their works are broadcast and publicly performed. Performers and artistes have also been urged to register with the Malaysia Intellectual Property Corporation (MylPO) which will issue certificate of their composition, to protect the copyright of songs. The Government has also indicated its intention to learn from The Council of Europe Cybercrime Convention on how to tackle cyber crime.
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