

No. S 92

CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

COPYRIGHT (AMENDMENT) ORDER, 2013

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

COPYRIGHT (AMENDMENT) ORDER, 2013

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation.

1. This Order may be cited as the Copyright (Amendment) Order, 2013.

Amendment of section 2 of S 14/2000.

2. Section 2 of the Emergency (Copyright) Order, 1999, in this Order referred to as the principal Order, is amended, in subsection (1) —

(a) in the definition of “Controller of Customs” —

- (i) in the marginal note, by deleting “Cap. 36.”;
- (ii) by deleting “Customs Act” and by substituting “Customs Order, 2006 [S 39/2006]” therefor;

(b) in the definition of “customs control” —

- (i) in the marginal note, by deleting “Cap. 36.”;
- (ii) by deleting “Customs Act” and by substituting “Customs Order, 2006 [S 39/2006]” therefor.

Amendment of section 20.

3. Section 20 of the principal Order is amended —

(a) by repealing subsection (2) and by substituting the following new subsection therefor —

“(2) References in this Part to the issue to the public of copies of a work are to —

(a) the act of putting into circulation in Brunei Darussalam copies not previously put into circulation in Brunei Darussalam by or with the consent of the copyright owner; and

(b) the act of putting into circulation outside Brunei Darussalam copies not previously put into circulation in Brunei Darussalam or elsewhere, except that, in relation to sound recordings, films and computer programs, the restricted act of issuing copies to the public includes any rental of copies to the public.”;

(b) by adding the following two new subsections —

“{3} References in this Part to the issue to the public of copies of a work do not include —

(a) any subsequent distribution, sale, hire or loan of copies previously put into circulation;

(b) any subsequent importation of copies previously put into circulation; or

(c) any rental of copies to the public,

except, so far as subsection (2)/*(a)* applies, to putting into circulation in Brunei Darussalam copies previously put into circulation outside Brunei Darussalam.

(4) References in this Part to the issue to the public of copies of a work include the issue of the original.”

Insertion of new section 20A.

4. The principal Order is amended by inserting the following new section immediately after section 20 —

“Infringement by rental or lending of copies of work to public.

20A. (1) The rental or lending of copies of the work to the public is an act restricted by the copyright in —

(a) a literary, dramatic or musical work;

(b) an artistic work, other than —

(i) a work of architecture in the form of a building or a model for a building; or

(ii) a work of applied art; or

(c) a film or a sound recording.

(2) In this Part, subject to subsections (3) to (6) —

“lending” means making a copy of the work available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public;

“rental” means making a copy of the work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage.

(3) The expressions “rental” and “lending” do not include —

(a) making available for the purpose of public performance, playing or showing in public or communication to the public;

(b) making available for the purpose of exhibition in public; or

(c) making available for on-the-spot reference use.

(4) The expression “lending” does not include making available between establishments that are accessible to the public.

(5) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section.

(6) References in this Part to the rental or lending of copies of a work include the rental or lending of the original.”

Insertion of new section 25A.

5. The principal Order is amended by inserting the following new section immediately after section 25 —

“Back-up copy of computer program.

25A. (1) Subject to subsection (2), the copyright in a literary work in the form of a computer program is not infringed by the making of a reproduction of the work or of a computer program being an adaptation of the work, if —

(a) the reproduction is made by, or on behalf of, the owner of the copy (in this section referred to as the original copy) from which the reproduction is made; and

(b) the reproduction is made for the purpose only of being used, by or on behalf of the owner of the original copy, *in lieu* of the original copy in the event that the original copy is lost, destroyed or rendered unusable.

(2) Subsection (1) does not apply to the making of a reproduction of a computer program or of an adaptation of a computer program —

(a) from an infringing copy of the computer program; or

(b) contrary to an express direction by or on behalf of the owner of the copyright in the computer program given to the owner of the original copy not later than the time when the owner of the original copy acquired the original copy.

(3) For the purposes of this section —

(a) a reference to a copy of a computer program or of an adaptation of a computer program is a reference to any article in which the computer program or adaptation is reproduced in a material form; and

(b) a reference to an express direction, in relation to a copy of a computer program, or of an adaptation of a computer program, includes a reference to a clearly legible direction printed on the copy or on a package in which the copy is supplied.”.

Amendment of section 31.

6. Section 31 of the principal Order is amended, in subsection (4), by deleting “subsection (2)” where it appears for the second time in the fourth line and by substituting “subsections (2) and (3)” therefor.

Amendment of section 109.

7. Section 109 of the principal Order is amended —

(a) by inserting the following new subsection immediately after subsection (3) —

“(3A) The period specified in a notice under subsection (1) shall not exceed 5 years and shall not extend beyond the period for which copyright subsists.”;

(b) in subsection (4) —

- (i) in the marginal note, by deleting “Cap. 36.”;
- (ii) by deleting “Customs Act” from the fourth line and by substituting “Customs Order, 2006 (S 39/2006)” therefor;
- (iii) by deleting “section 28 of that Act” from the fifth line and by substituting “section 31(1) of that Order” therefor;
- (iv) by deleting “Act” from the sixth line and by substituting “Order” therefor.

Amendment of section 110.

8. Section 110 of the principal Order is amended —

(a) by inserting “(1)” immediately before “Where” in the first line;

(b) in subsection (1)/*(a)*, by deleting “subsection (1) of section 109” and by substituting “section 109(1) or (3)” therefor.

Amendment of section 113.

9. Section 113 of the principal Order is amended —

(a) in subsection (1), by deleting “subsection (1) of section 109” from the third and fourth lines and by substituting “section 109(1) or (3)” therefor;

(b) in subsection (2) —

- (i) in paragraph *(a)*, by deleting “Collector” from the first and second lines and by substituting “Controller” therefor;
- (ii) in paragraph *(b)*, by deleting “Collector” from the second line and by substituting “Controller” therefor;

(c) in subsection (3), by deleting “Collector” from the first line and by substituting “Controller” therefor.

Amendment of section 114.

10. Section 114 of the principal Order is amended, in subsection (1), by deleting “subsection (1) of section 109” and by substituting “section 109(1) or (3)” therefor.

Amendment of section 117.

11. Section 117 of the principal Order is amended, in subsection (1)(a), by deleting “subsection (1) of section 109” and by substituting “section 109(1) or (3)” therefor.

Amendment of section 163.

12. Section 163 of the principal Order is amended, in subsection (1) —

(a) in paragraph (b), by deleting “the relevant provisions of this Part have been applied” and by substituting “section 166 applies” therefor;

(b) in paragraph (c), by deleting “the relevant provisions of this Part have been applied” and by substituting “section 166 applies” therefor.

Amendment of section 164.

13. Section 164 of the principal Order is amended, in subsection (1)(b), by deleting “the relevant provisions of this Part have been applied” and by substituting “section 166 applies” therefor.

Amendment of section 165.

14. Section 165 of the principal Order is amended, in paragraph (b), by deleting “the relevant provisions of this Part have been applied” and by substituting “section 166 applies” therefor.

Amendment of section 176.

15. Section 176 of the principal Order is amended, in subsection (1), by deleting “(6)” from the first line and by substituting “(7)” therefor.

Amendment of section 177.

16. Section 177 of the principal Order is amended, in subsection (1), by deleting paragraph (a) and by substituting the following new paragraph therefor —

“(a) any educational institution, as defined in section 2 of the Education Act (Chapter 210); and”.

Insertion of new section 203A.

17. The principal Order is amended by inserting the following new section immediately after section 203 —

“Penalty for breach of section 203(2).

203A. Any person who commits an act referred to in section 203(2) is guilty of an offence and liable on conviction to a fine not exceeding \$250,000, imprisonment for a term not exceeding 3 years or both, and in respect of a second or subsequent offence, to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both.”

Amendment of section 204.

18. Section 204 of the principal Order is amended —

(a) in subsection (1)/b), by inserting “possesses, has custody or control of, or” immediately before “imports”;

(b) by repealing subsection (5) and by substituting the following new subsection therefor —

“(5) A person guilty of an offence against subsection (1) is liable on conviction to a fine not exceeding \$10,000 for the infringing copy of a work or for each infringing copy of a work in respect of which the offence was committed, imprisonment for a term not exceeding 5 years or both, and in respect of a second or subsequent offence, to a fine not exceeding \$20,000 for the infringing copy of a work or for each infringing copy of a work in respect of which the offence was committed, imprisonment for a term not exceeding 10 years or both.”;

(c) by repealing subsection (6) and by substituting the following new subsection therefor —

“(6) A person guilty of an offence against subsection (2) is liable on conviction to a fine not exceeding \$20,000 for each infringing copy of a work in respect of which the offence was committed, imprisonment for a term not exceeding 10 years or both, and in respect of a second or subsequent offence, to a fine not exceeding \$40,000 for each infringing copy of a work in respect of which the offence was committed, imprisonment for a term not exceeding 20 years or both.”.

Insertion of new sections 204A and 204B.

19. The principal Order is amended by inserting the following two new sections immediately after section 204 —

“Presumption under section 204(1)/b).

204A. For the purpose of section 204(1)/b), any person who has in his possession, custody or control five or more infringing copies of a work in the

same form shall, unless the contrary is proved, be presumed to be in possession, custody or control of or to have imported such copies otherwise than for his private or domestic use.

Presumption under section 204(1)(e).

204B. For the purpose of section 204(1)(e), any person who has in his possession five or more infringing copies of a work or other subject matter shall, unless the contrary is proved, be presumed to be in possession of such copies in the course of a business.”.

Amendment of section 205.

20. Section 205 of the principal Order is amended —

(a) in subsection (1)(b), by inserting “possesses, has custody or control of, or” immediately before “imports”;

(b) by repealing subsection (5) and by substituting the following new subsection therefor —

“(5) A person guilty of an offence against subsection (1) is liable on conviction to a fine not exceeding \$10,000 for the infringing copy of a work or for each infringing copy of a work in respect of which the offence was committed, imprisonment for a term not exceeding 5 years or both, and in respect of a second or subsequent offence, to a fine not exceeding \$20,000 for the infringing copy of a work or for each infringing copy of a work in respect of which the offence was committed, imprisonment for a term not exceeding 10 years or both.”;

(c) by repealing subsection (6) and substituting the following new subsection therefor —

“(6) A person guilty of any other offence against this section is liable on conviction to a fine not exceeding \$25,000, imprisonment for a term not exceeding 3 years or both.”.

Insertion of new sections 205A and 205B.

21. The principal Order is amended by inserting the following two new sections immediately after section 205 —

“Presumption under section 205(1)(b).

205A. For the purpose of section 205(1)(b), any person who has in his possession, custody or control, five or more infringing copies of a work in the same form shall, unless the contrary is proved, be presumed to be in

possession, custody or control of or to have imported such copies otherwise than for his private and domestic use.

Presumption under section 205(1)(e).

205B. For the purpose of section 205(1)(e), any person who has in his possession five or more infringing copies of a work shall, unless the contrary is proved, be presumed to be in possession of such copies in the course of a business.”

Repeal of section 206.

22. Section 206 of the principal Order is repealed.

Insertion of new section 207A.

23. The principal Order is amended by inserting the following new section immediately after section 207 —

“General penalty for offences not otherwise provided for.

207A. Any person guilty of any offence against this Order is liable on conviction, if no other penalty is provided, to a fine not exceeding \$25,000, imprisonment for a term not exceeding 3 years or both.”

Amendment of section 210.

24. The principal Order is amended by repealing section 210 and by substituting the following new section therefor —

“Search warrants.

210. (1) Where a magistrate is satisfied by information given by a police officer that there are reasonable grounds for believing that —

(a) an offence against section 204 or 205 has been or is about to be committed in any place; and

(b) evidence that such an offence has been or is about to be committed in any place,

he may issue a warrant authorising a police officer to —

(i) enter and search that place, using such reasonable force as is necessary;

(ii) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect; and

(iii) detain every person found in the place until the place has been searched.

(2) A warrant under subsection (1) —

(a) may authorise persons to accompany the police officer executing the warrant; and

(b) remains in force for 28 days from the date of its issue.

(3) In executing a warrant issued under this section, the police officer may seize any article if he reasonably believes that it is evidence that an offence against section 204 or 205 has been or is about to be committed.

(4) In this section, “police officer” means a police officer not below the rank of an Inspector or a police officer in charge of a police station.”

Insertion of new sections 210A to 210M.

25. The principal Order is amended by inserting the following thirteen new sections immediately after section 210 —

“Entry without warrant.

210A. If a police officer is satisfied upon information received that he has reasonable grounds for believing that by reason of delay in obtaining a search warrant, any article, vehicle, book, document, copy or contrivance used to commit or to be used to commit an offence against this Order is likely to be removed or destroyed, he may enter any premises without a warrant and seize any such article, vehicle, book, document, copy or contrivance from therein.

Arrest without warrant.

210B. Any police officer may arrest without a warrant any person who, in any public place —

(a) sells, exposes or offers for sale; or

(b) has, or is reasonably suspected of having, in his possession for the purpose of selling or letting for hire,

any infringing copy of any work and may seize any infringing copy of any work.

Stop, search and board vehicles.

210C. (1) Any officer may, without a warrant issued under section 210(1) —

(a) stop, search and forcibly board any vehicle in which he reasonably suspects that there is any infringing copy of any work; and

(b) seize, remove or detain any such infringing copy and anything which appears to him to be or to contain, or likely to be or to contain, evidence of an offence against this Order.

(2) In this section, “officer” means —

(a) a police officer;

(b) an officer of customs as defined in the Customs Order, 2006 (S 39/2006); or

(c) any officer or class or description of officers appointed by the Minister, by notification published in the *Gazette*, to exercise the powers and perform the duties conferred and imposed on an authorised officer by this section.

Access to computerised or digitalised data.

210D. (1) Any police officer shall, in the exercise of his powers under section 210A, if it is necessary, be given access to computerised or digitalised data whether stored in a computer or any other medium.

(2) For the purpose of this section, “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of the computerised data.

List of things seized.

210E. The police officer seizing any infringing copy of a work under this Part shall prepare a list of the things seized and forthwith deliver a copy signed by him to the occupier, or his agents or employees present in the premises.

Sealing of things.

210F. If it appears to the officer that it is not practical to remove from where they are found, any thing or document seized by him in the exercise of his powers under this Order, by reason of their nature, size or amount, he may by any means seal such things or documents in the premises or container in which they are found and it shall be an offence for any person without

lawful authority to break, tamper with or damage such seal or remove such things or documents or to attempt to do so.

Obstruction.

210G. Any person who —

(a) refuses any officer access to any vessel, aircraft, vehicle or place which the officer is entitled under this Part; or

(b) obstructs or hinders any officer in the execution of any power conferred upon that officer by this Part,

is guilty of an offence and liable on conviction to a fine not exceeding \$15,000, imprisonment for a term not exceeding 12 months or both.

Evidence of *agent provocateur* admissible.

210H. (1) Notwithstanding any written law or rule of law to the contrary, no *agent provocateur* shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under this Order, if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

(2) Notwithstanding any written law or rule of law to the contrary, any statement, whether oral or in writing made to the *agent provocateur* by any person who subsequently is charged with an offence against this Order shall be admissible as evidence at his trial.

Tipping off.

210I. (1) Any person who —

(a) knows or has reason to suspect that an officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Order and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or

(b) knows or has reason to suspect that a disclosure has been made to the officer under this Order and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

is guilty of an offence.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter —

(a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or

(b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

Protection of informers.

210J. (1) Except as hereinafter provided, no complaint as to an offence under this Order shall be admitted in evidence in any civil or criminal proceedings, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding contain any entry in which any informer is named or described or which might lead his discovery, the court before which the proceeding is had shall cause all such passage to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery, but no further.

(3) If in any proceedings relating to an offence under this Order, the court, after full inquiry into the case —

(a) is of the opinion that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true; or

(b) is of opinion that justice cannot be fully done between the parties thereto without the discovery of the informer,

the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

Forfeiture.

210K. (1) Any infringing copy of a work seized pursuant to this Order, shall be deemed to be forfeited at the expiration of one calendar month from the date of seizure, unless a claim thereto is made before that date in the manner set out in this section.

(2) Any person asserting that he is the owner of any seized infringing copy of a work and that the same are not liable to forfeiture may personally

or by his agent authorised in writing give written notice to the Commissioner of Police of his claim.

(3) On receipt of such notice, the Commissioner of Police may, subject to any direction of the Public Prosecutor —

(a) direct that such infringing copy of a work be released or forfeited;

(b) refer the matter to a court for decision.

(4) The court to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the infringing copy of a work and the person from whom they were seized to appear before it and upon his appearance or default to appear, due service of the summons being proved, the court shall proceed to the examination of the matter and if satisfied on the balance of probabilities that an offence has been committed and that such infringing copy of a work was the subject matter or was used in the commission of such offence, shall order the same to be forfeited, or if it is not so satisfied, order the release of the same infringing copy of a work to the person entitled to it.

(5) Any infringing copy of a work forfeited or deemed to be forfeited shall be delivered to the Commissioner of Police who shall dispose of it in a manner he thinks fit or may deliver it up to the first owner of copyright in question, his assignee or exclusive licensee, as the case may be.

Proportional examination of articles seized to be accepted.

210L. (1) Where packages or receptacles containing copies suspected to be infringing copies or otherwise liable to seizure have been seized, it shall be sufficient only to open and examine one *per cent* or any five copies, whichever is lesser, of the contents of each package or receptacle seized.

(2) The court shall presume that the remaining copies contained in the package or the receptacle, are of the same nature as those copies examined.

Claim to copyright.

210M. (1) An affidavit or statutory declaration made before any person having authority to administer an oath under section 380 of the Criminal Procedure Code (Chapter 7), by or on behalf of any person claiming to be —

(a) the owner of the copyright in any works eligible for copyright under this Order stating that —

- (i) at the time specified therein copyright subsisted in such work;
- (ii) he or the person named therein is the owner of the copyright; and
- (iii) a copy of the work annexed thereto is the true copy thereof; or

(b) the performer in a live performance eligible for the right copyright under this Order stating that —

- (i) at the time specified therein his right to copyright subsisted in such live performance;
- (ii) he or the person named therein is the performer; and
- (iii) a copy of the document annexed thereto is the document which proves that he or the person named therein performed in the live performance,

shall be admissible in evidence in any proceedings under this Order and shall be *prima facie* evidence of the facts contained therein.

{2} Any person who is authorised to act on behalf of the owner of the copyright or performer for the purposes of subsection (1) shall be required to produce such authorisation in writing.”.

Amendment of section 211.

26. Section 211 of the principal Order is amended, in subsection (3) —

(a) in the marginal note, by deleting “S 25/91.”;

(b) by deleting “Emergency (Limitation) Order, 1991” and by substituting “Limitation Act (Chapter 14)” therefor.

Insertion of new section 214A.

27. The principal Order is amended by inserting the following new section immediately after section 214 —

“Public Prosecutor’s fiat.

214A. (1) Notwithstanding any provision in the Criminal Procedure Code (Chapter 7), the Public Prosecutor may by *fiat*, and subject to such conditions as he thinks fit, permit any person to prosecute, on the person’s

own behalf, any particular offence punishable under this Order, or to pursue any further proceedings in such prosecution.

(2) The person to whom the *fiat* is granted under subsection (1) may either appear in person or by an advocate.”

Insertion of new section 216.

28. The principal Order is amended by inserting the following new section immediately after section 215 —

“Jurisdiction of Court of a Magistrate.

216. Notwithstanding the provisions of any written law to the contrary, a Court of a Magistrate shall have jurisdiction to try any offence under sections 203(2), 204 and 205 and to award the full punishment for any such offence.”

Amendment of First Schedule.

29. The First Schedule to the principal Order is amended —

(a) in paragraph 13(3)(a), by deleting “12” and by substituting “11” therefor;

(b) in paragraph 13(3)(b), by deleting “12” and by substituting “11” therefor;

(c) by renumbering paragraph “13”, where it appears immediately after paragraph 14, as paragraph “15”.

Made this 1st. day of Safar, 1434 Hijriah corresponding to the 4th. day of December, 2013 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM