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Indonesia's New Copyright Law: The Highlights

Indonesia's House of Representatives passed the latest draft of the country's Copyright Bill on September 16, 2014, and it will soon come into law. These latest revisions mark the third set of amendments made in the history of Indonesia's copyright law.

The changes introduced by the new copyright law are generally favorable to copyright owners. Of particular note is that the changes pave the way for a clearer understanding of the country's copyright law—a law previously beset by ambiguity.

Clearer Definitions

The new copyright law defines many previously unclear terms including "royalty," "copyright piracy," "compensation," "commercial use," and "Collection Management Organization." This will go far toward fostering understanding between copyright owners and law enforcement agencies, as well as between licensors and licensees in the context of license agreements.

Longer Periods of Copyright Protection

The period of protection for most types of copyright work is to be extended from 50 years to 70 years after the death of the author. In the case of a work owned by a legal entity, copyright will remain valid for 50 years from the date of first publication.

Landlord Liability

According to the new copyright law, the management of a trade venue, such as a shopping mall or retail center, is prohibited from allowing the sale and/or reproduction of counterfeit goods which infringe upon the copyright or related rights of others.

If a landlord deliberately and knowingly allows the sale and/or reproduction of counterfeit goods at their trade venue, the landlord shall be liable to a maximum fine of approximately USD 9,000.

While the criminal sanction for landlord liability excludes imprisonment, the introduction of a fine actually represents a remarkable step for Indonesia's system of IP law. As an offshoot effect, other pending bills, such as those related to Indonesia's trademark and patent laws, will most likely introduce a similar provision. This will serve as a strong supporting force to tackle Indonesia's rampant copyright piracy.

A potentially complicating and undetermined issue is, however, whether landlords can include a waiver clause in the lease agreement to bypass the provisions and transfer all of the liabilities to the tenant.

Collective Management Organization

In order to assist copyright holders, including authors, to manage and collect a reasonable amount of compensation from users of their copyright works, the new law introduces the concept of Collective Management Organizations.

A Collective Management Organization can be established in the form of a nonprofit legal entity authorized by the copyright holder and/or the author and in possession of an operation permit, obtained from the Minister of Laws and Human Rights. In order to qualify for the operation permit, the Collective Management Organization must meet a requirement to represent a minimum number of copyright holders and/or authors. For example, the minimum number requirement for Collective Management Organizations in the field of songs and music is 200 authorizers of a shared interest.

The Collective Management Organizations should, in theory, be welcomed by all stakeholders, as this system sets out to standardize all of the royalty collection agencies through government control. It should also mitigate the problem posed by malicious, unauthorized collection agencies which have manipulated copyright law to threaten copyright users such as owners of restaurants and karaoke clubs.

Prohibition on Recordal of Trademark Logos

As a general rule, a work automatically enjoys copyright protection when it is created, and it is not necessary to register this right. Although registration is not mandatory, the Directorate General of Intellectual Property (DGIP) allows for copyright recordal to enable a copyright holder or author to record their work for purposes of *prima facie* evidence.

The new law, however, explicitly states that a painting or drawing in the form of a logo or other distinctive sign which is used as a trademark cannot be recorded. But the law does not state whether such trademark logo would be protected under the copyright law. Notably, a drawing of a logo being used as a trademark is not listed among the noncopyrightable works under Article 41.

Copyright of Drawings for Industrial Designs

Under the previous copyright law, an industrial design drawing was precluded from copyright protection, while this preclusion is not seen under the new law. This suggests that it may now be possible to claim copyright protection for an industrial design drawing.

E-Filing of Copyright Recordal

The new copyright law allows for copyright recordal to be made through an online filing system, introduced by the DGIP a few months ago and currently undergoing a trial period. Several more months may be needed for the DGIP to bridge an effective payment system with major local banks to allow for the online payment of official fees.

The new e-filing system will likely be extended to other types of IP registrations, such as trademarks or patents, in the future.

Online Infringement

To tackle online infringement, the new copyright law empowers the Ministry of Information to block access to infringing material found on the Internet, although details about how this will occur in practice are not yet clear.

A Better IP Landscape for Indonesia

In summary, this new copyright law is a promising step toward improving Indonesia's IP landscape, and hopefully, this momentum will carry over to other pending bills—notably the trademark and patent bills—as well. The key to successfully implementing this law lies heavily on the implemented regulations to be issued by the Ministry, which will ensure that all mechanisms introduced under the law can function properly. 🚲