

## Client Alert



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### Indonesia: Law No. 28 of 2014 on Copyright

On 16 October 2014, the new Copyright Law was introduced as Law Number 28 of 2014. This new Copyright Law became effective on 16 October 2014.

This is the first new Indonesian intellectual property ("IP") law in 12 years and we should expect other new IP laws to follow. Copyright issues have become more complex over the last 12 years and the previous Law No. 19 of 2002 on Copyright is considered to be no longer sufficient to regulate the developments, in particular in the field of information and communication technology.

#### Transitional Provisions

Pending copyright applications and ongoing copyright cases that were lodged before the effective date of the new Copyright Law will be processed based on the old Copyright Law.

Any copyright registration certificates issued based on the old Copyright Law will now be named as recordings of copyright and considered effective until the validity period of the work expires.

Sale and purchase agreements of songs or music that were executed before the new Copyright Law became effective should remain binding until the term of the agreement ends.

Copyright that is assigned under any "flat-sold" agreement that had reached 25 years when the new Copyright Law is effective, should be returned to the original author within two years after the effective date of the new Copyright Law. If the "flat-sold" agreement has not yet reached 25 years when the new Copyright Law is effective, the copyright should be returned to the original author 25 years after the execution date of the "flat-sold" agreement, plus two years as an additional.

#### Economic Rights

The new Copyright Law details the scope of economic rights of an author or copyright holder, which are rights to: (i) the publication of the work, (ii) the reproduction of the work, (iii) the translation of the work, (iv) the adaptation, the arrangement and the transformation of the work, (v) the distribution of the work and its copies, (vi) the performance of the work, (vii) the announcement of the work, (viii) the communication of the work, and (ix) the rental of the work.

## Moral Rights

The new Copyright Law introduces a new provision with regard to moral rights in the event the author passes away. The inheritor may in writing opt to waive or to decline the implementation of the moral rights given.

## The extended duration of copyright protection

The new Copyright Law extends the duration of copyright protection to the author's lifetime plus 70 years for books, pamphlets and other written works; speeches, lectures and sermons; music and songs, drama, musical shows and choreographic works; artworks in the form of paintings, drawings, carvings and sculptures; architectural work, visual aids, maps and batik.

## Assignment of Rights

If an assignment of rights agreement on works such as books, written works, songs and music does not stipulate the duration of the assignment period, by law the copyright ownership would automatically be assigned back to the original author after 25 years.

## Copyright Licensing

The new Copyright Law provides general provisions on copyright licensing, such as that the licensing period should not extend beyond the validity and protection period of the licensed copyright works, and that the licensee is entitled to receive royalty from the licensor, unless agreed otherwise.

The new Copyright Law states that a copyright license agreement should not be used as an avenue to diminish or take over all the author's rights in relation to its copyright.

## Copyright Recordal

Voluntarily registration of copyright work can still be done at the Copyright Office. However, the new Copyright Law refers to this mechanism as recordation of copyright instead of registration of copyright.

## Security interest over copyright

The new Copyright Law now also introduces a new provision stating that as intangible assets, copyrights can be put under security interest (*fiducia*). The prevailing law on *Fiducia* in Indonesia will apply.

## Landlord Liability

There is a new provision that stipulates the application of a landlord liability principle where the landlord of a trade area may not allow the sale and/or the reproduction of pirated goods on its premises. If a landlord fails to comply, it would be subject to a monetary fine of a maximum Rp. 100,000,000.

## Fair Use Provisions

The new Copyright Law does not define "fair use", but it regulates a certain scope of activities of copyright use that cannot be considered as infringement.

As long as the information on the authors of the works' is disclosed, unauthorized use of all or a substantial part of copyright works does not constitute infringement if it is carried out (i) for the purposes of education,

research, writing scientific works, reports, criticisms, and reviewing cases without damaging the fair interests of the copyright owner; (ii) for the purposes of security and organization of the state, and court proceedings; (iii) for non-commercial performance or staging without damaging the fair interests of the copyright owner; (iv) for facilitating people with disabilities (e.g. braille or audio books) for non commercial purposes; and (v) for changing architectural works under certain technical consideration.

The new Copyright Law provides specific provisions on fair use of information and technology platforms that use copyright, such as the internet. Particularly, it stipulates that unauthorized dissemination of copyrighted contents using information technology and communication medias that (i) is for non-commercial purposes; (ii) is beneficial for the author or related parties; or (iii) is carried out as long as the authors do not object to such creation and dissemination, is allowed and cannot be considered as infringement.

## Collecting Societies

Collecting societies in Indonesia are now subject to more detailed provisions under the new Copyright Law. They are defined as "collective management organizations", and are in the form of non-profit organizations that must obtain an operational license from the Minister of Law and Human Rights ("MOLHR") by fulfilling certain requirements.

Specifically for collecting societies of song and musical works, the new Copyright Law requires the establishment of two national collecting societies, one representing the interests of authors, while the other representing the interests of the neighboring rights owners (e.g. performers).

Collecting societies that are carrying out royalty collecting activities without an operational license would be subject to four years imprisonment or a monetary fine of a maximum of Rp1,000,000,000.

## Coordination between relevant ministries on infringing contents

The new Copyright Law also accommodates the rights of the MOLHR and the Minister of Communication and Informatics ("MOCI") to coordinate in shutting down electronic systems or contents that disseminate contents that infringe on any copyrights. Any person who is aware of any activities that infringe copyrights on an electronic system (information and communication technology media) may submit notification of infringement to the MOLHR for verification and process. The MOLHR will make a recommendation to the MOCI to (i) take down the copyright infringing contents, or (ii) block access to the relevant electronics system.

## Criminal Action

Under the new Copyright Law, before lodging any criminal complaint, the copyright owners should first try to resolve disputes through mediation. However, this requirement does not apply in cases of infringement in the form of piracy (e.g. distribution of pirated copyright works).

Further, criminal cases related to infringement will only be processed based on complaints lodged by the copyright owners to enforcement officials.

The new Copyright Law details criminal sanctions for copyright violation based on the type of unauthorized actions, which range from Rp. 100,000,000 to Rp. 4,000,000,000 of monetary fines and/or one to ten years of imprisonment.

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With the enactment of the new Copyright Law, Indonesia will now have an adequate law to tackle more copyright violations and the enforcement issues. It will be interesting to see how the implementation of this new Copyright Law in practice.