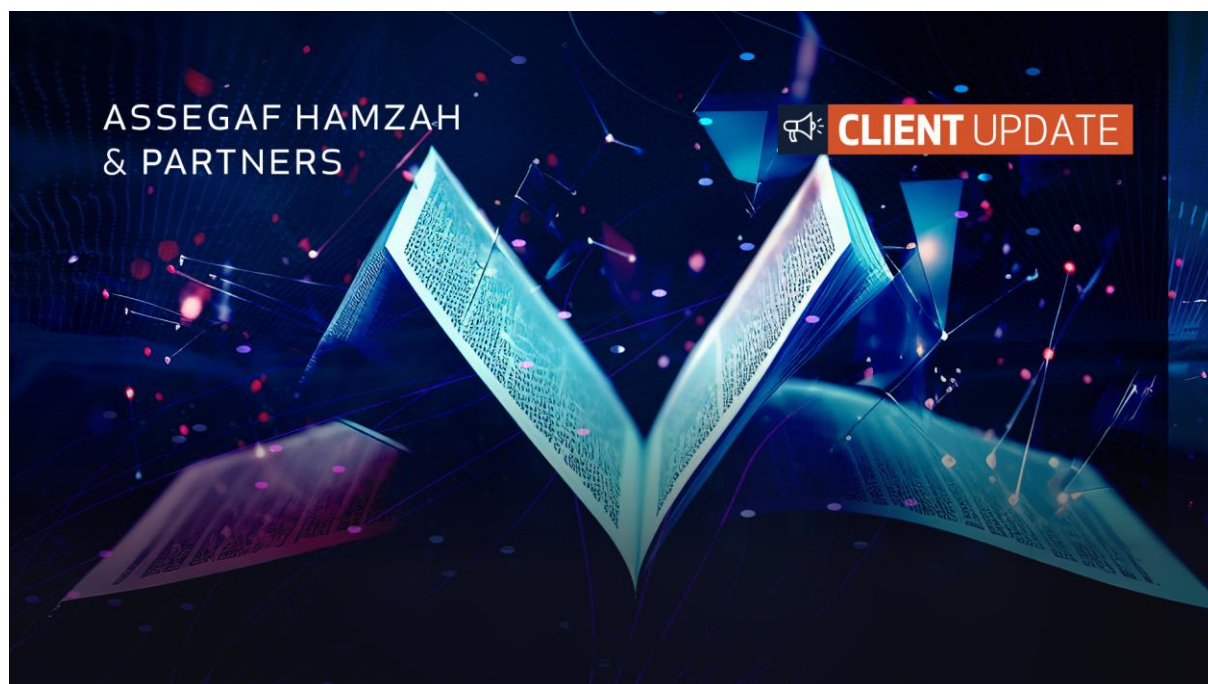


## Client Update: Indonesia

24 July 2024

# New Regulation on Royalties of Books: A Victory for Authors



In June 2024, the Ministry of Law and Human Rights (“**Ministry**”) passed the Ministry of Law and Human Rights Regulation No. 15 of 2024 on the Management of Royalties for Secondary Licensing of Copyright of Books and Other Literary Works (“**Regulation**”). This Regulation aims to provide legal certainty for all parties when duplicating books or other literary works in physical, digital, and/or virtual forms.

By way of background, royalties from literary works (“**Books**”) are compensation paid to the author or copyright holder for the economic rights arising from the use of the Books. The term "secondary use" includes activities such as making copies of the Books or utilising artificial intelligence or AI on the Books. The Regulation covers both commercial and non-commercial reproduction and distribution of Books. Notably, non-commercial uses will fall under the Regulation if they are reasonably detrimental to the legitimate interests of the author or copyright holder.

Before the enactment of the Regulation, although authors and copyright holders were entitled to receive royalties from the secondary use of their Books, they faced significant challenges in actualising these royalties. Consequently, many suffered financial losses. Moreover, this lack of legal protection undermined the value of their intellectual property and prevented them from benefitting from the full economic potential of their Books.

The Regulation marks a significant step forward in ensuring that authors receive fair remuneration for the use of their works. Indeed, the Regulation clearly stipulates that authors and copyright holders are

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entitled to receive royalties from the secondary use of their Books. To aid them in collecting the royalties, authors and copyright holders can register as members of a Collective Management Organisation (“CMO”). In this scenario, instead of receiving the royalties directly, the royalties will be paid to the CMO, which has the authority to collect royalties from the secondary use of Books and distribute the royalties to the authors and copyright holders.

The key provisions of the Regulation include governing:

1. The licensing mechanism for Books;
2. The limitations and exceptions of the use of Books; and
3. The collection, accumulation, and distribution of royalties.

## Licensing Mechanism

A common example of secondary use is copying. The Regulation recognises that copies can be made in the form of prints, photocopies, scans, screenshots, internet downloads, emails, posts/uploads, storage, shares, read-alouds, live performances, and web scrapings. Besides identifying the types of copies that can be made, the Regulation also governs the users deemed as “secondary users” of Books, namely:

- Education institutions, e.g. universities;
- Research institutions;
- Ministry/governmental institutions/regional governments;
- Private businesses that manage the business of copying documents;
- Photocopy businesses;
- Electronic system organisers;
- Broadcasting institutions;
- Artificial intelligence or AI developers; and
- Any other secondary users based on the Regulation.

Under the Regulation, secondary use of Books, e.g. through copying, can be done by a third party without obtaining the author or copyright holder’s permission by paying royalties to the CMO. Royalties must be paid if the secondary use of the Books is for commercial purposes or if the purposes are non-commercial, they are reasonably detrimental to the legitimate interests of the author or copyright holder.

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#### *AI developers*

As detailed above, the Regulation recognises many secondary users of literary works, including AI developers. When an AI developer processes a Book as part of the AI's data training, the developer will be required to pay royalties to the author or the copyright holder of the Book. Under Article 18 of the Regulation, secondary use of Books by AI developers include internet downloading, storing, sharing, and web scraping.

### Limitation for Secondary Use of Works

Under the Regulation, the secondary use of a Book must not exceed 10% of the Book's content. Additionally, such use must not harm the legitimate interests of the Book's author or copyright holder. Furthermore, the secondary use of a literary work in a magazine, newspaper, or newsletter cannot use its full version.

### Collection, Accumulation, and Distribution of Royalties

The Regulation authorises the CMOs to annually collect royalties from secondary use based on the author or copyright holder's written approval. For foreign Books, there must be a reciprocal agreement with the CMO in the author or copyright holder's country or region, and/or a reciprocal agreement with the relevant entity. However, it is unclear what relevant entity is referred to by the Regulation. Written approval from the author or copyright holder must be in the form of a power of attorney given to the CMO to collect royalties from secondary use on behalf of the author or copyright holder.

Additionally, CMOs may also collect royalties for the interest of authors or copyright holders who are members of the CMOs. In this case, the royalties will be distributed based on the report of the secondary use, which will be in the form of a log sheet that records the utilisation and sampling by secondary users, as well as the amount of royalties allocated to the author or copyright holder based on the agreement between the CMO and the secondary users. While the Regulation mentions that there must be an agreement between the CMOs and the secondary users, the Regulation lacks details on the minimum requirements of such agreement.

The Regulation mandates CMOs to distribute royalties to authors or copyright holders and to notify the Ministry of the distribution at least once a year. The royalty distribution notification must include the amount of royalties distributed, recipient of the royalties, and data about the secondary users for each commercial purposes.

Furthermore, the Regulation stipulates that education institutions and micro and small enterprises may submit a tariff adjustment request to the CMOs to reduce the amount of royalties that should be paid. One of the CMOs in Indonesia, Perkumpulan Reproduksi Cipta Indonesia, is currently preparing a guideline to determine the amount of royalties for secondary use of Books as mandated by the Regulation.

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### Key Takeaways

As a direct consequence of the Regulation, secondary users of Books must pay royalties to the CMOs for commercial purposes. Even if the secondary use is of a non-commercial nature, the user must still pay royalties to the CMO if such use can reasonably impact the interests of the Book's author or copyright holder. This requirement stands to benefit authors and copyright holders to optimise the royalties mechanisms and maximise the amount of royalties that authors and copyright holders can receive.

Moreover, the Regulation serves to mitigate the risk of royalties disputes in the future, thereby providing legal certainty for secondary users of Books. Apart from AI developers, the Regulation can also be applied to the use of journalistic works by digital platform providers in connection with Presidential Regulation No. 32 of 2024, which govern the responsibilities of digital platform companies to support quality journalism.

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

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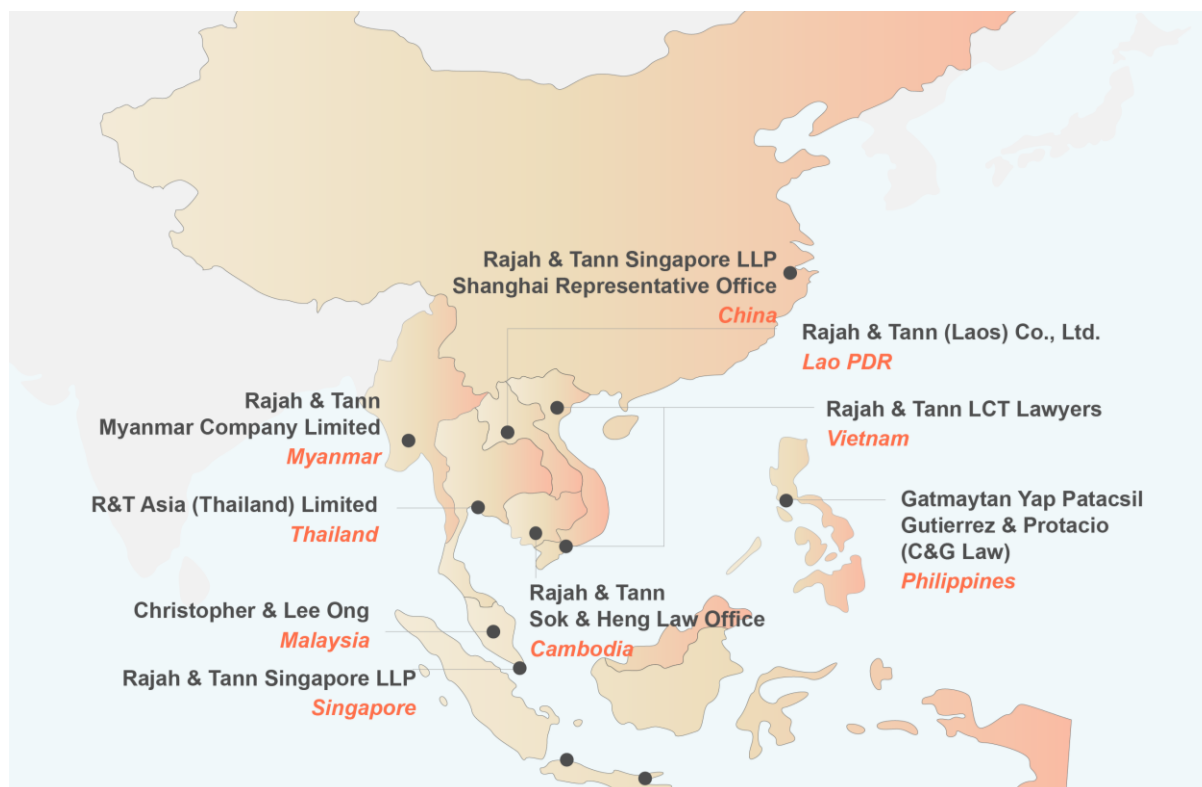
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