

COPYRIGHT ORDINANCE

(Cap. 528)

Contents

Section		Page
	PART I	
	PRELIMINARY	
1.	Short title and interpretation	1-2
	PART II	
	COPYRIGHT	
	DIVISION I—SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT	
2.	Copyright and copyright works	2-2
3.	Rights subsisting in copyright works	2-2
4.	Literary, dramatic and musical works	2-4
5.	Artistic works	2-6
6.	Sound recordings	2-6
7.	Films	2-8
8.	Broadcasts	2-8
9.	Cable programmes	2-12
10.	Published editions	2-22
11.	Authorship of work	2-22

COPYRIGHT ORDINANCE

T-4

Cap. 528

Section		Page
12.	Works of joint authorship	2-24
13.	First ownership of copyright	2-26
14.	Employee works	2-26
15.	Commissioned works	2-26
16.	Government copyright, etc.	2-28
17.	Duration of copyright in literary, dramatic, musical or artistic works	2-28
18.	Duration of copyright in sound recordings	2-32
19.	Duration of copyright in films	2-34
20.	Duration of copyright in broadcasts and cable programmes	2-36
21.	Duration of copyright in typographical arrangement of published editions	2-38
DIVISION II—RIGHTS OF COPYRIGHT OWNER		
22.	The acts restricted by copyright in a work	2-38
23.	Infringement of copyright by copying	2-42
24.	Infringement by issue of copies to the public	2-42
25.	Infringement by rental of work to the public	2-44
26.	Infringement by making available of copies to the public	2-46
27.	Infringement by performance, playing or showing of work in public	2-48

Section		Page
28.	Infringement by broadcasting or inclusion in a cable programme service	2-48
29.	Infringement by making adaptation or act done in relation to adaptation	2-50
30.	Secondary infringement: importing or exporting infringing copy	2-52
31.	Secondary infringement: possessing or dealing with infringing copy	2-52
32.	Secondary infringement: providing means for making infringing copies	2-54
33.	Secondary infringement: permitting use of premises for infringing performance	2-56
34.	Secondary infringement: provision of apparatus for infringing performance, etc.	2-56
35.	Meaning of “infringing copy”	2-58
35A.	Copy of a computer program, or of certain other works embodied in the same article as a computer program, not an “infringing copy” for the purposes of section 35(3)	2-68
35B.	Imported copy not an “infringing copy” for the purposes of section 35(3)	2-74
36.	Defences for the purposes of sections 30 and 31	2-76
	DIVISION III—ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS	
37.	Introductory provisions	2-82

COPYRIGHT ORDINANCE

T-8

Cap. 528

Section		Page
38.	Research and private study	2-84
39.	Criticism, review and news reporting	2-86
40.	Incidental inclusion of copyright material	2-86
40A.	Definitions for sections 40A to 40F	2-88
40B.	Making a single accessible copy for a person with a print disability	2-90
40C.	Making multiple accessible copies by specified bodies for persons with a print disability	2-92
40D.	Intermediate copies	2-96
40E.	Records to be kept by specified bodies	2-100
40F.	Supplementary provisions for sections 40A to 40E	2-102
41A.	Fair dealing for purposes of giving or receiving instruction	2-104
41.	Things done for purposes of instruction or examination	2-110
42.	Anthologies for educational use	2-112
43.	Performing, playing or showing work in course of activities of educational establishments	2-112
44.	Recording by educational establishments of broadcasts and cable programmes	2-114

COPYRIGHT ORDINANCE

T-10

Cap. 528

Section		Page
45.	Reprographic copying made by educational establishments or pupils of passages from published works	2-116
46.	Libraries and archives: introductory	2-118
47.	Copying by librarians: articles in periodicals	2-120
48.	Copying by librarians: parts of published works	2-122
49.	Restriction on production of multiple copies of the same material	2-124
50.	Copying by librarians: supply of copies to other libraries	2-124
51.	Copying by librarians or archivists: replacement copies of works	2-126
52.	Copying by librarians or archivists: certain unpublished works	2-126
53.	Copying by librarians or archivists: articles of cultural or historical importance	2-128
54A.	Fair dealing for purposes of public administration	2-130
54B.	Legislative Council	2-132
54.	Judicial proceedings	2-132
55.	Statutory inquiries	2-134
56.	Material open to public inspection or on official register	2-134

COPYRIGHT ORDINANCE

T-12

Cap. 528

Section		Page
57.	Material communicated to the Government in the course of public business	2-138
58.	Public records	2-140
59.	Acts done under statutory authority	2-140
60.	Lawful user may make back-up copy of computer program	2-140
61.	Lawful user may copy or adapt computer program	2-142
62.	Use of typeface in ordinary course of printing	2-142
63.	Articles for producing material in particular typeface	2-144
64.	Transfers of copies of works in electronic form	2-146
65.	Certain acts permitted where works made available to the public	2-148
66.	Anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author	2-148
67.	Use of notes or recordings of spoken words in certain cases	2-150
68.	Public reading or recitation	2-152
69.	Abstracts of scientific or technical articles	2-152
70.	Recordings of folksongs	2-154
71.	Representation of certain artistic works on public display	2-156

COPYRIGHT ORDINANCE

T-14

Cap. 528

Section		Page
72.	Advertisement of sale of artistic work	2-156
73.	Making of subsequent works by same artist	2-158
74.	Reconstruction of buildings	2-158
75.	Films: acts permitted on assumptions as to expiry of copyright, etc.	2-158
76.	Performance, showing or playing of works for purposes of club, society, etc.	2-160
77.	Incidental recording for purposes of broadcast or cable programme	2-162
78.	Recording for purposes of supervision and control of broadcasts and cable programmes	2-164
79.	Recording for purposes of time-shifting	2-166
80.	Photographs of television broadcasts or cable programmes	2-166
81.	Free public showing or playing of broadcast or cable programme	2-166
81A.	Playing of sound broadcasts inside vehicles	2-168
82.	Reception and re-transmission of broadcast in cable programme service	2-170
83.	Provision of sub-titled copies of broadcast or cable programme	2-174
84.	Recording for archival purposes	2-176
85.	Adaptations	2-176
86.	Corresponding design	2-178

Section		Page
87.	Effect of exploitation of design derived from artistic work	2-178
88.	Things done in reliance on registration of design	2-180
DIVISION IV—MORAL RIGHTS		
89.	Right to be identified as author or director	2-182
90.	Requirement that right be asserted	2-186
91.	Exceptions to right	2-190
92.	Right to object to derogatory treatment of work	2-194
93.	Exceptions to right	2-198
94.	Qualification of right in certain cases	2-200
95.	Infringement of right by possessing or dealing with infringing article	2-202
96.	False attribution of work	2-204
97.	Duration of rights	2-208
98.	Consent and waiver of rights	2-208
99.	Application of provisions to joint works	2-210
100.	Application of provisions to parts of works	2-212
DIVISION V—DEALINGS WITH RIGHTS IN COPYRIGHT WORKS		
101.	Assignment and licences	2-212
102.	Prospective ownership of copyright	2-214

Section		Page
103.	Exclusive licences	2-216
104.	Copyright to pass under will with unpublished work	2-216
105.	Moral rights not assignable	2-218
106.	Transmission of moral rights on death	2-218
DIVISION VI—REMEDIES FOR INFRINGEMENT		
107.	Infringement actionable by copyright owner	2-222
108.	Provisions as to damages in infringement action	2-222
109.	Order for delivery up	2-224
110.	Period after which remedy of delivery up not available	2-226
111.	Order as to disposal of infringing copy or other article	2-226
112.	Rights and remedies of exclusive licensee	2-230
113.	Exercise of concurrent rights	2-230
114.	Remedies for infringement of moral rights	2-234
115.	Presumptions relevant to literary, dramatic, musical and artistic works	2-236
116.	Presumptions relevant to sound recordings, films and computer programs	2-238
117.	Presumptions relevant to works subject to Government copyright	2-242

COPYRIGHT ORDINANCE

T-20

Cap. 528

Section		Page
118.	Offences in relation to making or dealing with infringing articles, etc.*	2-242
118A.	Application of sections 60 and 61 to offences under section 118(1)	2-262
119.	Penalties for offences under section 118	2-262
119A.	Offence in relation to possession of infringing copies in a copying service business	2-264
119B.	Offence in relation to making for distribution or distributing on a regular or frequent basis infringing copies of copyright works in printed form contained in books, etc.	2-266
120.	#Making infringing copies outside Hong Kong, etc.	2-278
120A.	Time limit for prosecutions	2-282
121.	Affidavit evidence	2-282
122.	Powers of investigating officers	2-296
123.	Authority to issue warrant for entry and search	2-300
124.	Obstruction of investigating officers	2-302
125.	Liability of persons other than principal offender	2-302
126.	Disclosure of information, etc.	2-304
127.	Protection of informers in criminal proceedings	2-306
128.	Inspection of articles, release of samples, etc.	2-306

Section		Page
129.	Multilateral co-operation	2-310
130.	Offences relating to disclosure of information	2-310
131.	Seized articles, etc. liable to forfeiture	2-312
132.	Disposal of articles, etc. where a person is charged	2-316
133.	Determination of application for forfeiture	2-318
134.	Jurisdiction of District Court	2-326

**DIVISION VII—PROCEEDINGS
RELATING TO IMPORTATION OF
INFRINGEMENT ARTICLES**

135.	Definitions	2-328
136.	Application for detention order	2-328
137.	Issuance of detention order	2-330
138.	Enforcement of detention order	2-334
139.	Variation or setting aside of detention order	2-338
140.	Disclosure of information	2-340
141.	Inspection of articles, release of samples, etc.	2-342
142.	Costs payable	2-344
143.	Compensation payable to importer, etc.	2-346
144.	Rules	2-348

**DIVISION VIII—COPYRIGHT
LICENSING**

COPYRIGHT ORDINANCE

T-24

Cap. 528

Section		Page
145.	Licensing schemes and licensing bodies	2-348
146.	Registrar of Copyright Licensing Bodies	2-350
147.	Maintenance of register and inspection	2-352
148.	Application for registration and renewal	2-352
149.	Registration, issue of certificate of registration	2-352
150.	Change of royalty charges during currency of certificate	2-354
151.	Duration of registration, renewal and cancellation	2-356
152.	Regulations	2-358
153.	No liability in the case of the bona fide exercise of functions under this Division	2-358
154.	Licensing schemes to which sections 155 to 160 apply	2-358
155.	Reference of proposed licensing scheme to Tribunal	2-360
156.	Reference of licensing scheme to Tribunal	2-362
157.	Further reference of scheme to Tribunal	2-362
158.	Application for grant of licence in connection with licensing scheme	2-366
159.	Application for review of order as to entitlement to licence	2-368
160.	Effect of order of Tribunal as to licensing scheme	2-368

Section		Page
161.	Licences to which sections 162 to 166 apply	2-372
162.	Reference to Tribunal of proposed licence	2-374
163.	Reference to Tribunal of expiring licence	2-374
164.	Tribunal may award interim payment and restrict application for interlocutory injunction	2-376
165.	Application for review of order as to licence	2-378
166.	Effect of order of Tribunal as to licence	2-378
167.	General considerations: unreasonable discrimination	2-380
168.	Implied indemnity in certain schemes and licences	2-384

**DIVISION IX—THE COPYRIGHT
TRIBUNAL**

169.	The Copyright Tribunal	2-386
170.	Membership of Tribunal	2-388
171.	Financial provisions	2-390
172.	Constitution for purposes of proceedings	2-390
173.	Jurisdiction of Tribunal	2-394
174.	General power to make rules	2-394
175.	Costs, proof of orders, etc.	2-396
176.	Appeal to court on point of law	2-398

**DIVISION X—QUALIFICATION FOR
COPYRIGHT PROTECTION**

Section		Page
177.	Qualification for copyright protection	2-398
178.	Qualification by reference to author	2-400
179.	Ships, aircraft and hovercraft registered in Hong Kong	2-402
180.	Denial of copyright protection to people of countries, etc. not giving adequate protection to Hong Kong works	2-402
181.	Meaning of first publication and material time	2-404
	DIVISION XI—MISCELLANEOUS AND GENERAL	
182.	Government copyright	2-406
183.	Copyright in Ordinances	2-408
184.	Legislative Council copyright	2-410
185.	Copyright in bills	2-412
186.	Legislative Council: supplementary provisions with respect to copyright	2-414
187.	Groundless threat of proceedings in relation to “parallel-imported” copies of works	2-416
188.	Copyright vesting in international organizations	2-418
189.	Folklore, etc.: anonymous unpublished works	2-420
190.	Protection of Commissioner and authorized officers	2-422
191.	Transitional provisions and savings	2-424

Section		Page
192.	Rights and privileges under other enactments or the common law	2-424
193.	General provisions as to construction	2-426
194.	Construction of references to copyright owner	2-426
195.	Meaning of “educational establishment” and related expressions	2-428
196.	Meaning of “publication” and “commercial publication”	2-428
197.	Requirement of signature: application in relation to body corporate	2-432
198.	Minor definitions	2-434
199.	Index of defined expressions	2-444

PART III

RIGHTS IN PERFORMANCES

**DIVISION I—THE RIGHTS,
INFRINGEMENT OF THE RIGHTS AND
REMEDIES FOR INFRINGEMENT**

200.	Rights conferred on performers and persons having fixation rights	3-2
201.	Qualifying performances	3-4
202.	Consent required for fixation, etc. of unfixed performance	3-6
203.	Consent required for copying of fixation	3-6
204.	Consent required for issue of copies to public	3-8

COPYRIGHT ORDINANCE

T-32

Cap. 528

Section		Page
205.	Consent required for making available of copies to public	3-10
206.	Infringement of performer's rights by use of fixation made without consent	3-12
207.	Infringement of performer's rights by importing, exporting, possessing or dealing with infringing fixation	3-12
207A.	Infringement of performers' rights by renting copies to the public without consent	3-14
208.	Exclusive fixation contracts and persons having fixation rights	3-16
209.	Consent required for fixation of performance subject to exclusive contract	3-18
210.	Infringement of fixation rights by use of fixation made without consent	3-20
211.	Infringement of fixation rights by importing, exporting, possessing or dealing with infringing fixation	3-20
212.	Acts permitted notwithstanding rights conferred by this Division	3-24
213.	Power of Tribunal to give consent on behalf of owner of right of reproduction in certain cases	3-24
213A.	Power of Tribunal to give consent on behalf of owners of performers' rental right in certain cases	3-26
214.	Duration of rights	3-28

Section		Page
215.	Performers' economic rights	3-28
216.	Assignment and licences	3-30
217.	Prospective ownership of a performer's economic rights	3-32
218.	Exclusive licences	3-34
219.	Performer's economic right to pass under will with unpublished original fixation	3-34
220.	Infringement actionable by rights owner	3-36
221.	Provisions as to damages in infringement action	3-36
222.	Right and remedies for exclusive licensee	3-38
223.	Exercise of concurrent rights	3-38
224.	Performers' non-economic rights	3-40
225.	Transmissibility of rights of person having fixation rights	3-44
226.	Consent	3-44
227.	Infringement actionable	3-44
228.	Order for delivery up	3-46
229.	Meaning of "infringing fixation"	3-46
229A.	Imported fixation not an "infringing fixation" for the purposes of section 229(4)	3-52
230.	Period after which remedy of delivery up not available	3-56

Section	Page
231. Order as to disposal of infringing fixation	3-58
232. Jurisdiction of District Court	3-60
233. Jurisdiction of Copyright Tribunal	3-62
234. Qualifying person	3-62
235. Ships, aircraft and hovercraft registered in Hong Kong	3-64
236. Denial of protection to people of countries, etc. not giving adequate protection to Hong Kong performers	3-64
237. Transitional provisions and savings	3-68
238. Expressions having same meaning as in copyright provisions	3-68
239. Index of defined expressions	3-70
DIVISION II—RIGHTS IN PERFORMANCES: PERMITTED ACTS	
240. Introductory	3-74
241. Criticism, reviews and news reporting	3-74
242. Incidental inclusion of performance or fixation	3-76
242A. Fair dealing for purposes of giving or receiving instruction	3-76
243. Things done for purposes of instruction or examination	3-80

COPYRIGHT ORDINANCE

T-38

Cap. 528

Section		Page
244.	Playing or showing sound recording, film, broadcast or cable programme at educational establishment	3-82
245.	Recording of broadcasts and cable programmes by educational establishments	3-84
246.	Copying by librarians or archivists: articles of cultural or historical importance	3-86
246A.	Fair dealing for purposes of public administration	3-86
246B.	Legislative Council	3-88
247.	Judicial proceedings	3-88
248.	Statutory inquiries	3-90
249.	Public records	3-90
250.	Acts done under statutory authority	3-90
251.	Transfer of fixations of performances in electronic form	3-92
252.	Certain copying permitted when performances made available to the public	3-94
253.	Use of fixations of spoken words in certain cases	3-94
254.	Fixations of folksongs	3-96
255.	Performance, showing or playing of works for purposes of club, society, etc.	3-98
256.	Incidental fixation for purposes of broadcast or cable programme	3-98

Section		Page
257.	Recordings for purposes of supervision and control of broadcasts and cable programmes	3-100
258.	Free public showing or playing of broadcast or cable programme	3-102
258A.	Playing of sound broadcasts inside vehicles	3-104
259.	Reception and re-transmission of broadcast in cable programme service	3-106
260.	Provision of sub-titled copies of broadcast or cable programme	3-110
261.	Recording of broadcast or cable programme for archival purposes	3-112

**DIVISION III—PROCEEDINGS
RELATING TO IMPORTATION OF
INFRINGEMENT FIXATIONS**

262.	Definitions	3-112
263.	Application for detention order	3-114
264.	Issuance of detention order	3-116
265.	Enforcement of detention order	3-118
266.	Variation or setting aside of detention order	3-124
267.	Disclosure of information	3-126
268.	Inspection of articles, release of samples, etc.	3-128
269.	Costs payable	3-130
270.	Compensation payable to importer, etc.	3-130

Section		Page
271.	Rules	3-132
272.	Protection of Commissioner and authorized officers	3-134

**PART IIIA
PERFORMERS' MORAL RIGHTS**

272A.	Moral rights conferred on certain performers	3A-2
272B.	Right to be identified as performer	3A-6
272C.	Requirement that right under section 272B be asserted	3A-8
272D.	Exceptions to right under section 272B	3A-10
272E.	Right to object to derogatory treatment	3A-12
272F.	Infringing of right under section 272E by possessing or dealing with infringing articles	3A-14
272G.	Exceptions to right under section 272E	3A-16
272H.	Duration of rights	3A-18
272I.	Consent and waiver of rights	3A-18
272J.	Application of provisions to joint performers	3A-20
272K.	Application of provisions to part of performance	3A-22
272L.	Moral rights not assignable	3A-22
272M.	Transmission of moral rights on death	3A-22
272N.	Remedies for infringement of performers' moral rights	3A-26

Section		Page
272O.	Presumptions relevant to sound recordings in which performances are fixed	3A-26
PART IV		
TECHNOLOGICAL MEASURES AND GENERAL		
273.	Interpretation of sections 273 to 273H	4-2
273A.	Rights and remedies in respect of circumvention of effective technological measures	4-4
273B.	Rights and remedies in respect of devices and services designed to circumvent effective technological measures	4-8
273C.	Offences in relation to circumvention of effective technological measures	4-12
273D.	Exceptions to section 273A	4-18
273E.	Exceptions to section 273B	4-26
273F.	Exceptions to section 273C	4-34
273G.	Application of sections 273, 273A, 273B, 273D and 273E to performances	4-44
273H.	Exceptions to sections 273A, 273B, 273C and 273G	4-44
274.	Rights and remedies in respect of unlawful acts to interfere with rights management information	4-46

COPYRIGHT ORDINANCE

T-46

Cap. 528

Section	Page
275. Rights and remedies in respect of apparatus, etc. for unauthorized reception of transmissions	4-50
276. Denial of rights under section 275 to people of countries, etc. not giving adequate protection to Hong Kong broadcasts, cable programmes and encrypted transmissions	4-52
277. Supplementary provisions as to fraudulent reception	4-54
278. Commissioner may authorize officers	4-56
279. Interpretation	4-56
280. <i>(Omitted as spent)</i>	4-56
281. Repeals	4-56
282. Transitional provisions and savings in relation to amendments effected by the Copyright (Amendment) Ordinance 2003	4-56
283. Transitional provisions and savings in relation to amendments effected by the Copyright (Amendment) Ordinance 2007	4-58
SCHEDULE 1 EDUCATIONAL ESTABLISHMENTS	S1-2
SCHEDULE 1AA CIRCUMSTANCES IN WHICH SECTION 119B(1) OF THIS ORDINANCE DOES NOT APPLY (EXTENT OF MAKING OR DISTRIBUTION OF INFRINGING COPIES)	S1AA-2

Section		Page
SCHEDULE 1AB	CIRCUMSTANCES IN WHICH SECTION 119B(1) OF THIS ORDINANCE DOES NOT APPLY (MANNER OF DISTRIBUTION OF INFRINGING COPIES)	S1AB-2
Schedule 1A	BODIES AND AUTHORITIES SPECIFIED FOR PURPOSES OF DEFINITION OF “SPECIFIED COURSE OF STUDY”	S1A-2
SCHEDULE 2	COPYRIGHT: TRANSITIONAL PROVISIONS AND SAVINGS	S2-2
SCHEDULE 3	RIGHTS IN PERFORMANCE: TRANSITIONAL PROVISIONS AND SAVINGS	S3-2
Schedule 4	<i>(Omitted as spent)</i>	S4-2
SCHEDULE 5	REPEALS	S5-2
SCHEDULE 6	TRANSITIONAL PROVISIONS AND SAVINGS	S6-2
SCHEDULE 7	TRANSITIONAL PROVISIONS AND SAVINGS IN RELATION TO AMENDMENTS EFFECTED BY THE COPYRIGHT (AMENDMENT) ORDINANCE 2007 (15 OF 2007)	S7-2

COPYRIGHT ORDINANCE

PART I

1-2

Section 1

Cap. 528

An Ordinance to make provisions in respect of copyright and related rights
and for connected purposes.

(Amended 15 of 2007 s. 3)

[27 June 1997]

PART I

PRELIMINARY

1. Short title and interpretation

- (1) This Ordinance may be cited as the Copyright Ordinance.
 - (2) *(Omitted as spent)*
 - (3) The tables showing the provisions defining expressions used in Part II and Part III are set out in sections 199 and 239 respectively.
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PART II

COPYRIGHT

**DIVISION I—SUBSISTENCE, OWNERSHIP AND
DURATION OF COPYRIGHT**

Introductory

2. Copyright and copyright works

- (1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work—
 - (a) original literary, dramatic, musical or artistic works;
 - (b) sound recordings, films, broadcasts or cable programmes; and
 - (c) the typographical arrangement of published editions.
- (2) In this Part “copyright work” (版權作品) means a work of any of those descriptions in which copyright subsists.
- (3) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection are met (see section 177 and the provisions referred to there).

[cf. 1988 c. 48 s. 1 U.K.]

3. Rights subsisting in copyright works

- (1) The owner of the copyright in a work of any description has the exclusive right to do the acts specified in Division II as the acts restricted by the copyright in a work of that description.

- (2) In relation to certain descriptions of copyright work the following rights conferred by Division IV (moral rights) subsist in favour of the author or director of the work, whether or not he is the owner of the copyright—
- (a) section 89 (right to be identified as author or director); and
 - (b) section 92 (right to object to derogatory treatment of work).

[cf. 1988 c. 48 s. 2 U.K.]

Descriptions of work and related provisions

4. Literary, dramatic and musical works

- (1) In this Part—

“dramatic work” (戲劇作品) includes a work of dance or mime;

“literary work” (文學作品) means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes—

- (a) a compilation of data or other material, in any form, which by reason of the selection or arrangement of its contents constitutes an intellectual creation, including but not limiting to a table;
- (b) a computer program; and
- (c) preparatory design material for a computer program;

“musical work” (音樂作品) means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

- (2) Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise; and references in this Part to the time at which such a work is made are to the time at which it is so recorded.

- (3) It is immaterial for the purposes of subsection (2) whether the work is recorded by or with the permission of the author; and where it is not recorded by the author, nothing in that subsection affects the question whether copyright subsists in the record as distinct from the work recorded.

[cf. 1988 c. 48 s. 3 U.K.]

5. Artistic works

In this Part—

“artistic work” (藝術作品) means—

- (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality;
- (b) a work of architecture being a building or a model for a building; or
- (c) a work of artistic craftsmanship;

“building” (建築物) includes any fixed structure, and a part of a building or fixed structure;

“graphic work” (平面美術作品) includes—

- (a) any painting, drawing, diagram, map, chart or plan; and
- (b) any engraving, etching, lithograph, woodcut or similar work;

“photograph” (照片) means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;

“sculpture” (雕塑品) includes a cast or model made for purposes of sculpture.

[cf. 1988 c. 48 s. 4 U.K.]

6. Sound recordings

- (1) In this Part “sound recording” (聲音紀錄) means—
 - (a) a recording of sounds, from which the sounds may be reproduced; or
 - (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced,regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.
- (2) Copyright does not subsist in a sound recording which is, or to the extent that it is, a copy taken from a previous sound recording.

[cf. 1988 c. 48 s. 5A U.K.]

7. Films

- (1) In this Part “film” (影片) means a recording on any medium from which a moving image may by any means be produced.
- (2) The sound-track accompanying a film is to be treated as part of the film for the purposes of this Part.
- (3) Without prejudice to the generality of subsection (2), where that subsection applies—
 - (a) references in this Part to showing a film include playing the film sound-track to accompany the film; and
 - (b) references to playing a sound recording do not include playing the film sound-track to accompany the film.
- (4) Copyright does not subsist in a film which is, or to the extent that it is, a copy taken from a previous film.

[cf. 1988 c. 48 s. 5B U.K.]

8. Broadcasts

- (1) In this Part a “broadcast” (廣播) means a transmission by wireless telegraphy of sounds or of visual images and sounds or of representations thereof which—
 - (a) is capable of being lawfully received by members of the public in Hong Kong or elsewhere; or
 - (b) is transmitted for presentation to members of the public in Hong Kong or elsewhere,otherwise than through a service for making available to the public of copies of works or fixations of performances.
- (2) An encrypted transmission is regarded as capable of being lawfully received by members of the public in Hong Kong or elsewhere only if decoding equipment has been made available to members of the public in Hong Kong or elsewhere by or with the authority of the person making the transmission or the person providing the contents of the transmission.
- (3) References in this Part to the person making a broadcast, broadcasting a work, or including a work in a broadcast are—
 - (a) to the person transmitting the programme, if he has responsibility to any extent for its contents; and
 - (b) to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission,and references in this Part to a programme, in the context of broadcasting, are to any item included in a broadcast.
- (4) For the purposes of this Part the place from which a broadcast is made is the place where, under the control and responsibility of the person making the broadcast, the programme-carrying signals are introduced into an uninterrupted chain of communication (including, in the case

of a satellite transmission, the chain leading to the satellite and down towards the earth).

- (5) References in this Part to the reception of a broadcast include reception of a broadcast relayed by means of a telecommunications system. (*Amended 36 of 2000 s. 28*)
- (6) Copyright does not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast or in a cable programme.

[*cf. 1988 c. 48 s. 6 U.K.*]

9. Cable programmes

- (1) In this Part—

“cable programme” (有線傳播節目) means any item included in a cable programme service;

“cable programme service” (有線傳播節目服務) means a service which consists wholly or mainly in the lawful sending by any person, by means of a telecommunications system (whether run by himself or by any other person), of sounds, visual images, other information or any combination of them either— (*Amended 36 of 2000 s. 28*)

- (a) for lawful reception, otherwise than by wireless telegraphy, at 2 or more places in Hong Kong or elsewhere, whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service; or
- (b) for lawful reception, by whatever means, at a place in Hong Kong or elsewhere for the purposes of their being presented there either to members of the public or to any group of persons,

and includes such a service that has as a component a multipoint microwave distribution system, but does not include the services excepted under subsection (2);

- “interconnection” (互相連接) includes interconnection that involves a change of technical characteristics, format or parameters;
- “sounds” (聲音), for the purposes of the exclusion in subsection (2)(a), means speech or music or both except that they do not include, in relation to any telecommunications system, speech providing information for the purpose of facilitating the use of a telecommunications service provided by means of that system; (*Amended 36 of 2000 s. 28*)
- “visual images” (影像), for the purposes of the exclusion in subsection (2)(a), means visual images which are such that sequences of them may be seen as moving pictures.
- (2) The following are excepted from the definition of “cable programme service”—
- (a) a service (such as the services commonly known as video conferencing and video telephony) which consists wholly or mainly in the transmission of sounds or visual images or both by any person if it is an essential feature of the service that, while they are being transmitted, there will or may be transmitted from each place of reception, by means of the telecommunications system or (as the case may be) the part of it by means of which they are transmitted, sounds or visual images or both for reception by that person; (*Amended 36 of 2000 s. 28*)
 - (b) a service for making available to the public of copies of works or fixations of performances, but excluding a service in which the transmission of moving visual representational images is an essential feature (such as the service commonly known as video-on-demand);
 - (c) the running by a broadcaster of a telecommunications system in the case of which every transmission made by it is either— (*Amended 36 of 2000 s. 28*)

- (i) a transmission, by wireless telegraphy, from a transmitting station for general reception of sounds, visual images or signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
 - (ii) a transmission within a single set of premises of sounds, visual images or such signals which are to be or have been so transmitted;
- (d) the running of a telecommunications system in the case of which the only agency involved in the transmission of things thereby transmitted is light and the things thereby transmitted are so transmitted as to be capable of being received or perceived by the eye and without more; (*Amended 36 of 2000 s. 28*)
- (e) the running by a person of a telecommunications system which is not connected to another telecommunications system and in the case of which all the apparatus comprised therein is situated either— (*Amended 36 of 2000 s. 28*)
 - (i) on a single set of premises in single occupation (other than a service operated as part of the amenities provided for residents or inmates of premises run as a business); or
 - (ii) in a vehicle, vessel, aircraft or hovercraft or in 2 or more vehicles, vessels, aircraft or hovercraft mechanically coupled together;
- (f) the running by a single individual of a telecommunications system which is not connected to another telecommunications system and in the case of which— (*Amended 36 of 2000 s. 28*)

- (i) all the apparatus comprised therein is under his control; and
 - (ii) everything transmitted by it that is speech, music and other sounds, visual images, signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images, or signals serving for the actuation or control of machinery or apparatus is transmitted solely for his domestic purposes,
- and references in paragraph (e) and this paragraph to another telecommunications system do not include references to such a system as is mentioned in paragraph (c) (whether run by a broadcaster or by any other person); or (*Amended 36 of 2000 s. 28*)
- (g) in the case of a business carried on by a person, the running, for the purposes of the business, of a telecommunications system which is not connected to another telecommunications system and with respect to which the following conditions are satisfied— (*Amended 36 of 2000 s. 28*)
 - (i) that no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system;
 - (ii) that nothing that is speech, music and other sounds, visual images, signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images, or signals serving for the actuation or control of machinery or apparatus is transmitted by the system by way of rendering a service to another;

- (iii) that, in so far as sounds or visual images are transmitted by the system, they are not transmitted for the purpose of their being heard or seen by persons other than the person carrying on the business or any employees of his engaged in the conduct thereof;
 - (iv) that, in so far as signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images are transmitted by the system, they are not transmitted for the purpose of imparting matter otherwise than to the person carrying on the business, any employees of his engaged in the conduct thereof or things used in the course of the business and controlled by him; and
 - (v) that, in so far as signals of speech, music and other sounds are transmitted by the system, they are not transmitted for the purpose of actuating or controlling machinery or apparatus used otherwise than in the course of the business.
- (3) The Chief Executive in Council may by order amend subsection (2) so as to remove exceptions, subject to such transitional provision as appears to him to be appropriate.
(Amended 22 of 1999 s. 3)
- (4) References in this Part to the inclusion of a cable programme or work in a cable programme service are to its transmission as part of the service; and references to the person including it are to the person providing the service.
- (5) Copyright does not subsist in a cable programme if—
 - (a) it is included in a cable programme service by reception and immediate re-transmission of a broadcast; or

- (b) it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.

[cf. 1988 c. 48 s. 7 U.K. & 1956 c. 74 s. 14A U.K.]

10. Published editions

- (1) In this Part “published edition” (已發表版本), in the context of copyright in the typographical arrangement of a published edition, means a published edition of the whole or any part of one or more literary, dramatic or musical works.
- (2) Copyright does not subsist in the typographical arrangement of a published edition if, or to the extent that, it reproduces the typographical arrangement of a previous edition.

[cf. 1988 c. 48 s. 8 U.K.]

Authorship and ownership of copyright

11. Authorship of work

- (1) In this Part “author” (作者), in relation to a work, means the person who creates it.
- (2) That person is taken to be—
 - (a) in the case of a sound recording, the producer;
 - (b) in the case of a film, the producer and the principal director;
 - (c) in the case of a broadcast, the person making the broadcast (see section 8(3)) or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast;
 - (d) in the case of a cable programme, the person providing the cable programme service in which the programme is included;

- (e) in the case of the typographical arrangement of a published edition, the publisher.
- (3) In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author is taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.
- (4) For the purposes of this Part a work is of “unknown authorship” if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.
- (5) For the purposes of this Part the identity of an author is regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if his identity is once known it shall not subsequently be regarded as unknown.

[cf. 1988 c. 48 s. 9 U.K.]

12. Works of joint authorship

- (1) In this Part a “work of joint authorship” (合作作品) means a work made by the collaboration of 2 or more authors in which the contribution of each author is not distinct from that of the other author or authors.
- (2) A film is treated as a work of joint authorship unless the producer and the principal director are the same person.
- (3) A broadcast is treated as a work of joint authorship in a case where more than one person is to be taken as making the broadcast (section 8(3)).
- (4) References in this Part to the author of a work are, except as otherwise provided, construed in relation to a work of joint authorship as references to all the authors of the work.

[cf. 1988 c. 48 s. 10 U.K.]

13. First ownership of copyright

The author of a work is the first owner of any copyright in it, subject to sections 14, 15 and 16.

[cf. 1988 c. 48 s. 11(1) U.K.]

14. Employee works

- (1) Where a literary, dramatic, musical or artistic work, or a film, is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to—
 - (a) any agreement to the contrary; and
 - (b) subsection (2).
- (2) Subject to any agreement to the contrary, where such work is exploited by his employer or by someone else with the employer's permission in a way that could not reasonably have been contemplated by the employer and the employee at the time of making the work, the employer shall pay an award to the employee in respect of such exploitation at such amount as agreed between the employer and the employee or failing an agreement, as determined by the Copyright Tribunal.

[cf. 1988 c. 48 s. 11(2) U.K.]

15. Commissioned works

- (1) Where a work is made on the commission of a person and there is an agreement between the author and the commissioner of the work which expressly provides for the entitlement to the copyright, copyright in the commissioned work belongs to the person who is entitled to the copyright under the agreement.

- (2) Notwithstanding subsection (1) and sections 13 and 103, the person who commissioned the work—
- (a) has an exclusive licence to exploit the commissioned work for all purposes that could reasonably have been contemplated by the author and the person who commissioned the work at the time the work was commissioned; and
 - (b) has the power to restrain any exploitation of the commissioned work for any purpose against which he could reasonably take objection.

16. Government copyright, etc.

Sections 13, 14 and 15 do not apply to Government copyright or Legislative Council copyright (see sections 182 and 184) or to copyright which subsists by virtue of section 188 (copyright of certain international organizations).

Duration of copyright

17. Duration of copyright in literary, dramatic, musical or artistic works

- (1) The following provisions have effect with respect to the duration of copyright in a literary, dramatic, musical or artistic work.
- (2) Copyright expires at the end of the period of 50 years from the end of the calendar year in which the author dies, subject as follows.
- (3) If the work is of unknown authorship, copyright expires—
 - (a) at the end of the period of 50 years from the end of the calendar year in which the work was first made; or

- (b) if during that period the work is made available to the public, at the end of the period of 50 years from the end of the calendar year in which it is first so made available,
subject as follows.
- (4) Subsection (2) applies if the identity of the author becomes known before the end of the period specified in subsection (3)(a) or (b).
- (5) For the purposes of subsection (3) making available to the public includes—
 - (a) in the case of a literary, dramatic or musical work—
 - (i) performance in public; or
 - (ii) being broadcast or included in a cable programme service;
 - (b) in the case of an artistic work—
 - (i) exhibition in public;
 - (ii) a film including the work being shown in public; or
 - (iii) being included in a broadcast or cable programme service;
 - (c) making available of copies of a work to the public within the meaning of section 26,
but in determining generally for the purposes of that subsection whether a work has been made available to the public no account is to be taken of any unauthorized act.
- (6) If the work is computer-generated the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.

- (7) The provisions of this section are adapted as follows in relation to a work of joint authorship—
 - (a) the reference in subsection (2) to the death of the author is to be construed—
 - (i) if the identity of all the authors is known, as a reference to the death of the last of them to die; and
 - (ii) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last whose identity is known; and
 - (b) the reference in subsection (4) to the identity of the author becoming known is to be construed as a reference to the identity of any of the authors becoming known.
- (8) This section does not apply to Government copyright or Legislative Council copyright (see sections 182 to 184) or to copyright which subsists by virtue of section 188 (copyright of certain international organizations).

[cf. 1988 c. 48 s. 12 U.K.]

18. Duration of copyright in sound recordings

- (1) The following provisions have effect with respect to the duration of copyright in a sound recording.
- (2) Copyright expires—
 - (a) at the end of the period of 50 years from the end of the calendar year in which it is made; or
 - (b) if during that period it is released, 50 years from the end of the calendar year in which it is released,subject as follows.

- (3) For the purposes of subsection (2) a sound recording is “released” when it is first published, played in public, broadcast or included in a cable programme service; but in determining whether a sound recording has been released no account is to be taken of any unauthorized act.

[cf. 1988 c. 48 s. 13A U.K.]

19. Duration of copyright in films

- (1) The following provisions have effect with respect to the duration of copyright in a film.
- (2) Copyright expires at the end of the period of 50 years from the end of the calendar year in which the death occurs of the last to die of the following persons—
 - (a) the principal director;
 - (b) the author of the screenplay;
 - (c) the author of the dialogue; or
 - (d) the composer of music specially created for and used in the film,subject as follows.
- (3) If the identity of one or more of the persons referred to in subsection (2)(a) to (d) is known and the identity of one or more others is not, the reference in that subsection to the death of the last of them to die is to be construed as a reference to the death of the last whose identity is known.
- (4) If the identity of the persons referred to in subsection (2)(a) to (d) is unknown, copyright expires at—
 - (a) the end of the period of 50 years from the end of the calendar year in which the film was made; or
 - (b) if during that period the film is made available to the public, at the end of the period of 50 years from the

end of the calendar year in which it is first so made available.

- (5) Subsections (2) and (3) apply if the identity of any of those persons becomes known before the end of the period specified in subsection (4)(a) or (b).
- (6) For the purposes of subsection (4) making available to the public includes—
 - (a) showing in public;
 - (b) making available of copies of a work to the public within the meaning of section 26; or
 - (c) being broadcast or included in a cable programme service,
 but in determining generally for the purposes of that subsection whether a film has been made available to the public no account is to be taken of any unauthorized act.
- (7) If in any case there is no person falling within subsection (2)(a) to (d) the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the film was made.
- (8) For the purposes of this section the identity of any of the persons referred to in subsection (2)(a) to (d) is to be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if the identity of any such person is once known it shall not subsequently be regarded as unknown.

[cf. 1988 c. 48 s. 13B U.K.]

20. Duration of copyright in broadcasts and cable programmes

- (1) The following provisions have effect with respect to the duration of copyright in a broadcast or cable programme.

- (2) Copyright in a broadcast or cable programme expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made or the programme was included in a cable programme service, subject as follows.
- (3) Copyright in a repeat broadcast or cable programme expires at the same time as the copyright in the original broadcast or cable programme; and accordingly no copyright arises in respect of a repeat broadcast or cable programme which is broadcast or included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme.
- (4) A repeat broadcast or cable programme means one which is a repeat either of a broadcast previously made or of a cable programme previously included in a cable programme service.

[cf. 1988 c. 48 s. 14 U.K.]

21. Duration of copyright in typographical arrangement of published editions

Copyright in the typographical arrangement of a published edition expires at the end of the period of 25 years from the end of the calendar year in which the edition was first published.

[cf. 1988 c. 48 s. 15 U.K.]

DIVISION II—RIGHTS OF COPYRIGHT OWNER

The acts restricted by copyright

22. The acts restricted by copyright in a work

- (1) The owner of the copyright in a work has, in accordance with the following provisions of this Division, the exclusive right to do the following acts in Hong Kong—

- (a) to copy the work (see section 23);
 - (b) to issue copies of the work to the public (see section 24);
 - (c) to rent copies of the work to the public (see section 25);
(Replaced 15 of 2007 s. 5)
 - (d) to make available copies of the work to the public (see section 26);
 - (e) to perform, show or play the work in public (see section 27);
 - (f) to broadcast the work or include it in a cable programme service (see section 28);
 - (g) to make an adaptation of the work or do any of the above in relation to an adaptation (see section 29),and those acts are referred to in this Part as the “acts restricted by the copyright”.
- (2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorizes another to do, any of the acts restricted by the copyright.
- (3) References in this Part to the doing of an act restricted by the copyright in a work are to the doing of it—
 - (a) in relation to the work as a whole or any substantial part of it; and
 - (b) either directly or indirectly,and it is immaterial whether any intervening acts themselves infringe copyright.
- (4) This Division has effect subject to—
 - (a) the provisions of Division III (acts permitted in relation to copyright works); and

- (b) the provisions of Division VIII (provisions with respect to copyright licensing).

[cf. 1988 c. 48 s. 16 U.K.]

23. Infringement of copyright by copying

- (1) The copying of the work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies are construed as follows.
- (2) Copying of a work means reproducing the work in any material form. This includes storing the work in any medium by electronic means.
- (3) In relation to an artistic work copying includes the making of a copy in 3 dimensions of a 2-dimensional work and the making of a copy in 2 dimensions of a 3-dimensional work.
- (4) Copying in relation to a film, television broadcast or cable programme includes making a photograph of the whole or any substantial part of any image forming part of the film, broadcast or cable programme.
- (5) Copying in relation to the typographical arrangement of a published edition means making a facsimile copy of the arrangement.
- (6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.

[cf. 1988 c. 48 s. 17 U.K.]

24. Infringement by issue of copies to the public

- (1) The issue of copies of the work to the public is an act restricted by the copyright in every description of copyright work.

- (2) References in this Part to the issue of copies of a work to the public are to the act of putting into circulation copies not previously put into circulation, in Hong Kong or elsewhere, by or with the consent of the copyright owner.
- (3) References in this Part to the issue of copies of a work to the public do not include—
 - (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation (but see section 25: infringement by rental); or
 - (b) any subsequent importation of those copies into Hong Kong.
- (4) References in this Part to the issue of copies of a work include the issue of the original and the issues of copies in electronic form.

[cf. 1988 c. 48 s. 18 U.K.]

25. Infringement by rental of work to the public

(* Italicized part is not yet in operation.)

- (1) The rental of copies of any of the following works to the public is an act restricted by the copyright in the work—
 - (a) a computer program;
 - (b) a sound recording;
 - (c) a film;
 - (d) a literary, dramatic or musical work included in a sound recording;
 - *[(e) *a literary or artistic work included in a comic book; or*
 - (f) *the typographical arrangement of a published edition of a comic book.*] (*Replaced 15 of 2007 s. 6*)
- (2) In this Part, subject to the following provisions of this section, “rental” (租賃) 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 expression “rental” (租賃) does not include—
 - (a) making available for the purpose of public performance, playing or showing in public, broadcasting or inclusion in a cable programme service;
 - (b) making available for the purpose of exhibition in public; or
 - (c) making available for on-the-spot reference use.
- (4) References in this Part to the rental of copies of a work include the rental of the original.

[cf. 1988 c. 48 s. 18A U.K.]

26. Infringement by making available of copies to the public

- (1) The making available of copies of the work to the public is an act restricted by copyright in every description of copyright work.
- (2) References in this Part to the making available of copies of a work to the public are to the making available of copies of the work, by wire or wireless means, in such a way that members of the public in Hong Kong or elsewhere may access the work from a place and at a time individually chosen by them (such as the making available of copies of works through the service commonly known as the INTERNET).
- (3) References in this Part to the making available of copies of a work to the public include the making available of the original.
- (4) The mere provision of physical facilities for enabling the making available of copies of works to the public does not of itself constitute an act of making available of copies of works to the public.

27. Infringement by performance, playing or showing of work in public

- (1) The performance of the work in public is an act restricted by the copyright in a literary, dramatic or musical work.
- (2) In this Part “performance” (表演), in relation to a work—
 - (a) includes delivery in the case of lectures, addresses, speeches and sermons; and
 - (b) in general, includes any mode of visual or acoustic presentation, including presentation by means of a sound recording, film, broadcast or cable programme of the work.
- (3) The playing or showing of the work in public is an act restricted by the copyright in a sound recording, film, broadcast or cable programme.
- (4) Where copyright in a work is infringed by its being performed, played or shown in public by means of apparatus for receiving visual images or sounds transmitted by electronic means, the person by whom the visual images or sounds are sent, and in the case of a performance the performers, shall not be regarded as responsible for the infringement.

[cf. 1988 c. 48 s. 19 U.K.]

28. Infringement by broadcasting or inclusion in a cable programme service

The broadcasting of the work or its inclusion in a cable programme service is an act restricted by the copyright in—

- (a) a literary, dramatic, musical or artistic work;
- (b) a sound recording or film; or
- (c) a broadcast or cable programme.

[cf. 1988 c. 48 s. 20 U.K.]

29. Infringement by making adaptation or act done in relation to adaptation

- (1) The making of an adaptation of the work is an act restricted by the copyright in a literary, dramatic or musical work. For this purpose an adaptation is made when it is recorded, in writing or otherwise.
- (2) The doing of any of the acts specified in sections 23 to 28, or subsection (1), in relation to an adaptation of the work is also an act restricted by the copyright in a literary, dramatic or musical work. For this purpose it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.
- (3) In this Part “adaptation” (改編本)—
 - (a) in relation to a literary work, other than a computer program, or dramatic work, means—
 - (i) a translation of the work;
 - (ii) a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is converted into a dramatic work;
 - (iii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;
 - (b) in relation to a computer program, means an arrangement or altered version of the program or a translation of it;
 - (c) in relation to a musical work, means an arrangement or transcription of the work.

- (4) In relation to a computer program a “translation” (翻譯本) includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code.
- (5) No inference is to be drawn from this section as to what does or does not amount to copying a work.

[cf. 1988 c. 48 s. 21 U.K.]

Secondary infringement of copyright

30. Secondary infringement: importing or exporting infringing copy

The copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into Hong Kong or exports from Hong Kong, otherwise than for his private and domestic use, a copy of the work which is, and which he knows or has reason to believe to be, an infringing copy of the work.

[cf. 1988 c. 48 s. 22 U.K.]

31. Secondary infringement: possessing or dealing with infringing copy

- (1) The copyright in a work is infringed by a person who, without the licence of the copyright owner— *(Amended 64 of 2000 s. 2)*
 - (a) possesses for the purpose of or in the course of any trade or business; *(Replaced 64 of 2000 s. 2. Amended 15 of 2007 s. 7)*
 - (b) sells or lets for hire, or offers or exposes for sale or hire;
 - (c) exhibits in public or distributes for the purpose of or in the course of any trade or business; or *(Replaced 64 of 2000 s. 2. Amended 15 of 2007 s. 7)*

- (d) distributes (otherwise than for the purpose of or in the course of any trade or business) to such an extent as to affect prejudicially the owner of the copyright, (*Amended 64 of 2000 s. 2; 15 of 2007 s. 7*)

a copy of a work which is, and which he knows or has reason to believe to be, an infringing copy of the work.

- (2) It is immaterial for the purpose of subsection (1)(a) and (c) whether or not the trade or business consists of dealing in infringing copies of copyright works. (*Added 64 of 2000 s. 2*)

[*cf. 1988 c. 48 s. 23 U.K.*]

32. Secondary infringement: providing means for making infringing copies

- (1) Copyright in a work is infringed by a person who, without the licence of the copyright owner—
 - (a) makes;
 - (b) imports into Hong Kong or exports from Hong Kong;
 - (c) possesses for the purpose of or in the course of any trade or business; or (*Amended 64 of 2000 s. 3; 15 of 2007 s. 8*)
 - (d) sells or lets for hire, or offers or exposes for sale or hire, an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.
- (2) Copyright in a work is infringed by a person who, without the licence of the copyright owner, transmits the work by means of a telecommunications system (otherwise than by broadcasting or inclusion in a cable programme service), knowing or having reason to believe that infringing copies

of the work will be made by means of the reception of the transmission in Hong Kong or elsewhere.

- (3) It is immaterial for the purpose of subsection (1)(c) whether or not the trade or business consists of dealing in articles specially designed or adapted for making copies of copyright works. (*Added 64 of 2000 s. 3*)

[cf. 1988 c. 48 s. 24 U.K.]

33. Secondary infringement: permitting use of premises for infringing performance

- (1) Where the copyright in a work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance is also liable for the infringement unless when he gave permission he believed on reasonable grounds that the performance would not infringe copyright.
- (2) In this section “place of public entertainment” (公眾娛樂場所) includes premises which are occupied mainly for other purposes but are from time to time made available for hire for the purposes of public entertainment.

[cf. 1988 c. 48 s. 25 U.K.]

34. Secondary infringement: provision of apparatus for infringing performance, etc.

- (1) Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public, by means of apparatus for—
- (a) playing sound recordings;
 - (b) showing films; or
 - (c) receiving visual images or sounds transmitted by electronic means,

the persons specified in subsections (2) to (4) are also liable for the infringement.

- (2) A person who supplied the apparatus, or any substantial part of it, is liable for the infringement if when he supplied the apparatus or part—
 - (a) he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright; or
 - (b) in the case of apparatus whose normal use involves a public performance, playing or showing, he did not believe on reasonable grounds that it would not be so used as to infringe copyright.
- (3) An occupier of premises who gave permission for the apparatus to be brought onto the premises is liable for the infringement if when he gave permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright.
- (4) A person who supplied a copy of a sound recording or film used to infringe copyright is liable for the infringement if when he supplied it he knew or had reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright.

[cf. 1988 c. 48 s. 26 U.K.]

35. Meaning of “infringing copy”

Infringing copy

- (1) In this Part “infringing copy” (侵犯版權複製品), in relation to a copyright work, is to be construed in accordance with this section.

- (2) A copy of a work is an infringing copy if its making constituted an infringement of the copyright in the work in question.
- (3) Except as otherwise provided in section 35A or 35B, a copy of a work other than a copy of an accessory work is also an infringing copy if— (*Amended 27 of 2003 s. 2; 15 of 2007 s. 9*)
 - (a) it has been or is proposed to be imported into Hong Kong; and
 - (b) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.
- (4) For the purposes of sections 118 to 133 (criminal provisions) “infringing copy” (侵犯版權複製品) does not include a copy of a work—
 - (a) that was lawfully made in the country, territory or area where it was made;
 - (b) that has been or is proposed to be imported into Hong Kong at any time after the expiration of 15 months beginning on the first day of publication of the work in Hong Kong or elsewhere; and (*Amended 15 of 2007 s. 9*)
 - (c) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work,

or a copy of an accessory work-

- (i) that was lawfully made in the country, territory or area where it was made;
 - (ii) that has been or is proposed to be imported into Hong Kong;
- and

(iii) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.

(5) For the purposes of Division VII (proceedings relating to importation of infringing articles), “infringing copy” (侵犯版權複製品) does not include a copy of a work or a copy of an accessory work—

- (a) that was lawfully made in the country, territory or area where it was made;
- (b) that has been or is proposed to be imported into Hong Kong; and
- (c) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.

(6) Where in any proceedings the question arises whether a copy of a work is an infringing copy and it is shown—

- (a) that it is a copy of the work; and
- (b) that copyright subsists in the work or has subsisted at any time,

it shall be presumed until the contrary is proved that the copy was made at a time when copyright subsisted in the work.

(6A) Where, in any proceedings, a question arises as to whether a copy of a work that was lawfully made in the country, territory or area where it was made is an infringing copy by virtue only of subsection (3), and it is shown—

- (a) in the case of a copy of a work that is stored in an optical disc, that the optical disc is not marked with a manufacturer’s code as required under

section 15 of the Prevention of Copyright Piracy Ordinance (Cap. 544);

- (b) that a label or mark on the copy, the article in which the copy is embodied or the packaging or container in which the copy is packaged or contained indicates that the copy was made in a country, territory or area outside Hong Kong; or
- (c) that a label or mark on the copy, the article in which the copy is embodied or the packaging or container in which the copy is packaged or contained indicates that distribution, sale or supply of the copy is prohibited in Hong Kong or restricted to countries, territories or areas outside Hong Kong,

then, unless there is evidence to the contrary, the copy shall be presumed to have been imported into Hong Kong. (*Added 15 of 2007 s. 9*)

(6B) In subsection (6A)(a)—

“manufacturer’s code” (製造者代碼) has the meaning assigned to it by section 2(1) of the Prevention of Copyright Piracy Ordinance (Cap. 544);

“marked” (標上) has the meaning assigned to it by section 15(3) of the Prevention of Copyright Piracy Ordinance (Cap. 544);

“optical disc” (光碟) has the meaning assigned to it by section 2(1) of the Prevention of Copyright Piracy Ordinance (Cap. 544). (*Added 15 of 2007 s. 9*)

- (7) In this Part, “infringing copy” (侵犯版權複製品) includes a copy which is to be treated as an infringing copy by virtue of any of the following provisions—

- (a) section 35B(5) (imported copy not an “infringing copy” for purposes of section 35(3));
- (b) section 40B(5) (accessible copies made for persons with a print disability);
- (c) section 40C(7) (accessible copies made by specified bodies for persons with a print disability);
- (d) section 40D(2) (intermediate copies possessed by specified bodies);
- (e) section 40D(7) (intermediate copies dealt with by specified bodies);
- (f) section 41A(7) (copies made for purposes of giving or receiving instruction);
- (g) section 41(5) (copies made for purposes of instruction or examination);
- (h) section 44(3) (recordings made by educational establishments for educational purposes);
- (i) section 45(3) (reprographic copying by educational establishments for purposes of instruction);
- (j) section 46(4)(b) (copies made by librarian or archivist in reliance on false declaration);
- (k) section 54A(3) (copies made for purposes of public administration);
- (l) section 64(2) (further copies, adaptations, etc. of work in electronic form retained on transfer of principal copy);
- (m) section 72(2) (copies made for purpose of advertising artistic work for sale); or
- (n) section 77(4) (copies made for purposes of broadcast or cable programme). (*Replaced 15 of 2007 s. 9*)

- (8) For the purpose of subsections (3), (4) and (5), “accessory work” (附屬作品) means a work incorporated in or consisting of—
- (a) a label affixed to, or displayed on, an article;
 - (b) the packaging or container in which an article is packaged or contained;
 - (c) a label affixed to, or displayed on, the packaging or container in which an article is packaged or contained;
 - (d) a written instruction, warranty or other information incidental to an article and provided with the article on its sale; or
 - (e) an instructional sound recording or film incidental to an article and provided with the article on its sale,

and the economic value of the article (inclusive of the label, packaging, container, instruction, warranty, other information, sound recording or film, as the case may be) is not predominantly attributable to the economic value of the work.

(9) *(Repealed 27 of 2003 s. 2)*

[cf. 1988 c. 48 s. 27 U.K.]

35A. Copy of a computer program, or of certain other works embodied in the same article as a computer program, not an “infringing copy” for the purposes of section 35(3)

- (1) A copy of a work to which this subsection applies is not an infringing copy for the purposes of section 35(3) if it was lawfully made in the country, territory or area where it was made.
- (2) Subsection (1) applies to—
 - (a) a copy of a computer program; or

(b) except as provided in subsection (3) or (4), a copy of a work other than a computer program, which copy is embodied in an article that also embodies a copy of a computer program,

that, but for subsection (1), would be an infringing copy for the purposes of section 35(3).

(3) Subsection (1) does not apply to any copy of a work described in subsection (2)(b)—

(a) that is a copy of the whole or substantially the whole of a movie or a television drama; or

(b) that is a copy of a part of a movie or a television drama if—

(i) all those parts of the movie or television drama copies of which are embodied in the article together constitute the whole or substantially the whole of the movie or television drama; or

(ii) the viewing time of all those parts of the movie or television drama copies of which are embodied in the article is, in the case of a movie, more than 15 minutes in aggregate or, in the case of a television drama, more than 10 minutes in aggregate,

and in paragraphs (a) and (b)(i), reference to a television drama, in the case of a television drama comprising one or more episodes, is reference to an episode of the television drama.

(4) Subsection (1) does not apply to any copy of a work described in subsection (2)(b) that is—

(a) a copy of a movie or a television drama (other than a copy to which subsection (3) applies);

(b) a copy of a musical sound recording or a musical visual recording; or

- (c) a copy that forms part of an e-book,
(a “specified copy of a work”) if the article in which the specified copy is embodied is likely, in being acquired by a person for his own use, to be acquired for the purpose of acquiring the specified copies of works that are embodied in it more so than for the purpose of acquiring the copies of works other than specified copies that are embodied in it.
- (5) For the purposes of subsection (4), in considering the extent to which an article is likely to be acquired for the purpose of acquiring a particular copy of a work that is embodied in it, a copy of those parts of any computer program the function of which is to provide a means of—
 - (a) viewing or listening to a specified copy of a work that is embodied in the article (or, where that work is in encrypted form, a means of decrypting it so as to enable such viewing or listening); or
 - (b) searching for any specific part of a specified copy of a work that is embodied in the article,
 shall be regarded as part of the specified copy of a work.
- (6) In this section, “e-book” (電子書) means a combination of copies of works embodied in a single article and comprising—
 - (a) one or more copies of each of—
 - (i) a computer program; and
 - (ii) a literary work (other than a computer program), a dramatic work, a musical work or an artistic work (“main work”),
 so arranged as to provide for the copy of the main work to be presented in the form of an electronic version of a book, magazine or periodical; and

- (b) where a main work is accompanied for illustrative purposes by any copy or copies of films or sound recordings, that copy or those copies.
- (7) For the avoidance of doubt, reference in this section, other than subsection (6), to a copy of a work is reference to a copy of the whole or a substantial part of a work.

(Added 27 of 2003 s. 3)

35B. Imported copy not an “infringing copy” for the purposes of section 35(3)

- (1) A copy of a work to which this subsection applies is not—
 - (a) in relation to the person who imports it into Hong Kong, an infringing copy for the purposes of section 35(3) if—
 - (i) it was lawfully made in the country, territory or area where it was made; and
 - (ii) it is not imported with a view to its being dealt in by any person for the purpose of or in the course of any trade or business; or
 - (b) in relation to the person who possesses it, an infringing copy for the purposes of section 35(3) if—
 - (i) it was lawfully made in the country, territory or area where it was made; and
 - (ii) it is not possessed with a view to its being dealt in by any person for the purpose of or in the course of any trade or business.
- (2) Subsection (1) applies to a copy of a work of any description except a copy of a work—
 - (a) that is—
 - (i) a musical sound recording;
 - (ii) a musical visual recording;

- (iii) a television drama; or
 - (iv) a movie; and
 - (b) that is, or is intended to be, played or shown in public.
- (3) Notwithstanding the exception in subsection (2), subsection (1) applies to a copy of a work that is referred to in subsection (2)(a) and that is, or is intended to be, played or shown in public—
 - (a) by an educational establishment for the educational purposes of the establishment; or
 - (b) by a specified library for use of the library.
- (4) For the purposes of subsection (3)(b), a library is regarded as a specified library if it falls within the description of any library specified under section 46(1)(b).
- (5) Where a copy of a work is not an infringing copy by virtue of subsection (1) but is subsequently dealt in for the purpose of or in the course of any trade or business—
 - (a) if that dealing takes place within the period of 15 months referred to in section 35(4)(b), it is, for the purposes of sections 118 to 133 (criminal provisions), to be treated, in relation to that dealing and the person who deals in it, as an infringing copy; and
 - (b) irrespective of the time at which that dealing takes place, it is, for the purposes of any provision of this Ordinance except sections 118 to 133, to be treated, in relation to that dealing and the person who deals in it, as an infringing copy.
- (6) In this section, “deal in” (經銷) means sell, let for hire, offer or expose for sale or hire, or distribute for profit or reward.

(Added 15 of 2007 s. 10)

Defences

36. Defences for the purposes of sections 30 and 31

- (1) For the purposes of sections 30 and 31 and for the avoidance of doubt, it is declared that if in an action for infringement of copyright under section 30 or 31 in respect of a copy of a work which is an infringing copy by virtue only of section 35(3) and which was lawfully made in the country, territory or area where it was made, the defendant proves that— (*Amended 15 of 2007 s. 11*)
 - (a) he had made reasonable enquiries sufficient to satisfy himself that the copy of the work imported or proposed to be imported into Hong Kong was not an infringing copy of the work;
 - (b) he had reasonable grounds to be satisfied in the circumstances of the case that the copy was not an infringing copy; and
 - (c) there were no other circumstances which would have led him reasonably to suspect that the copy was an infringing copy,he has proved that he did not have reason to believe that the copy was an infringing copy.
- (2) In determining whether a defendant has proved under subsection (1) that he did not have reason to believe that the copy was an infringing copy of the work, the court may have regard to, including but not limited to, the following—
 - (a) whether he had made enquiries with a relevant trade body in respect of that category of work;
 - (b) whether he had given any notice drawing attention of the copyright owner or exclusive licensee to his interest to import and to sell the copy of the work;

- (c) whether he had complied with any code of practice that may exist in respect of the supply of that category of work;
 - (d) whether the response, if any, to those enquiries made by the defendant was reasonable and timely;
 - (e) whether he was provided with the name, address and contact details of the copyright owner or exclusive licensee (as the case may be);
 - (f) whether he was provided with the date of first day of publication of the work;
 - (g) whether he was provided with proof of any relevant exclusive licence.
 - (3) In an action against a person for infringement of copyright under section 30 or 31, it is a defence for that person to prove that—
 - (a) he had placed an order with the copyright owner or the exclusive licensee, as the case may be, for the supply of copies of the work;
 - (b) the person with whom he placed the order had acted unconscionably by either withholding supply on unreasonable grounds or by agreeing to supply on unreasonable terms; and
 - (c) the import took place after that unconscionable act by the copyright owner or exclusive licensee and after the expiration of the period referred to in section 35(4)(b).
 - (4) In determining whether the copyright owner or exclusive licensee had acted unconscionably, the court shall take into consideration the established practices of the particular trade for the orderly distribution of copies of that category of work and, in particular, whether the order, if fulfilled, would conflict with a normal exploitation of the work by

the copyright owner or the exclusive licensee, or would unreasonably prejudice the legitimate interests of the copyright owner or exclusive licensee.

- (5) In determining whether supply is withheld on “unreasonable grounds” or whether the agreement to supply is on “unreasonable terms” the court shall have regard to the reasonable requirements of the particular trade or particular public, including but not limited to price and delivery times, the practice of the trade with existing stocks in Hong Kong, the practice of the trade generally for the product in its particular medium, category or language, the size of the order, enquiries made and whether or not any person has previously had unfulfilled orders with the particular supplier.

DIVISION III—ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

Introductory

37. Introductory provisions

- (1) The provisions of this Division specify acts which may be done in relation to copyright works notwithstanding the subsistence of copyright; they relate only to the question of infringement of copyright and do not affect any other right or obligation restricting the doing of any of the specified acts.
- (2) Where it is provided by this Division that an act does not infringe copyright, or may be done without infringing copyright, and no particular description of copyright work is mentioned, the act in question does not infringe the copyright in a work of any description.
- (3) In determining whether an act specified in this Division may be done in relation to a copyright work notwithstanding the subsistence of copyright, the primary consideration is that the

act does not conflict with a normal exploitation of the work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner.

- (4) No inference is to be drawn from the description of any act which may by virtue of this Division be done without infringing copyright as to the scope of the acts restricted by the copyright in any description of work.
- (5) The provisions of this Division are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

[cf. 1988 c. 48 s. 28 U.K.]

General

38. Research and private study

- (1) Fair dealing with a work for the purposes of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement. (*Amended 15 of 2007 s. 12*)
- (2) Copying by a person other than the researcher or student himself is not fair dealing if—
 - (a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 49 would not permit to be done under section 47 or 48 (articles or parts of published works: restriction on multiple copies of same material); or
 - (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

- (3) In determining whether any dealing with a work is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—
 - (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the work;
 - (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the work. (*Replaced 15 of 2007 s. 12*)
[cf. 1988 c. 48 s. 29 U.K.]

39. Criticism, review and news reporting

- (1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, if it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.
- (2) Fair dealing with a work for the purpose of reporting current events, if (subject to subsection (3)) it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work.
- (3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

[cf. 1988 c. 48 s. 30 U.K.]

40. Incidental inclusion of copyright material

- (1) Copyright in a work is not infringed by its incidental inclusion in an artistic work, sound recording, film, broadcast

or cable programme.

- (2) The copyright is also not infringed by the issue or making available to the public of copies, or the playing, showing, broadcasting or inclusion in a cable programme service, of anything whose making was, by virtue of subsection (1), not an infringement of the copyright.
- (3) A musical work, words spoken or sung with music, or so much of a sound recording, broadcast or cable programme as includes a musical work or such words, is not regarded as incidentally included in another work if it is deliberately included.

[cf. 1988 c. 48 s. 31 U.K.]

Persons with a print disability

40A. Definitions for sections 40A to 40F

In this section and in sections 40B to 40F—

“accessible copy” (便於閱讀文本), in relation to a copyright work, means a version which provides improved access to the work for a person with a print disability;

“lend” (借出), in relation to a copy, means to make it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will be returned;

“print disability” (閱讀殘障), in relation to a person, means—

- (a) blindness;
- (b) an impairment of his visual function which cannot be improved by the use of corrective lenses to a level that would normally be acceptable for reading without a special level or kind of light;
- (c) inability, through physical disability, to hold or manipulate a book; or

- (d) inability, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading;

“specified body” (指明團體) means a body of any of the following descriptions—

- (a) an educational establishment specified in section 1 of Schedule 1;
- (b) an educational establishment exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112);
- (c) an educational establishment receiving direct recurrent subvention from the Government; or
- (d) an organization which is not established or conducted for profit and whose main objects are charitable or are otherwise concerned with the advancement of welfare for persons with a print disability.

(Added 15 of 2007 s. 13)

40B. Making a single accessible copy for a person with a print disability

(1) If—

- (a) a person with a print disability possesses a copy of the whole or part of a literary, dramatic, musical or artistic work (referred to in this section as “master copy”); and
- (b) the master copy is not accessible to him because of the disability,

it is not an infringement of copyright in the work or, in the case of a published edition, in the typographical arrangement, for one accessible copy of the master copy to be made by or on behalf of the person for his personal use.

(2) Subsection (1) does not apply—

- (a) if the master copy is an infringing copy;

- (b) if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
 - (c) if the master copy is of a dramatic work or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the work or part of the work.
- (3) Subsection (1) does not apply unless, at the time when the accessible copy is made by or on behalf of the person with a print disability, the maker of the copy is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to the person cannot be obtained at a reasonable commercial price.
- (4) If a person makes an accessible copy on behalf of a person with a print disability under this section and charges for it, the sum charged must not exceed the cost incurred in making and supplying the copy.
- (5) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
- (a) for the purpose of that dealing; and
 - (b) if that dealing infringes copyright, for all subsequent purposes.
- (6) In subsection (5), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 13)

40C. Making multiple accessible copies by specified bodies for persons with a print disability

- (1) If—
 - (a) a specified body possesses a copy of the whole or part of a commercial publication of a literary, dramatic, musical or artistic work (referred to in this section as “master copy”); and
 - (b) the master copy is not accessible to persons with a print disability,it is not an infringement of copyright in the work or, in the case of a published edition, in the typographical arrangement, for the specified body to make for those persons or supply to those persons accessible copies of the master copy for their personal use.
- (2) Subsection (1) does not apply—
 - (a) if the master copy is an infringing copy;
 - (b) if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
 - (c) if the master copy is of a dramatic work or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the work or part of the work.
- (3) Subsection (1) does not apply unless, at the time when the accessible copies are made, the specified body is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to a person with a print disability cannot be obtained at a reasonable commercial price.
- (4) The specified body must—

- (a) within a reasonable time before making or supplying the accessible copies, notify the relevant copyright owner of its intention to make or supply the accessible copies; or
 - (b) within a reasonable time after making or supplying the accessible copies, notify the relevant copyright owner of the fact that it has made or supplied the accessible copies.
- (5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.
- (6) If the specified body charges for making and supplying an accessible copy under this section, the sum charged must not exceed the cost incurred in making and supplying the copy.
- (7) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
 - (a) for the purpose of that dealing; and
 - (b) if that dealing infringes copyright, for all subsequent purposes.
- (8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 13)

40D. Intermediate copies

- (1) A specified body entitled to make accessible copies of a master copy under section 40C may possess an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but—

- (a) the specified body may possess the intermediate copy only for the purpose of the production of further accessible copies; and
 - (b) the specified body must destroy the intermediate copy within 3 months after it is no longer required for that purpose.
- (2) An intermediate copy possessed otherwise than in accordance with subsection (1) is to be treated as an infringing copy.
- (3) A specified body may lend or transfer an intermediate copy possessed under subsection (1) to another specified body which is also entitled to make accessible copies of the relevant copyright work under section 40C.
- (4) The specified body must—
 - (a) within a reasonable time before lending or transferring the intermediate copy, notify the relevant copyright owner of its intention to lend or transfer the intermediate copy; or
 - (b) within a reasonable time after lending or transferring the intermediate copy, notify the relevant copyright owner of the fact that it has lent or transferred the intermediate copy.
- (5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.
- (6) If the specified body charges for lending or transferring an intermediate copy under this section, the sum charged must not exceed the cost incurred in lending or transferring the copy.
- (7) Where an intermediate copy which apart from this section would be an infringing copy is possessed, lent or transferred

in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- (a) for the purpose of that dealing; and
 - (b) if that dealing infringes copyright, for all subsequent purposes.
- (8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 13)

40E. Records to be kept by specified bodies

- (1) A specified body must make a record of any accessible copy made or supplied under section 40C as soon as practicable after it is made or supplied.
- (2) The record referred to in subsection (1) must include—
 - (a) the date on which the accessible copy is made or supplied;
 - (b) the form of the accessible copy;
 - (c) the title, publisher and edition of the relevant master copy;
 - (d) where the accessible copy is made for or supplied to a body or a class of persons, the name of the body or a description of the class of persons; and
 - (e) where more than one copy of the accessible copy is made or supplied, the total number of such copies.
- (3) A specified body must make a record of any intermediate copy lent or transferred under section 40D as soon as practicable after it is lent or transferred.
- (4) The record referred to in subsection (3) must include—
 - (a) the name of the specified body to which and the date on which the intermediate copy is lent or transferred;

- (b) the form of the intermediate copy; and
 - (c) the title, publisher and edition of the relevant master copy.
- (5) A specified body must—
 - (a) retain any record made under subsection (1) or (3) for a period of at least 3 years after it is made; and
 - (b) allow the relevant copyright owner or a person acting for him, on giving reasonable notice, to inspect and make copies of the record at any reasonable time.

(Added 15 of 2007 s. 13)

40F. Supplementary provisions for sections 40A to 40E

- (1) This section supplements sections 40A to 40E.
- (2) A copy (other than an accessible copy made under section 40B or 40C) of a copyright work is taken to be accessible to a person with a print disability only if it is as accessible to him as it would be if he were not suffering from the disability.
- (3) An accessible copy of a copyright work may be in the form of—
 - (a) a sound recording of the work;
 - (b) a Braille, large-print or electronic version of the work; or
 - (c) any other specialized format of the work.
- (4) An accessible copy of a copyright work may include facilities for navigating around the version of the work but must not include—
 - (a) changes which are not necessary to overcome problems caused by a print disability; or

- (b) changes which infringe the moral right of the author of the work conferred by section 92 not to have the work subjected to derogatory treatment.

(Added 15 of 2007 s. 13)

Education

41A. Fair dealing for purposes of giving or receiving instruction

- (1) Fair dealing with a work by or on behalf of a teacher or by a pupil for the purposes of giving or receiving instruction in a specified course of study provided by an educational establishment does not infringe the copyright in the work or, in the case of a published edition, in the typographical arrangement.
- (2) In determining whether any dealing with a work is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—
 - (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the work;
 - (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the work.
- (3) Where any dealing with a work involves the inclusion of any passage or excerpt from a published literary or dramatic work in an anthology—
 - (a) if the inclusion is not accompanied by a sufficient acknowledgement, the dealing is not fair dealing under subsection (1); and

- (b) if the inclusion is accompanied by a sufficient acknowledgement, subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).
- (4) Where any dealing with a work involves the making of a recording of a broadcast or cable programme or a copy of such a recording—
 - (a) if an acknowledgement of authorship or other creative effort contained in the work recorded is not incorporated in the recording, the dealing is not fair dealing under subsection (1); and
 - (b) if an acknowledgement of authorship or other creative effort contained in the work recorded is incorporated in the recording, subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).
- (5) Where any dealing with a work involves the making available of copies of the work through a wire or wireless network wholly or partly controlled by an educational establishment—
 - (a) if the educational establishment fails to—
 - (i) adopt technological measures to restrict access to the copies of the work through the network so that the copies of the work are made available only to persons who need to use the copies of the work for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; or
 - (ii) ensure that the copies of the work are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,

the dealing is not fair dealing under subsection (1); and

(b) if the educational establishment—

(i) adopts technological measures to restrict access to the copies of the work through the network so that the copies of the work are made available only to persons who need to use the copies of the work for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; and

(ii) ensures that the copies of the work are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,

subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).

(6) Without affecting the generality of section 37(5), where any dealing with a work involves the making of reprographic copies, the fact that the making of the copies does not fall within section 45 does not mean that it is not covered by this section, and subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).

(7) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

(a) for the purpose of that dealing; and

(b) if that dealing infringes copyright, for all subsequent purposes.

- (8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 14)

41. Things done for purposes of instruction or examination

- (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied, to a reasonable extent, in the course of instruction or of preparation for instruction, if the copying—
 - (a) is done by a person giving or receiving instruction; and
 - (b) is not by means of a reprographic process.
- (2) Copyright in a sound recording, film, broadcast or cable programme is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, if the copying is done by a person giving or receiving instruction.
- (3) Copyright is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions.
- (4) Subsection (3) does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.
- (5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, the copy is treated as an infringing copy for the purpose of that dealing and if that dealing infringes copyright, for all subsequent purposes.

For this purpose “dealt with” (進行交易) means sold or let for hire or offered or exposed for sale or hire.

[cf. 1988 c. 48 s. 32 U.K.]

42. Anthologies for educational use

- (1) The inclusion of a short passage from a published literary or dramatic work in a collection which—
 - (a) is intended for use in educational establishments and is so described in its title, and in any advertisements issued by or on behalf of the publisher; and
 - (b) consists mainly of material in which no copyright subsists,does not infringe the copyright in the work if the work itself is not intended for use in such establishments and the inclusion is accompanied by a sufficient acknowledgement.
- (2) Subsection (1) does not authorize the inclusion of more than 2 excerpts from copyright works by the same author in collections published by the same publisher over any period of 5 years.
- (3) In relation to any given passage the reference in subsection (2) to excerpts from works by the same author—
 - (a) is taken to include excerpts from works by him in collaboration with another; and
 - (b) if the passage in question is from such a work, is taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.
- (4) References in this section to the use of a work in an educational establishment are to any use for the educational purposes of such an establishment.

[cf. 1988 c. 48 s. 33 U.K.]

43. Performing, playing or showing work in course of activities of educational establishments

- (1) The performance of a literary, dramatic or musical work before an audience consisting wholly or mainly of teachers and pupils at an educational establishment, parents or guardians of pupils at the establishment, and other persons directly connected with the activities of the establishment— (*Amended 15 of 2007 s. 15*)
 - (a) by a teacher or pupil in the course of the activities of the establishment; or
 - (b) at the establishment by any person for the purposes of instruction,is not a public performance for the purposes of infringement of copyright.
- (2) The playing or showing of a sound recording, film, broadcast or cable programme before such audience at an educational establishment for the purposes of giving or receiving instruction is not a playing or showing of the work in public for the purposes of infringement of copyright. (*Amended 15 of 2007 s. 15*)
- (3) (*Repealed 15 of 2007 s. 15*)

[*cf. 1988 c. 48 s. 34 U.K.*]

44. Recording by educational establishments of broadcasts and cable programmes

- (1) A recording of a broadcast or cable programme, or a copy of such a recording may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast or cable programme, or in any work included in it, if—
 - (a) an acknowledgement of authorship or other creative effort contained in the work recorded is incorporated in the recording made by the establishment; and

- (b) it is not made for gain.
- (2) Recording or copying is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the recording or copying in question and the person making the recording or copies knew or ought to have been aware of that fact.
- (3) Where a recording or copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, the copy is treated as an infringing copy for the purposes of that dealing and if that dealing infringes copyright, for all subsequent purposes.

For this purpose “dealt with” (進行交易) means sold or let for hire or offered or exposed for sale or hire.

[cf. 1988 c. 48 s. 35 U.K.]

45. Reprographic copying made by educational establishments or pupils of passages from published works

Reprographic copying made by educational establishments or pupils of passages from published works

(Amended 15 of 2007 s. 16)

- (1) Reprographic copies of artistic works or of passages from published literary, dramatic or musical works may, to a reasonable extent, be made by or on behalf of an educational establishment for the purposes of giving instruction, or by a pupil for the purposes of receiving instruction in a specified course of study provided by an educational establishment, without infringing any copyright in the work, or in the typographical arrangement. *(Amended 15 of 2007 s. 16)*
- (2) Copying is not authorized by this section if, or to the extent that, licences under licensing schemes are available

authorizing the copying in question and the person making the copies knew or ought to have been aware of that fact.

- (3) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it is treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright, for all subsequent purposes.

For this purpose “dealt with” (進行交易) means sold or let for hire or offered or exposed for sale or hire.

[*cf.* 1988 c. 48 s. 36 U.K.]

Libraries and archives

46. Libraries and archives: introductory

(For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.)

- (1) The Secretary for Commerce and Economic Development may— (*Amended L.N. 173 of 2000; L.N. 106 of 2002; L.N. 130 of 2007*)
- (a) by regulations prescribe conditions; and
 - (b) by notice in the Gazette specify libraries or archives, for the purposes of any provision in sections 47 to 53 (copying by librarians and archivists).
- (2) In sections 47 to 53—
- (a) references in any provision to the prescribed conditions are to the conditions prescribed for the purposes of that provision under subsection (1)(a); and
 - (b) references in any provision to a specified library or archive are to a library or archive of a description specified for the purposes of that provision under subsection (1)(b).

- (3) The regulations may—
 - (a) provide that, where a librarian or archivist is required to be satisfied as to any matter before making or supplying a copy of a work—
 - (i) he may rely on a signed declaration as to that matter by the person requesting the copy, unless he is aware that it is false in a material particular; and
 - (ii) in such cases as may be prescribed, he shall not make or supply a copy in the absence of a signed declaration in such form as may be prescribed;
 - (b) make different provisions for different descriptions of libraries or archives and for different purposes.
- (4) Where a person requesting a copy makes a declaration which is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him—
 - (a) he is liable for infringement of copyright as if he had made the copy himself; and
 - (b) the copy is treated as an infringing copy.
- (5) References in this section, and in sections 47 to 53, to the librarian or archivist include a person acting on his behalf.

[cf. 1988 c. 48 s. 37 U.K.]

47. Copying by librarians: articles in periodicals

- (1) The librarian of a specified library may, if the prescribed conditions are complied with, make and supply a copy of an article in a periodical without infringing any copyright in the text, in any illustrations accompanying the text or in the typographical arrangement.
- (2) The prescribed conditions must include the following—

- (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
- (b) that no person is furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical; and
- (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

[cf. 1988 c. 48 s. 38 U.K.]

48. Copying by librarians: parts of published works

- (1) The librarian of a specified library may, if the prescribed conditions are complied with, make and supply from a published edition a copy of part of a literary, dramatic or musical work (other than an article in a periodical) without infringing any copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.
- (2) The prescribed conditions must include the following—
 - (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
 - (b) that no person is furnished with more than one copy of the same material or with a copy of more than a reasonable proportion of any work; and
 - (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

[cf. 1988 c. 48 s. 39 U.K.]

49. Restriction on production of multiple copies of the same material

- (1) Regulations for the purposes of sections 47 and 48 (copying by librarian of article or part of published work) must contain provision to the effect that a copy is supplied only to a person satisfying the librarian that his requirement is not related to any similar requirement of another person.
- (2) The regulations may provide—
 - (a) that requirements are regarded as similar if the requirements are for copies of substantially the same material at substantially the same time and for substantially the same purpose; and
 - (b) that requirements of persons are regarded as related if those persons receive instruction to which the material is relevant at the same time and place.

[cf. 1988 c. 48 s. 40 U.K.]

50. Copying by librarians: supply of copies to other libraries

- (1) The librarian of a specified library may, if the prescribed conditions are complied with, make and supply to another specified library a copy of—
 - (a) an article in a periodical;
 - (b) the whole or part of a published edition of a literary, dramatic or musical work; or
 - (c) a sound recording or film,without infringing any copyright in the text of the article, in the work, in any illustration accompanying it, in the typographical arrangement, or in the sound recording or film, as the case may be.

- (2) Subsection (1)(b) and (c) does not apply if at the time the copy is made the librarian making it knows, or could by reasonable inquiry ascertain, the name and address of a person entitled to authorize the making of the copy.

[cf. 1988 c. 48 s. 41 U.K.]

51. Copying by librarians or archivists: replacement copies of works

- (1) The librarian or archivist of a specified library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive—
- (a) in order to preserve or replace that item by placing the copy in its permanent collection in addition to or in place of it; or
 - (b) in order to replace in the permanent collection of another specified library or archive an item which has been lost, destroyed or damaged,
- without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement or, in the case of a sound recording or a film, in the sound recording or film.
- (2) The prescribed conditions must include provision for restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question to fulfill that purpose.

[cf. 1988 c. 48 s. 42 U.K.]

52. Copying by librarians or archivists: certain unpublished works

- (1) The librarian or archivist of a specified library or archive may, if the prescribed conditions are complied with, make

and supply a copy of the whole or part of—

(a) a literary, dramatic or musical work from a document (including a document in electronic form); or

(b) a sound recording or film,

in the library or archive without infringing any copyright in the work or any illustrations accompanying it or in the sound recording or film.

(2) This section does not apply if—

(a) the work had been published before it was deposited in the library or archive; or

(b) the copyright owner has prohibited copying of the work, and at the time the copy is made the librarian or archivist making it is, or ought to be, aware of that fact.

(3) The prescribed conditions must include the following—

(a) that copies are supplied only to persons satisfying the librarian or archivist that they require them for purposes of research or private study and will not use them for any other purpose;

(b) that no person is furnished with more than one copy of the same material; and

(c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.

[cf. 1988 c. 48 s. 43 U.K.]

53. Copying by librarians or archivists: articles of cultural or historical importance

The librarian or archivist of a specified library or archive may make a copy of an article of cultural or historical importance or

interest and deposit the copy at the specified library or archive without infringing any copyright in respect of the article if the article is likely to be lost to Hong Kong through sale or export.

[cf. 1988 c. 48 s. 44 U.K.]

Public administration

54A. Fair dealing for purposes of public administration

- (1) Fair dealing with a work by the Government, the Executive Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe the copyright in the work or, in the case of a published edition, in the typographical arrangement.
- (2) In determining whether any dealing with a work is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—
 - (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the work;
 - (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the work.
- (3) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
 - (a) for the purpose of that dealing; and
 - (b) if that dealing infringes copyright, for all subsequent purposes.

- (4) In subsection (3), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 17)

54B. Legislative Council

- (1) Copyright is not infringed by—
- (a) anything done for the purposes of the proceedings of the Legislative Council; or
 - (b) anything done by or on behalf of—
 - (i) the members of the Legislative Council; or
 - (ii) The Legislative Council Commission,

for the purposes of the exercise and discharge by the Legislative Council of its powers and functions.
- (2) Copyright is not infringed by anything done for the purposes of reporting the proceedings of the Legislative Council; but this is not to be construed as authorizing the copying of a work which is itself a published report of the proceedings.

(Added 15 of 2007 s. 17)

54. Judicial proceedings

Judicial proceedings

(Amended 15 of 2007 s. 18)

- (1) Copyright is not infringed by anything done for the purposes of judicial proceedings. *(Amended 15 of 2007 s. 18)*
- (2) Copyright is not infringed by anything done for the purposes of reporting such proceedings; but this is not to be construed as authorizing the copying of a work which is itself a published report of the proceedings.

[cf. 1988 c. 48 s. 45 U.K.]

55. Statutory inquiries

- (1) Copyright is not infringed by anything done for the purposes of the proceedings of a statutory inquiry.
- (2) Copyright is not infringed by anything done for the purposes of reporting any such proceedings held in public; but this is not to be construed as authorizing the copying of a work which is itself a published report of the proceedings.
- (3) Copyright in a work is not infringed by the issue or making available to the public of copies of the report of a statutory inquiry containing the work or material from it.
- (4) In this section—
“statutory inquiry” (法定研訊) means an inquiry held or investigation conducted in pursuance of—
 - (a) the Commissions of Inquiry Ordinance (Cap. 86); or
 - (b) a duty imposed or power conferred by or under an Ordinance.

[cf. 1988 c. 48 s. 46 U.K.]

56. Material open to public inspection or on official register

(Adaptation amendments retroactively made - see 22 of 1999 s. 3)

- (1) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, copyright is not infringed by the copying of so much of the material as contains factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve the issuing or making available of copies to the public.
- (2) Where material is open to public inspection pursuant to a statutory requirement, copyright is not infringed by the copying or issuing or making available to the public of copies of the material, by or with the authority of the appropriate

person, for the purpose of enabling the material to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.

- (3) Where material which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contains information about matters of general scientific, technical, commercial or economic interest, copyright is not infringed by the copying or issuing or making available to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of disseminating that information.
- (4) The Chief Executive may by regulation provide that subsection (1), (2) or (3) applies, in such cases as may be specified in the regulation, only to copies marked in such manner as may be so specified. (*Amended 22 of 1999 s. 3*)
- (5) The Chief Executive may by regulation provide that subsections (1) to (3) apply, to such extent and with such modifications as may be specified in the regulation— (*Amended 22 of 1999 s. 3*)
 - (a) to material made open to public inspection by—
 - (i) an international organization specified in the regulation; or
 - (ii) a person so specified who has functions in Hong Kong under an international agreement to which Hong Kong is a party; or
 - (b) to a register maintained by an international organization specified in the regulation,as they apply in relation to material open to public inspection pursuant to a statutory requirement or to a statutory register.
- (6) In this section—

“appropriate person” (適當的人) means the person required to make the material open to public inspection or, as the case may be, the person maintaining the statutory register;

“statutory register” (法定登記冊) means a register maintained in pursuance of a requirement imposed by or under an Ordinance;

“statutory requirement” (法例規定) means a requirement imposed by or under an Ordinance.

[cf. 1988 c. 48 s. 47 U.K.]

57. Material communicated to the Government in the course of public business

- (1) This section applies where a work has in the course of public business been communicated to the Government for any purpose, by or with the licence of the copyright owner and a document or other material thing recording or embodying the work is owned by or in the custody or control of the Government.
- (2) The Government may, for the purpose for which the work was communicated to it, or any related purpose which could reasonably have been anticipated by the copyright owner, copy the work, or issue or make available copies of the work to the public without infringing any copyright in the work.
- (3) The Government may not copy a work, or issue or make available copies of a work to the public, by virtue of this section if the work has previously been published otherwise than by virtue of this section.
- (4) In subsection (1) “public business” (公務) includes any activity carried on by the Government.
- (5) This section has effect subject to any agreement to the contrary between the Government and the copyright owner.

[cf. 1988 c. 48 s. 48 U.K.]

58. Public records

- (1) Material which is comprised in public records which are open to public inspection may be copied, and a copy may be supplied to any person without infringement of copyright.
- (2) In this section “public records” (公共紀錄) means the records of any nature or description which have been made, received or acquired in the course of proceedings of the Legislative Council, judicial proceedings or executive transaction, together with the exhibits and other material evidence which form part of or are annexed to or are otherwise related to any record, which are or are required to be in the custody of, or which may be transferred to or be acquired by, any department of the Government.

[cf. 1988 c. 48 s. 49 U.K.]

59. Acts done under statutory authority

- (1) Where the doing of a particular act is specifically authorized by an Ordinance, whenever enacted, then, unless the Ordinance provides otherwise, the doing of that act does not infringe copyright.
- (2) Nothing in this section is to be construed as excluding any defence of statutory authority otherwise available under or by virtue of any Ordinance.

[cf. 1988 c. 48 s. 50 U.K.]

Computer programs: Lawful users

60. Lawful user may make back-up copy of computer program

- (1) A lawful user of a copy of a computer program may make a back-up copy of the program without infringing the copyright

in the program if it is necessary for him to have the back-up copy for the purposes of his lawful use.

- (2) For the purposes of this section and section 61 a person is a lawful user of a computer program if he has a contractual right to use the program.
- (3) This section has effect subject to any agreement to the contrary.

[cf. 1988 c. 48 s. 50A U.K.]

61. Lawful user may copy or adapt computer program

- (1) A lawful user of a copy of a computer program may copy or adapt the program without infringing the copyright in the program if the copying or adapting is necessary for his lawful use.
- (2) A lawful user of a copy of a computer program may, in particular, if it is necessary for the lawful use of the program, copy the program or adapt it for the purpose of correcting errors in it.
- (3) This section does not apply to any copying or adapting permitted under section 60.

[cf. 1988 c. 48 s. 50C U.K.]

Typefaces

62. Use of typeface in ordinary course of printing

- (1) It is not an infringement of copyright in an artistic work consisting of the design of a typeface—
 - (a) to use the typeface in the ordinary course of typing, composing text, typesetting or printing;
 - (b) to possess an article for the purpose of such use; or

- (c) to do anything in relation to material produced by such use,
and this is so notwithstanding that an article is used which is an infringing copy of the work.
- (2) However, the following provisions of this Part apply in relation to persons making, importing, exporting or dealing with articles specifically designed or adapted for producing material in a particular typeface, or possessing such articles for the purpose of dealing with them, as if the production of material as mentioned in subsection (1) did infringe copyright in the artistic work consisting of the design of the typeface—
section 32 (secondary infringement: making, importing, exporting, possessing or dealing with article for making infringing copy);
section 109 (order for delivery up); and
section 118(4) (offence of making or possessing such an article).
- (3) The references in subsection (2) to “dealing with” an article are to selling, letting for hire, or offering or exposing for sale or hire, exhibiting in public, or distributing.

[cf. 1988 c. 48 s. 54 U.K.]

63. Articles for producing material in particular typeface

- (1) This section applies to the copyright in an artistic work consisting of the design of a typeface where articles specifically designed or adapted for producing material in that typeface have been marketed by or with the licence of the copyright owner.
- (2) After the period of 25 years from the end of the calendar year in which the first such articles are marketed, the work may be copied by making further such articles, or doing anything

for the purpose of making such articles, and anything may be done in relation to articles so made, without infringing copyright in the work.

- (3) In subsection (1) “marketed” (推出市場) means sold, let for hire or offered or exposed for sale or hire, in Hong Kong or elsewhere.

[cf. 1988 c. 48 s. 55 U.K.]

Works in electronic form

64. Transfers of copies of works in electronic form

- (1) This section applies where a copy of a work in electronic form (other than such a copy which was made available to the public) has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work, or to adapt it or make copies of an adaptation, in connection with his use of it.
- (2) If there are no express terms—
- (a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence or terminating any licence on a transfer; or
 - (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,
- anything which the purchaser was allowed to do may also be done without infringement of copyright by a transferee; but any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred is to be treated as an infringing copy for all purposes after the transfer.
- (3) Subsection (2) also applies where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

- (4) The above provisions also apply on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.

[cf. 1988 c. 48 s. 56 U.K.]

65. Certain acts permitted where works made available to the public

Notwithstanding section 23, copyright in a work is not infringed by the making of a transient and incidental copy which is technically required for the viewing or listening of the work by a member of the public to whom a copy of the work is made available.

Miscellaneous: Literary, dramatic, musical and artistic works

66. Anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author

- (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when—
- (a) it is not possible by reasonable inquiry to ascertain the identity of the author; and
 - (b) it is reasonable to assume—
 - (i) that copyright has expired; or
 - (ii) that the author died 50 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.
- (2) Subsection (1)(b)(ii) does not apply in relation to—
- (a) a work in which Government copyright subsists; or
 - (b) a work in which copyright originally vested in an international organization by virtue of section 188 and in

respect of which a regulation under that section specifies a copyright period longer than 50 years.

- (3) In relation to a work of joint authorship—
 - (a) the reference in subsection (1) to its being not possible to ascertain the identity of the author is to be construed as a reference to its being not possible to ascertain the identity of all of the authors; and
 - (b) the reference in subsection (1)(b)(ii) to the author having died is to be construed as a reference to all the authors having died.

[cf. 1988 c. 48 s. 57 U.K.]

67. Use of notes or recordings of spoken words in certain cases

- (1) Where a record of spoken words is made, in writing or otherwise, for the purpose of—
 - (a) reporting current events; or
 - (b) broadcasting or including in a cable programme service the whole or part of the work,it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it (or to copy the record, or any such material, and use the copy) for that purpose, if the conditions in subsection (2) are met.
- (2) The conditions are that—
 - (a) the record is a direct record of the spoken words and is not taken from a previous record or from a broadcast or cable programme;
 - (b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright;

- (c) the use made of the record or material taken from it is not of a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and
- (d) the use is by or with the authority of a person who is lawfully in possession of the record.

[cf. 1988 c. 48 s. 58 U.K.]

68. Public reading or recitation

- (1) The reading or recitation in public by one person of a reasonable extract from a published literary or dramatic work does not infringe any copyright in the work if it is accompanied by a sufficient acknowledgement.
- (2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme service, of a reading or recitation which by virtue of subsection (1) does not infringe copyright in the work, if the recording, broadcast or cable programme consists mainly of material in relation to which it is not necessary to rely on that subsection.

[cf. 1988 c. 48 s. 59 U.K.]

69. Abstracts of scientific or technical articles

- (1) Where an article on a scientific or technical subject is published in a periodical accompanied by an abstract indicating the contents of the article, it is not an infringement of copyright in the abstract, or in the article, to copy the abstract or issue or make available copies of it to the public.
[cf. 1988 c. 48 s. 60(1) U.K.]
- (2) This section does not apply if, or to the extent that, licences under licensing schemes are available authorizing the act in question and the person so acting knew or ought to have been aware of that fact.

70. Recordings of folksongs

(For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.)

- (1) A sound recording of a performance of a song may be made for the purpose of including it in an archive maintained by a body designated under subsection (4)(b) without infringing any copyright in the words as a literary work or in the accompanying musical work, if the conditions in subsection (2) below are met.
- (2) The conditions are that—
 - (a) the words are unpublished and of unknown authorship at the time the recording is made;
 - (b) the making of the recording does not infringe any other copyright; and
 - (c) its making is not prohibited by any performer.
- (3) Copies of a sound recording made in reliance on subsection (1) and included in an archive maintained by a body designated under subsection (4)(b) may, if the conditions prescribed under subsection (4)(a) are met, be made and supplied by the archivist without infringing copyright in the recording or the works included in it.
- (4) The Secretary for Commerce and Economic Development may for the purposes of this section by regulation— (*Amended L.N. 173 of 2000; L.N. 106 of 2002; L.N. 130 of 2007*)
 - (a) prescribe conditions; and
 - (b) designate bodies, and he shall not designate a body unless he is satisfied that the body is not established or conducted for profit.
- (5) The conditions prescribed under subsection (4)(a) must include—

- (a) that copies are only supplied to persons satisfying the archivist that they require them for the purposes of research or private study and will not use them for any other purpose; and
 - (b) that no person is furnished with more than one copy of the same recording.
- (6) In this section, references to the archivist include a person acting on his behalf.

[cf. 1988 c. 48 s. 61 U.K.]

71. Representation of certain artistic works on public display

- (1) This section applies to—
 - (a) buildings; and
 - (b) sculptures, models for buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.
- (2) The copyright in such a work is not infringed by—
 - (a) making a graphic work representing it;
 - (b) making a photograph or film of it; or
 - (c) broadcasting or including in a cable programme service a visual image of it.
- (3) Nor is the copyright infringed by the issue or making available to the public of copies, or the broadcasting or inclusion in a cable programme service, of anything whose making was, by virtue of this section, not an infringement of the copyright.

[cf. 1988 c. 48 s. 62 U.K.]

72. Advertisement of sale of artistic work

- (1) It is not an infringement of copyright in an artistic work to

copy it, or to issue or make available copies to the public, for the purpose of advertising the sale of the work.

- (2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, the copy is treated as an infringing copy for the purposes of that dealing and, if that dealing infringes copyright, for all subsequent purposes.

(Amended 15 of 2007 s. 20)

For this purpose “dealt with” (進行交易) means sold or let for hire, offered or exposed for sale or hire, exhibited in public or distributed.

[cf. 1988 c. 48 s. 63 U.K.]

73. Making of subsequent works by same artist

Where the author of an artistic work is not the copyright owner, he does not infringe the copyright by copying the work in making another artistic work if he does not repeat or imitate the main design of the earlier work.

[cf. 1988 c. 48 s. 64 U.K.]

74. Reconstruction of buildings

Anything done for the purposes of reconstructing a building does not infringe any copyright—

- (a) in the building; or
- (b) in any drawings or plans in accordance with which the building was, by or with the licence of the copyright owner, constructed.

[cf. 1988 c. 48 s. 65 U.K.]

Miscellaneous: Films and sound recordings

75. Films: acts permitted on assumptions as to expiry of copyright, etc.

- (1) Copyright in a film is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when—
 - (a) it is not possible by reasonable inquiry to ascertain the identity of any of the persons referred to in section 19(2)(a) to (d) (persons by reference to whose life the copyright period is ascertained); and
 - (b) it is reasonable to assume—
 - (i) that copyright has expired; or
 - (ii) that the last to die of those persons died 50 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.
- (2) Subsection (1)(b)(ii) does not apply in relation to—
 - (a) a film in which Government copyright subsists; or
 - (b) a film in which copyright originally vested in an international organization by virtue of section 188 and in respect of which a regulation under that section specifies a copyright period longer than 50 years.

[cf. 1988 c. 48 s. 66A U.K.]

76. Performance, showing or playing of works for purposes of club, society, etc.

- (1) It is not an infringement of the copyright in a work (other than a broadcast or a cable programme) to perform, show or play it as part of the activities of, or for the benefit of, a club, society or other organization if the following conditions are met.

(2) The conditions are—

- (a) that the club, society or organization is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and
- (b) that the proceeds of any charge for admission to the place where the work is to be performed, shown or played are applied solely for the purposes of the club, society or organization.

[cf. 1988 c. 48 s. 67 U.K.]

Miscellaneous: Broadcasts and cable programmes

77. Incidental recording for purposes of broadcast or cable programme

- (1) This section applies where by virtue of a licence or assignment of copyright a person is authorized to broadcast or include in a cable programme service—
 - (a) a literary, dramatic or musical work, or an adaptation of such a work;
 - (b) an artistic work; or
 - (c) a sound recording or film.
- (2) He is by virtue of this section to be treated as licensed by the owner of the copyright in the work to do or authorize any of the following for the purposes of the broadcast or cable programme—
 - (a) in the case of a literary, dramatic or musical work, or an adaptation of such a work, to make a sound recording or film of the work or adaptation;
 - (b) in the case of an artistic work, to take a photograph or make a film of the work;

- (c) in the case of a sound recording or film, to make a copy of it.
- (3) That licence is subject to the condition that the sound recording, film, photograph or copy in question—
 - (a) must not be used for any other purposes;
 - (b) must be destroyed within 3 months of being first used for broadcasting the work or, as the case may be, including it in a cable programme service.
- (4) A sound recording, film, photograph or copy made in accordance with this section is treated as an infringing copy—
 - (a) for the purposes of any use in breach of the condition mentioned in subsection (3)(a); and
 - (b) for all purposes after that condition or the condition mentioned in subsection (3)(b) is broken.

[cf. 1988 c. 48 s. 68 U.K.]

78. Recording for purposes of supervision and control of broadcasts and cable programmes

- (1) Copyright is not infringed by the making or use by Radio Television Hong Kong, for the purposes of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.
- (2) Copyright is not infringed by the making or use of recordings—
 - (a) by the Communications Authority for the performance of its functions mentioned in section 9 of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391); or *(Amended 17 of 2011 s. 28)*
 - (b) pursuant to the instructions of the Communications Authority in the performance of those functions. *(Amended 17 of 2011 s. 28)*

[cf. 1988 c. 48 s. 69 U.K.]

79. Recording for purposes of time-shifting

The making for private and domestic use of a recording of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or cable programme or in any work included in it.

[cf. 1988 c. 48 s. 70 U.K.]

80. Photographs of television broadcasts or cable programmes

The making for private and domestic use of a photograph of the whole or any part of an image forming part of a television broadcast or cable programme, or a copy of such a photograph, does not infringe any copyright in the broadcast or cable programme or in any film included in it.

[cf. 1988 c. 48 s. 71 U.K.]

81. Free public showing or playing of broadcast or cable programme

- (1) The showing or playing in public of a broadcast or cable programme (other than an encrypted broadcast or cable programme) to an audience who have not paid for admission to the place where the broadcast or programme is to be seen or heard does not infringe any copyright in—
 - (a) the broadcast or cable programme; or
 - (b) any sound recording or film included in it.
- (2) The audience are treated as having paid for admission to a place—
 - (a) if they have paid for admission to a place of which that place forms part; or

- (b) if goods or services are supplied at that place (or a place of which it forms part)—
 - (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or programme; or
 - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.
- (3) The following are not regarded as having paid for admission to a place—
 - (a) persons admitted as residents or inmates of the place which is operated by a charitable organization and the facilities therein are not provided for profit;
 - (b) persons admitted as members of a club or society whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare and where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts or programmes is only incidental to the main purposes of the club or society.
- (4) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the copyright in a sound recording or film, the fact that it was heard or seen in public by the reception of the broadcast or programme is to be taken into account in assessing the damages for that infringement.

[cf. 1988 c. 48 s. 72 U.K.]

81A. Playing of sound broadcasts inside vehicles

- (1) The playing of a sound broadcast inside a vehicle primarily for the purpose of affording the driver of the vehicle access to public information (including but not limited to news reports, weather forecasts and information relating to road traffic)

does not infringe the copyright in the sound broadcast, any sound recording included in it or any literary, dramatic or musical work included in it.

- (2) In subsection (1), “vehicle” (車輛) means any vehicle constructed or adapted for use on roads.

(Added 15 of 2007 s. 21)

82. Reception and re-transmission of broadcast in cable programme service

- (1) The copyright in a television broadcast or a sound broadcast is not infringed by any person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided—
- (a) by a communal aerial broadcast distribution system within the scope of section 8(4)(e) of the Telecommunications Ordinance (Cap. 106);
 - (b) by an interconnection between a communal aerial broadcast distribution system within the scope of section 8(4)(e) of the Telecommunications Ordinance (Cap. 106) and a subscription television network licensed, or deemed to be licensed, under the Telecommunications Ordinance (Cap. 106), where the re-transmission is for the reception of the users of the communal aerial broadcast distribution system; or *(Amended 48 of 2000 s. 44)*
 - (c) by a system licensed under a broadcast relay station licence issued under the Telecommunications Ordinance (Cap. 106). *(Amended 36 of 2000 s. 28; 17 of 2011 s. 28)*
- (2) The copyright in a television broadcast which is not encrypted or in a sound broadcast which is not encrypted is not infringed by any person who, by the reception and immediate

re-transmission of the broadcast without any alteration, includes a programme in a service provided—

- (a) by a system licensed under a satellite master antenna television licence issued under the Telecommunications Ordinance (Cap. 106); or (*Amended 17 of 2011 s. 28*)
- (b) by an interconnection between a system licensed under a satellite master antenna television licence issued under the Telecommunications Ordinance (Cap. 106) and a subscription television network licensed, or deemed to be licensed, under the Telecommunications Ordinance (Cap. 106) and where the re-transmission is for the reception of the users of the satellite master antenna television system, (*Amended 48 of 2000 s. 44; 17 of 2011 s. 28*)

until the expiration of 6 months beginning on the day of publication of the notice in accordance with subsection (5). (*Amended 36 of 2000 s. 28*)

- (3) Where a television broadcast or sound broadcast is made or uplinked from a place in Hong Kong or elsewhere, and the broadcast is a lawful broadcast, then any person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or an interconnection specified in subsection (1) or (2), being a programme comprising a literary, dramatic or musical work, or an adaptation of such a work, or an artistic work, or a sound recording or film, shall be in a like position, in any proceedings for infringement of the copyright (if any) in the work, recording or film, as if he had been the holder of a licence granted by the owner of that copyright to include the work, adaptation, recording or film in any programme so included in that service.
- (4) Where a television broadcast or a sound broadcast is not encrypted, the person who, by the reception and immediate

re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or interconnection specified in subsection (2) is deemed to have been granted an implied licence by the maker of the broadcast to receive and re-transmit the broadcast using the system which is only revocable by notice given in accordance with subsection (5).

- (5) The maker of a broadcast in respect of which a licence is deemed to have been granted under subsection (4) may revoke the licence by publishing a notice of revocation in—
 - (a) 1 Chinese language newspaper circulating in Hong Kong; and
 - (b) 1 English language newspaper circulating in Hong Kong.

(Amended E.R. 1 of 2013)

[cf. 1988 c. 48 s. 73 U.K.]

83. Provision of sub-titled copies of broadcast or cable programme

(For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.)

- (1) A body designated under subsection (3) may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes and issue and make available copies to the public, without infringing any copyright in the broadcasts or cable programmes or works included in them.
- (2) This section does not apply if, or to the extent that, licences under licensing schemes are available authorizing the act in question and the person so acting knew or ought to have been aware of that fact.

- (3) The Secretary for Commerce and Economic Development may, by notice in the Gazette, designate bodies for the purposes of this section, and the Secretary shall not designate a body unless he is satisfied that it is not established or conducted for profit. (*Amended L.N. 173 of 2000; L.N. 106 of 2002; L.N. 130 of 2007*)

[*cf. 1988 c. 48 s. 74 U.K.*]

84. Recording for archival purposes

(For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.)

- (1) A recording of a broadcast or cable programme of a class designated under subsection (2), or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a body designated under subsection (2) without thereby infringing any copyright in the broadcast or cable programme or in any work included in it.
- (2) The Secretary for Commerce and Economic Development may, by notice in the Gazette, designate any class of broadcast or of cable programme and any body for the purposes of this section, and the Secretary shall not designate a body unless he is satisfied that it is not established or conducted for profit. (*Amended L.N. 173 of 2000; L.N. 106 of 2002; L.N. 130 of 2007*)

[*cf. 1988 c. 48 s. 75 U.K.*]

Adaptations

85. Adaptations

An act which by virtue of this Division may be done without infringing copyright in a literary, dramatic or musical work does

not, where that work is an adaptation, infringe any copyright in the work from which the adaptation was made.

[cf. 1988 c. 48 s. 76 U.K.]

Designs

86. Corresponding design

In sections 87 and 88, a “corresponding design” (相應外觀設計), in relation to an artistic work, means a design within the meaning of the Registered Designs Ordinance (Cap. 522) which if applied to an article would produce something which would be treated for the purposes of this Part as a copy of the artistic work.

[cf. 1988 c. 48 s. 53(2) U.K.]

87. Effect of exploitation of design derived from artistic work

- (1) This section applies where an artistic work has been exploited, by or with the licence of the copyright owner, by—
 - (a) making by an industrial process articles falling to be treated for the purposes of this Part as copies of the work; and
 - (b) marketing such articles, in Hong Kong or elsewhere.
- (2) After the end of the period of 25 years from the end of the calendar year in which such articles incorporating a registered corresponding design are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.
- (3) After the end of the period of 15 years from the end of the calendar year in which such articles incorporating an unregistered corresponding design are first marketed, the

work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.

- (4) Where only part of an artistic work is exploited as mentioned in subsection (1), subsection (2) or (3) applies only in relation to that part.
- (5) In this section—
 - (a) “registered corresponding design” (經註冊的相應外觀設計) means a corresponding design which has been registered under the Registered Designs Ordinance (Cap. 522);
 - (b) “unregistered corresponding design” (未經註冊的相應外觀設計) means a corresponding design which has not been registered under the Registered Designs Ordinance (Cap. 522), and includes a corresponding design which is not registrable under that Ordinance;
 - (c) references to articles do not include films;
 - (d) references to the marketing of an article are to its being sold or let for hire or offered or exposed for sale or hire.

[cf. 1988 c. 48 s. 52 U.K.]

88. Things done in reliance on registration of design

The copyright in an artistic work is not infringed by anything done—

- (a) in pursuance of an assignment or licence made or granted by a person registered under the Registered Designs Ordinance (Cap. 522) as the registered owner of a corresponding design; and
- (b) in good faith in reliance on the registration and without notice of any proceedings for the cancellation of the

registration or for rectifying the relevant entry in the register of designs,

and this is so notwithstanding that the person registered as the registered owner was not the owner of the design for the purposes of that Ordinance.

[cf. 1988 c. 48 s. 53(1) U.K.]

DIVISION IV—MORAL RIGHTS

Right to be identified as author or director

89. Right to be identified as author or director

- (1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right to be identified as the author or director of the work in the circumstances mentioned in this section; but the right is not infringed unless it has been asserted in accordance with section 90.
- (2) The author of a literary work (other than words intended to be sung or spoken with music) or a dramatic work has the right to be identified whenever—
 - (a) the work is published commercially, performed in public, broadcast or included in a cable programme service; or
 - (b) copies of a film or sound recording including the work are issued or made available to the public,and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.

- (3) The author of a musical work, or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified whenever—
 - (a) the work is published commercially, performed in public, broadcast or included in a cable programme service;
 - (b) copies of a sound recording of the work are issued or made available to the public; or
 - (c) a film of which the sound-track includes the work is shown in public or copies of such a film are issued or made available to the public,and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.
- (4) The author of an artistic work has the right to be identified whenever—
 - (a) the work is published commercially or exhibited in public, or a visual image of it is broadcast or included in a cable programme service;
 - (b) a film including a visual image of the work is shown in public or copies of such a film are issued or made available to the public; or
 - (c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship, copies of a graphic work representing it, or of a photograph of it, are issued or made available to the public.
- (5) The author of a work of architecture in the form of a building also has the right to be identified on the building as

constructed or, where more than one building is constructed to the design, on the first to be constructed.

- (6) The director of a film has the right to be identified whenever the film is shown in public, broadcast or included in a cable programme service or copies of the film are issued or made available to the public.
- (7) The right of the author or director under this section is—
 - (a) in the case of commercial publication or the issue or making available to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy;
 - (b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building; and
 - (c) in any other case, to be identified in a manner likely to bring his identity to the notice of a person seeing or hearing the performance, exhibition, showing, broadcast or cable programme in question,and the identification must in each case be clear and reasonably prominent.
- (8) If the author or director in asserting his right to be identified specifies a pseudonym, initials or some other particular form of identification, that form must be used; otherwise any reasonable form of identification may be used.
- (9) This section has effect subject to section 91.

[cf. 1988 c. 48 s. 77 U.K.]

90. Requirement that right be asserted

- (1) A person does not infringe the right conferred by section 89

(right to be identified as author or director) by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.

- (2) The right may be asserted generally, or in relation to any specified act or description of acts—
 - (a) on an assignment of copyright in the work, by including in the instrument effecting the assignment a statement that the author or director asserts in relation to that work his right to be identified; or
 - (b) by instrument in writing signed by the author or director.
- (3) The right may also be asserted in relation to the public exhibition of an artistic work—
 - (a) by securing that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or under his direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached; or
 - (b) by including in a licence by which the author or other first owner of copyright authorizes the making of copies of the work a written statement signed by or on behalf of the person granting the licence that the author asserts his right to be identified in the event of the public exhibition of a copy made in pursuance of the licence.
- (4) The persons bound by an assertion of the right under subsection (2) or (3) are—
 - (a) in the case of an assertion under subsection (2)(a), the assignee and anyone claiming through him, whether or not he has notice of the assertion;
 - (b) in the case of an assertion under subsection (2)(b), anyone to whose notice the assertion is brought;

- (c) in the case of an assertion under subsection (3)(a), anyone into whose hands that original or copy comes, whether or not the identification is still present or visible;
 - (d) in the case of an assertion under subsection (3)(b), the licensee and anyone into whose hands a copy made in pursuance of the licence comes, whether or not he has notice of the assertion.
- (5) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.

[cf. 1988 c. 48 s. 78 U.K.]

91. Exceptions to right

- (1) The right conferred by section 89 (right to be identified as author or director) is subject to the following exceptions.
- (2) The right does not apply in relation to the following descriptions of work—
 - (a) a computer program;
 - (b) the design of a typeface;
 - (c) any computer-generated work.
- (3) The right does not apply to anything done by or with the authority of the copyright owner where copyright in the work originally vested in the author's employer by virtue of section 14(1) (employee works).
- (4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work—
 - (a) section 39 (fair dealing for certain purposes), so far as it relates to the reporting of current events by means of a sound recording, film, broadcast or cable programme;

- (b) section 40 (incidental inclusion of work in an artistic work, sound recording, film, broadcast or cable programme);
- (c) section 41(3) (examination questions);
- (ca) section 54B (Legislative Council); (*Added 15 of 2007 s. 24*)
- (d) section 54 (judicial proceedings); (*Amended 15 of 2007 s. 24*)
- (e) section 55(1) or (2) (statutory inquiries);
- (f) section 66 or 75 (acts permitted on assumptions as to expiry of copyright, etc.).
- (5) The right does not apply in relation to any work made for the purpose of reporting current events.
- (6) The right does not apply in relation to the publication in—
 - (a) a newspaper, magazine or similar periodical; or
 - (b) an encyclopaedia, dictionary, yearbook or other collective work of reference,
 of a literary, dramatic, musical or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.
- (7) The right does not apply in relation to—
 - (a) a work in which Government copyright or Legislative Council copyright subsists; or
 - (b) a work in which copyright originally vested in an international organization by virtue of section 188,
 unless the author or director has previously been identified as such in or on published copies of the work.

[cf. 1988 c. 48 s. 79 U.K.]

Right to object to derogatory treatment of work**92. Right to object to derogatory treatment of work**

- (1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right in the circumstances mentioned in this section not to have his work subjected to derogatory treatment.
- (2) For the purposes of this section—
 - (a) “treatment” (處理) of a work means any addition to, deletion from or alteration to or adaptation of the work, other than—
 - (i) a translation of a literary or dramatic work; or
 - (ii) an arrangement or transcription of a musical work involving no more than a change of key or register; and
 - (b) the treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director,and in the following provisions of this section references to a derogatory treatment of a work are construed accordingly.
- (3) In the case of a literary, dramatic or musical work the right is infringed by a person who—
 - (a) publishes commercially, performs in public, broadcasts or includes in a cable programme service a derogatory treatment of the work; or
 - (b) issues or makes available to the public copies of a film or sound recording of, or including, a derogatory treatment of the work.

- (4) In the case of an artistic work the right is infringed by a person who—
 - (a) publishes commercially or exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable programme service a visual image of a derogatory treatment of the work;
 - (b) shows in public a film including a visual image of a derogatory treatment of the work or issues or makes available to the public copies of such a film; or
 - (c) in the case of—
 - (i) a work of architecture in the form of a model for a building;
 - (ii) a sculpture; or
 - (iii) a work of artistic craftsmanship,issues or makes available to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.
- (5) Subsection (4) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment he has the right to require the identification to be removed.
- (6) In the case of a film, the right is infringed by a person who—
 - (a) shows in public, broadcasts or includes in a cable programme service a derogatory treatment of the film; or
 - (b) issues or makes available to the public copies of a derogatory treatment of the film.
- (7) The right conferred by this section extends to the treatment of parts of a work resulting from a previous treatment by a

person other than the author or director, if those parts are attributed to, or are likely to be regarded as the work of, the author or director.

- (8) This section has effect subject to sections 93 and 94 (exceptions to and qualifications of right).

[cf. 1988 c. 48 s. 80 U.K.]

93. Exceptions to right

- (1) The right conferred by section 92 (right to object to derogatory treatment of work) is subject to the following exceptions.
- (2) The right does not apply to a computer program or to any computer-generated work.
- (3) The right does not apply in relation to any work made for the purpose of reporting current events.
- (4) The right does not apply in relation to the publication in—
- (a) a newspaper, magazine or similar periodical; or
 - (b) an encyclopaedia, dictionary, yearbook or other collective work of reference,
- of a literary, dramatic, musical or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication. Nor does the right apply in relation to any subsequent exploitation elsewhere of such a work without any modification of the published version.
- (5) The right is not infringed by an act which by virtue of section 66 or 75 (acts permitted on assumptions as to expiry of copyright, etc.) would not infringe copyright.
- (6) Subject to subsection (7), the right is not infringed by anything done for the purpose of—

- (a) avoiding the commission of an offence; or
 - (b) complying with a duty imposed by or under an enactment.
- (7) Where the author or director is identified at the time of the relevant act under subsection (6) or has previously been identified in or on published copies of the work, subsection (6) has effect only if there is a sufficient disclaimer.

[cf. 1988 c. 48 s. 81 U.K.]

94. Qualification of right in certain cases

- (1) This section applies to—
- (a) works in which copyright originally vested in the author's employer by virtue of section 14(1) (works produced in course of employment);
 - (b) works in which Government copyright or Legislative Council copyright subsists; and
 - (c) works in which copyright originally vested in an international organization by virtue of section 188.
- (2) The right conferred by section 92 (right to object to derogatory treatment of work) does not apply to anything done in relation to a work referred to in subsection (1) by or with the authority of the copyright owner unless the author or director—
- (a) is identified at the time of the relevant act; or
 - (b) has previously been identified in or on published copies of the work,
- and where in such a case the right does apply, it is not infringed if there is a sufficient disclaimer.

[cf. 1988 c. 48 s. 82 U.K.]

95. Infringement of right by possessing or dealing with infringing article

- (1) The right conferred by section 92 (right to object to derogatory treatment of work) is also infringed by a person who—
 - (a) possesses for the purpose of or in the course of any trade or business; (*Replaced 64 of 2000 s. 4. Amended 15 of 2007 s. 26*)
 - (b) sells or lets for hire, or offers or exposes for sale or hire;
 - (c) exhibits in public or distributes for the purpose of or in the course of any trade or business; or (*Replaced 64 of 2000 s. 4. Amended 15 of 2007 s. 26*)
 - (d) distributes (otherwise than for the purpose of or in the course of any trade or business) so as to affect prejudicially the honour or reputation of the author or director, (*Amended 64 of 2000 s. 4; 15 of 2007 s. 26*)

an article which is, and which he knows or has reason to believe is, an infringing article.

- (1A) It is immaterial for the purpose of subsection (1)(a) and (c) whether or not the trade or business consists of dealing in infringing articles. (*Added 64 of 2000 s. 4*)
- (2) An “infringing article” (侵犯權利物品) means a work or a copy of a work which—
 - (a) has been subjected to derogatory treatment within the meaning of section 92; and
 - (b) has been or is likely to be the subject of any of the acts mentioned in that section in circumstances infringing that right.

[*cf. 1988 c. 48 s. 83 U.K.*]

False attribution of work

96. False attribution of work

- (1) A person has the right in the circumstances mentioned in this section—
 - (a) not to have a literary, dramatic, musical or artistic work falsely attributed to him as author; and
 - (b) not to have a film falsely attributed to him as director,and in this section an “attribution” (署名), in relation to such a work, means a statement (express or implied) as to who is the author or director.
- (2) The right is infringed by a person who—
 - (a) issues or makes available to the public copies of a work of any of those descriptions in or on which there is a false attribution; or
 - (b) exhibits in public an artistic work, or a copy of an artistic work, in or on which there is a false attribution.
- (3) The right is also infringed by a person who—
 - (a) in the case of a literary, dramatic or musical work, performs the work in public, broadcasts it or includes it in a cable programme service as being the work of a person; or
 - (b) in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service as being directed by a person,knowing or having reason to believe that the attribution is false.
- (4) The right is also infringed by a person who issues or makes available to the public or displays in public material

containing a false attribution in connection with any of the acts mentioned in subsection (2) or (3).

- (5) The right is also infringed by a person who for the purpose of or in the course of any trade or business— (*Amended 64 of 2000 s. 5; 15 of 2007 s. 27*)

- (a) possesses or deals with a copy of a work of any of the descriptions mentioned in subsection (1) in or on which there is a false attribution; or
- (b) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it,

knowing or having reason to believe that there is such an attribution and that it is false.

- (6) In the case of an artistic work the right is also infringed by a person who for the purpose of or in the course of any trade or business— (*Amended 64 of 2000 s. 5; 15 of 2007 s. 27*)

- (a) deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author; or
- (b) deals with a copy of such an altered work as being a copy of the unaltered work of the author,

knowing or having reason to believe that that is not the case.

- (6A) It is immaterial for the purpose of subsections (5) and (6) whether or not the trade or business consists of dealing in—

- (a) works or copies of works in or on which there are false attributions; or
- (b) altered works or copies of altered works. (*Added 64 of 2000 s. 5*)

- (7) References in this section to dealing are to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public, or distributing.
- (8) This section applies where, contrary to the fact—
 - (a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person; or
 - (b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work,as it applies where the work is falsely attributed to a person as author.

[cf. 1988 c. 48 s. 84 U.K.]

Supplementary

97. Duration of rights

- (1) The rights conferred by section 89 (right to be identified as author or director) and section 92 (right to object to derogatory treatment of work) continue to subsist so long as copyright subsists in the work.
- (2) The right conferred by section 96 (false attribution) continues to subsist until 20 years after a person's death.

[cf. 1988 c. 48 s. 86 U.K.]

98. Consent and waiver of rights

- (1) It is not an infringement of any of the rights conferred by this Division to do any act to which the person entitled to the right has consented.
- (2) Any of those rights may be waived by instrument in writing signed by the person giving up the right.
- (3) A waiver—

- (a) may relate to a specific work, to works of a specified description or to works generally, and may relate to existing or future works; and
 - (b) may be conditional or unconditional and may be expressed to be subject to revocation,
- and if made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, it is presumed to extend to his licensees and successors in title unless a contrary intention is expressed.
- (4) Nothing in this Division is to be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to any of the rights mentioned in subsection (1).

[cf. 1988 c. 48 s. 87 U.K.]

99. Application of provisions to joint works

- (1) The right conferred by section 89 (right to be identified as author or director) is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author and must be asserted in accordance with section 90 by each joint author in relation to himself.
- (2) The right conferred by section 92 (right to object to derogatory treatment of work) is, in the case of a work of joint authorship, a right of each joint author and his right is satisfied if he consents to the treatment in question.
- (3) A waiver under section 98 of those rights by one joint author does not affect the rights of the other joint authors.
- (4) The right conferred by section 96 (false attribution) is infringed, in the circumstances mentioned in that section—
 - (a) by any false statement as to the authorship of a work of joint authorship; and

(b) by the false attribution of joint authorship in relation to a work of sole authorship,

and such a false attribution infringes the right of every person to whom authorship of any description is, whether rightly or wrongly, attributed.

(5) The provisions of this section also apply (with any necessary adaptations) in relation to a film which was, or is alleged to have been, jointly directed, as they apply to a work which is, or is alleged to be, a work of joint authorship.

A film is “jointly directed” if it is made by the collaboration of 2 or more directors and the contribution of each director is not distinct from that of the other director or directors.

[cf. 1988 c. 48 s. 88 U.K.]

100. Application of provisions to parts of works

- (1) The right conferred by section 89 (right to be identified as author or director) applies in relation to the whole or any substantial part of a work.
- (2) The rights conferred by section 92 (right to object to derogatory treatment of work) and section 96 (false attribution) apply in relation to the whole or any part of a work.

[cf. 1988 c. 48 s. 89 U.K.]

DIVISION V—DEALINGS WITH RIGHTS IN COPYRIGHT WORKS

Copyright

101. Assignment and licences

- (1) Copyright is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable

property.

- (2) An assignment or other transmission of copyright may be partial, that is, limited so as to apply—
 - (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do;
 - (b) to part, but not the whole, of the period for which the copyright is to subsist.
- (3) An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor.
- (4) A licence granted by a copyright owner is binding on every successor in title to his interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the copyright owner are construed accordingly.

[cf. 1988 c. 48 s. 90 U.K.]

102. Prospective ownership of copyright

- (1) Without prejudice to sections 14 and 15, where by an agreement made in relation to future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person, then if, on the copyright coming into existence, the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright vests in the assignee or his successor in title by virtue of this subsection.
- (2) In this Part—

“future copyright” (未來版權) means copyright which will or may come into existence in respect of a future work or class of works or on the occurrence of a future event; and

“prospective owner” (準擁有人) is construed accordingly, and includes a person who is prospectively entitled to copyright by virtue of such an agreement as is mentioned in subsection (1).

- (3) A licence granted by a prospective owner of copyright is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the copyright owner are construed accordingly.

[cf. 1988 c. 48 s. 91 U.K.]

103. Exclusive licences

- (1) In this Part an “exclusive licence” (專用特許) means a licence in writing signed by or on behalf of the copyright owner authorizing the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the copyright owner.
- (2) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

[cf. 1988 c. 48 s. 92 U.K.]

104. Copyright to pass under will with unpublished work

Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to—

- (a) an original document or other material thing recording or embodying a literary, dramatic, musical or artistic work which was not published before the death of the testator; or
- (b) an original material thing containing a sound recording or film which was not published before the death of the testator,

then unless a contrary intention is indicated in the testator's will or a codicil to it, the bequest includes the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

[cf. 1988 c. 48 s. 93 U.K.]

Moral rights

105. Moral rights not assignable

The rights conferred by Division IV (moral rights) are not assignable.

[cf. 1988 c. 48 s. 94 U.K.]

106. Transmission of moral rights on death

- (1) On the death of a person entitled to the right conferred by section 89 (right to identification of author or director) or section 92 (right to object to derogatory treatment of work)—
 - (a) the right passes to such a person as he may by testamentary disposition specifically direct;
 - (b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes; and

- (c) if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by his personal representatives.
- (2) Where copyright forming part of a person's estate passes in part to one person and in part to another, as for example where a bequest is limited so as to apply—
 - (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do or authorize; or
 - (b) to part, but not the whole, of the period for which the copyright is to subsist,any right which passes with the copyright by virtue of subsection (1) is correspondingly divided.
- (3) Where by virtue of subsection (1)(a) or (b) a right becomes exercisable by more than one person—
 - (a) it may, in the case of the right conferred by section 89 (right to identification of author or director), be asserted by any of them;
 - (b) it is, in the case of the right conferred by section 92 (right to object to derogatory treatment of work), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and
 - (c) any waiver of the right in accordance with section 98 by one of them does not affect the rights of the others.
- (4) A consent or waiver previously given or made binds any person to whom a right passes by virtue of subsection (1).
- (5) Any infringement after a person's death of the right conferred by section 96 (false attribution) is actionable by his personal representatives.
- (6) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's

death devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

[cf. 1988 c. 48 s. 95 U.K.]

DIVISION VI—REMEDIES FOR INFRINGEMENT

Rights and remedies of copyright owner

107. Infringement actionable by copyright owner

- (1) An infringement of copyright is actionable by the copyright owner.
- (2) In an action for infringement of copyright all such relief by way of damages, injunctions, accounts or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.
- (3) This section has effect subject to the following provisions of this Division.

[cf. 1988 c. 48 s. 96 U.K.]

108. Provisions as to damages in infringement action

- (1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.
- (2) The court may in an action for infringement of copyright having regard to all the circumstances, and in particular to—
 - (a) the flagrancy of the infringement;

- (b) any benefit accruing to the defendant by reason of the infringement; and
 - (c) the completeness, accuracy and reliability of the defendant's business accounts and records,
- award such additional damages as the justice of the case may require.

[cf. 1988 c. 48 s. 97 U.K.]

109. Order for delivery up

(1) Where a person—

- (a) has an infringing copy of a work in his possession, custody or control for the purpose of or in the course of any trade or business; or (*Amended 64 of 2000 s. 6; 15 of 2007 s. 30*)
- (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it has been or is to be used to make infringing copies,

the owner of the copyright in the work may apply to the court for an order that the infringing copy or article be delivered up to him or to such other person as the court may direct.

- (1A) It is immaterial for the purpose of subsection (1)(a) whether or not the trade or business consists of dealing in infringing copies of copyright works. (*Added 64 of 2000 s. 6*)
- (2) An application must be made before the end of the period specified in section 110 (period after which remedy of delivery up not available); and the court shall not make an order under this section unless the court also makes, or it appears to the court that there are grounds for making, an

order under section 111 (order as to disposal of infringing copy or other article).

- (3) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall, if an order under section 111 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.
- (4) Nothing in this section affects any other power of the court.

[cf. 1988 c. 48 s. 99 U.K.]

110. Period after which remedy of delivery up not available

- (1) An application for an order under section 109 (order for delivery up in civil proceedings) may not be made after the end of the period of 6 years from the date on which the infringing copy or article in question was made, subject to the following provisions of this section.
- (2) If during the whole or any part of that period the copyright owner—
 - (a) is under a disability; or
 - (b) is prevented by fraud or concealment from discovering the facts entitling him to apply for an order,an application may be made at any time before the end of the period of 6 years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.
- (3) In subsection (2) “disability” (無行為能力) has the same meaning as in the Limitation Ordinance (Cap. 347).

[cf. 1988 c. 48 s. 113 U.K.]

111. Order as to disposal of infringing copy or other article

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) An application may be made to the court for an order that an infringing copy or other article delivered up in pursuance of an order under section 109 should be—
 - (a) forfeited to the copyright owner; or
 - (b) destroyed or otherwise dealt with as the court may think fit,or for a decision that no such order should be made.
- (2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interests.
- (3) The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) includes power to make rules of court for the purposes of this section. (*Amended 25 of 1998 s. 2*)
- (4) The rules of court made for the purposes of this section may include rules as to the service of notice on persons having an interest in the copy or other articles, and any such person is entitled—
 - (a) to appear in proceedings for an order under this section, whether or not he was served with notice; and
 - (b) to appeal against any order made, whether or not he appeared.
- (5) An order under this section does not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.
- (6) Where there is more than one person interested in a copy or other article, the court may make such order as it thinks just

and may (in particular) direct that the copy or article be sold, or otherwise dealt with, and the proceeds divided.

- (7) If the court decides that no order should be made under this section, the person in whose possession, custody or control the copy or other article was before being delivered up is entitled to its return.
- (8) References in this section to a person having an interest in a copy or other article include any person in whose favour an order could be made in respect of it under this section or under section 231 (which makes similar provision in relation to infringement of rights in performances).

[cf. 1988 c. 48 s. 114 U.K.]

Rights and remedies of exclusive licensee

112. Rights and remedies of exclusive licensee

- (1) An exclusive licensee has, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.
- (2) His rights and remedies are concurrent with those of the copyright owner; and references in the relevant provisions of this Part to the copyright owner shall be construed accordingly.
- (3) In an action brought by an exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the copyright owner.

[cf. 1988 c. 48 s. 101 U.K.]

113. Exercise of concurrent rights

- (1) Subject to subsection (2), where an action for infringement

of copyright brought by the copyright owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the copyright owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.

- (2) Where an action for infringement of copyright brought by an exclusive licensee relates (wholly or partly) to an infringement in respect of an infringing copy within the meaning of section 35(3), the exclusive licensee may not, without the leave of the court, proceed with the action unless the copyright owner is joined as a plaintiff.
- (3) In an application for leave under subsection (2) to proceed without joining the copyright owner as plaintiff, the court shall not grant leave unless there are exceptional circumstances, other than costs considerations, beyond the control of the copyright owner or exclusive licensee.
- (4) A copyright owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.
- (5) The provisions of this section do not affect the granting of interlocutory relief on an application by a copyright owner or exclusive licensee alone.
- (6) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action—
 - (a) the court shall in assessing damages take into account—
 - (i) the terms of the licence; and
 - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;

- (b) the court shall not direct an account of profits if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
 - (c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them,
- and these provisions apply whether or not the copyright owner and the exclusive licensee are both parties to the action.
- (7) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 109 (order for delivery up); and the court may on the application of the licensee make such order under section 109 as it thinks fit having regard to the terms of the licence.

[cf. 1988 c. 48 s. 102 U.K.]

Remedies for infringement of moral rights

114. Remedies for infringement of moral rights

- (1) An infringement of a right conferred by Division IV (moral rights) is actionable as a breach of statutory duty owed to the person entitled to the right.
- (2) In proceedings for infringement of the right conferred by section 92 (right to object to derogatory treatment of work) the court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work.

[cf. 1988 c. 48 s. 103 U.K.]

Presumptions

115. Presumptions relevant to literary, dramatic, musical and artistic works

- (1) The following presumptions apply in proceedings brought by virtue of this Division with respect to a literary, dramatic, musical or artistic work.
- (2) Where a name purporting to be that of the author appeared on copies of the work as published or on the work when it was made, the person whose name appeared is presumed, until the contrary is proved—
 - (a) to be the author of the work;
 - (b) to have made it in circumstances not falling within section 14(1), 182, 184 or 188 (works produced in course of employment, Government copyright, Legislative Council copyright or copyright of certain international organizations).
- (3) In the case of a work alleged to be a work of joint authorship, subsection (2) applies in relation to each person alleged to be one of the authors.
- (4) Where no name purporting to be that of the author appeared as mentioned in subsection (2) but a name purporting to be that of the publisher appeared on copies of the work as first published, the person whose name appeared is presumed, until the contrary is proved, to have been the owner of the copyright at the time of publication.
- (5) If the author of the work is dead or the identity of the author cannot be ascertained by reasonable inquiry, it is presumed, in the absence of evidence to the contrary—
 - (a) that the work is an original work; and

- (b) that the plaintiff's allegations as to what was the first publication of the work and as to the country of first publication are correct.

[cf. 1988 c. 48 s. 104 U.K.]

116. Presumptions relevant to sound recordings, films and computer programs

- (1) In proceedings brought by virtue of this Division with respect to a sound recording, where copies of the recording as issued or made available to the public bear a label or other mark stating—

- (a) that a named person was the owner of copyright in the recording at the date of issue or making available of the copies; or
- (b) that the recording was first published in a specified year or in a specified country,

the label or mark is admissible as evidence of the facts stated and is presumed to be correct until the contrary is proved.

- (2) In proceedings brought by virtue of this Division with respect to a film, where copies of the film as issued or made available to the public bear a statement—

- (a) that a named person was the director or producer of the film;
- (b) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film;
- (c) that a named person was the owner of copyright in the film at the date of issue or making available of the copies; or

- (d) that the film was first published in a specified year or in a specified country,

the statement is admissible as evidence of the facts stated and is presumed to be correct until the contrary is proved.

- (3) In proceedings brought by virtue of this Division with respect to a computer program, where copies of the program are issued to the public in electronic form or made available to the public bearing a statement—

- (a) that a named person was the owner of copyright in the program at the date of issue or making available of the copies; or

- (b) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form or made available to the public in a specified year,

the statement is admissible as evidence of the facts stated and is presumed to be correct until the contrary is proved.

- (4) The above presumptions apply equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued or made available to the public.

- (5) In proceedings brought by virtue of this Division with respect to a film, where the film as shown in public, broadcast or included in a cable programme service bears a statement—

- (a) that a named person was the director or producer of the film;

- (b) that a named person was the principal director of the film, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film; or

- (c) that a named person was the owner of copyright in the film immediately after it was made,

the statement is admissible as evidence of the facts stated and is presumed to be correct until the contrary is proved.

This presumption applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public, broadcast or included in a cable programme service.

- (6) For the purposes of this section, a statement that a person was the director of a film is to be taken, unless a contrary indication appears, as meaning that he was the principal director of the film.

[cf. 1988 c. 48 s. 105 U.K.]

117. Presumptions relevant to works subject to Government copyright

In proceedings brought by virtue of this Division with respect to a literary, dramatic or musical work in which Government copyright subsists, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement is admissible as evidence of the fact stated and is presumed to be correct in the absence of evidence to the contrary.

[cf. 1988 c. 48 s. 106 U.K.]

Offences

118. Offences in relation to making or dealing with infringing articles, etc.*

- (1) A person commits an offence if he, without the licence of the copyright owner of a copyright work—
 - (a) makes for sale or hire an infringing copy of the work;

- (b) imports an infringing copy of the work into Hong Kong otherwise than for his private and domestic use;
 - (c) exports an infringing copy of the work from Hong Kong otherwise than for his private and domestic use;
 - (d) sells, lets for hire, or offers or exposes for sale or hire an infringing copy of the work for the purpose of or in the course of any trade or business;
 - (e) exhibits in public or distributes an infringing copy of the work for the purpose of or in the course of any trade or business which consists of dealing in infringing copies of copyright works;
 - (f) possesses an infringing copy of the work with a view to—
 - (i) its being sold or let for hire by any person for the purpose of or in the course of any trade or business; or
 - (ii) its being exhibited in public or distributed by any person for the purpose of or in the course of any trade or business which consists of dealing in infringing copies of copyright works; or
 - (g) distributes an infringing copy of the work (otherwise than for the purpose of or in the course of any trade or business which consists of dealing in infringing copies of copyright works) to such an extent as to affect prejudicially the copyright owner. (*Replaced 15 of 2007 s. 31*)
- (1A) Where—
- (a) a person exhibits in public or distributes an infringing copy of a copyright work for the purpose of or in the course of any trade or business; and

- (b) the circumstances in which the infringing copy is so exhibited or distributed give rise to a reasonable suspicion that the trade or business consists of dealing in infringing copies of copyright works,

then, unless there is evidence to the contrary, the trade or business is presumed, for the purposes of any proceedings instituted under subsection (1)(e), to be a trade or business which consists of dealing in infringing copies of copyright works. *(Added 15 of 2007 s. 31)*

(1B) Where—

- (a) a person possesses an infringing copy of a copyright work with a view to its being exhibited in public or distributed by any person for the purpose of or in the course of any trade or business; and
- (b) the circumstances in which the infringing copy is so possessed give rise to a reasonable suspicion that the trade or business consists of dealing in infringing copies of copyright works,

then, unless there is evidence to the contrary, the trade or business is presumed, for the purposes of any proceedings instituted under subsection (1)(f)(ii), to be a trade or business which consists of dealing in infringing copies of copyright works. *(Added 15 of 2007 s. 31)*

- (2) Subsections (1)(b) and (c) and (4)(b) and (c) do not apply to an article in transit.
- (2A) A person commits an offence if he, without the licence of the copyright owner of a copyright work to which this subsection applies, possesses an infringing copy of the work for the purpose of or in the course of any trade or business with a view to its being used by any person for the purpose of or in the course of that trade or business. *(Added 15 of 2007 s. 31)*
- (2B) Subsection (2A) applies to a copyright work that is—

- (a) a computer program;
 - (b) a movie;
 - (c) a television drama;
 - (d) a musical sound recording; or
 - (e) a musical visual recording. (*Added 15 of 2007 s. 31*)
- (2C) Subsection (2A) does not apply to an infringing copy of a computer program in a printed form. (*Added 15 of 2007 s. 31*)
- (2D) Subsection (2A) does not apply to the possession of an infringing copy of a computer program if—
- (a) the computer program incorporates the whole or any part of a work that is not a computer program itself, and the computer program is technically required for the viewing or listening of the work by a member of the public to whom a copy of the work is made available; or
 - (b) the computer program is incorporated in a work that is not a computer program itself, and the computer program is technically required for the viewing or listening of the work by a member of the public to whom a copy of the work is made available. (*Added 15 of 2007 s. 31*)
- (2E) Subsection (2A) does not apply to the possession of an infringing copy of a movie, television drama, musical sound recording or musical visual recording by the Hong Kong Film Archive for the purpose of heritage conservation if—
- (a) the infringing copy was donated or given to the Hong Kong Film Archive by the public; or
 - (b) the infringing copy was made by the Hong Kong Film Archive to preserve or replace the infringing copy referred to in paragraph (a) against loss, deterioration or damage. (*Added 15 of 2007 s. 31*)

- (2F) Subsection (2A) does not apply to the possession of an infringing copy of a movie, television drama, musical sound recording or musical visual recording by the Hong Kong Film Archive for the purpose of doing any act in relation to the infringing copy (other than for the purpose referred to in subsection (2E)) if—
- (a) the infringing copy was—
 - (i) an infringing copy donated or given to the Hong Kong Film Archive by the public; or
 - (ii) an infringing copy made by the Hong Kong Film Archive to preserve or replace the infringing copy referred to in subparagraph (i) against loss, deterioration or damage;
 - (b) it is not possible by reasonable enquiry to ascertain the identity and contact details of the copyright owner of the work in question; and
 - (c) a copy (other than an infringing copy) of the work in question cannot be obtained on reasonable commercial terms. (*Added 15 of 2007 s. 31*)
- (2G) Subsection (2A) does not apply if—
- (a) the person who possesses an infringing copy does so for the purpose of providing legal service in relation to the infringing copy, and—
 - (i) the person is enrolled on the roll of solicitors or the roll of barristers kept under the Legal Practitioners Ordinance (Cap. 159); or
 - (ii) the person has been admitted as a legal practitioner in a jurisdiction other than Hong Kong;
 - (b) the person who possesses an infringing copy is serving a pupillage under the Barristers (Qualification for Admission and Pupillage) Rules (Cap. 159 sub. leg. AC)

- and he possesses the infringing copy for the purpose of assisting the barrister with whom he serves the pupillage in providing legal service in relation to the infringing copy;
- (c) the person who possesses an infringing copy does so for the purpose of providing investigation service in relation to the infringing copy to the copyright owner or exclusive licensee of the copyright work concerned; or
 - (d) the person who possesses an infringing copy does so on his client's premises and the infringing copy is provided to him by his client. (*Added 15 of 2007 s. 31*)
- (2H) Without prejudice to section 125, where a body corporate or a partnership has done an act referred to in subsection (2A), the following person shall, unless there is evidence showing that he did not authorize the act to be done, be presumed also to have done the act—
- (a) in the case of the body corporate—
 - (i) any director of the body corporate who, at the time when the act was done, was responsible for the internal management of the body corporate; or
 - (ii) if there was no such director, any person who, at the time when the act was done, was responsible under the immediate authority of the directors of the body corporate for the internal management of the body corporate;
 - (b) in the case of the partnership—
 - (i) any partner in the partnership who, at the time when the act was done, was responsible for the internal management of the partnership; or
 - (ii) if there was no such partner, any person who, at the time when the act was done, was responsible

under the immediate authority of the partners in the partnership for the internal management of the partnership. (*Added 15 of 2007 s. 31*)

- (2I) A defendant charged with an offence under subsection (2A) by virtue of subsection (2H) is taken not to have done the act in question if—
 - (a) sufficient evidence is adduced to raise an issue that he did not authorize the act to be done; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt. (*Added 15 of 2007 s. 31*)
- (2J) For the purposes of subsection (2I)(a)—
 - (a) the defendant shall be taken to have adduced sufficient evidence if the court is satisfied that—
 - (i) the defendant has caused the body corporate or partnership concerned to set aside financial resources, and has directed the use of the resources, for the acquisition of a sufficient number of copies of the copyright work to which the proceedings relate, which are not infringing copies, for the use of the body corporate or partnership; or
 - (ii) the body corporate or partnership concerned has incurred expenditure for the acquisition of a sufficient number of copies of the copyright work to which the proceedings relate, which are not infringing copies, for the use of the body corporate or partnership;
 - (b) subject to paragraph (a), in determining whether sufficient evidence is adduced, the court may have regard to, including but not limited to, the following—
 - (i) whether the defendant has introduced policies or practices against the use of infringing copies

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- of copyright works by the body corporate or partnership;
- (ii) whether the defendant has taken action to prevent the use of infringing copies of copyright works by the body corporate or partnership. (*Added 15 of 2007 s. 31*)
- (3) It is a defence for the person charged with an offence under subsection (1) or (2A), to prove that he did not know and had no reason to believe that the copy in question was an infringing copy of the copyright work. (*Amended 15 of 2007 s. 31*)
- (3A) It is a defence for the person charged with an offence under subsection (2A) to prove that—
- (a) he possessed the infringing copy in question in the course of his employment; and
- (b) the infringing copy in question was provided to him by or on behalf of his employer for use in the course of his employment. (*Added 15 of 2007 s. 31*)
- (3B) Subsection (3A) does not apply to an employee—
- (a) who, at the time when the infringing copy in question was acquired, was in a position to make or influence a decision regarding the acquisition of the infringing copy; or
- (b) who, at the time when the offence in question was committed, was in a position to make or influence a decision regarding the use or removal of the infringing copy in question. (*Added 15 of 2007 s. 31*)
- (4) A person commits an offence if he—
- (a) makes;
- (b) imports into Hong Kong;

- (c) exports from Hong Kong;
 - (d) possesses; or
 - (e) sells or lets for hire, or offers or exposes for sale or hire, an article specifically designed or adapted for making copies of a particular copyright work which article is used or intended to be used to make infringing copies of the copyright work for sale or hire or for use for the purpose of or in the course of any trade or business. (*Amended 64 of 2000 s. 7; 15 of 2007 s. 31*)
- (5) It is a defence for the person charged with an offence under subsection (4) to prove that he did not know and had no reason to believe that the article was used or was intended to be used to make the infringing copies for sale or hire or for use for the purpose of or in the course of any trade or business. (*Amended 64 of 2000 s. 7; 15 of 2007 s. 31*)
- (6) For the purpose of subsections (1)(b) and (3), where a person is charged with an offence under subsection (1) in respect of a copy of a copyright work which is an infringing copy by virtue only of section 35(3) and not being excluded under section 35(4) and which was lawfully made in the country, territory or area where it was made, if he proves that— (*Amended 15 of 2007 s. 31*)
- (a) he had made reasonable enquiries sufficient to satisfy himself that the copy in question was not an infringing copy of the work;
 - (b) he had reasonable grounds to be satisfied in the circumstances of the case that the copy was not an infringing copy;
 - (c) there were no other circumstances which would have led him reasonably to suspect that the copy was an infringing copy,

he has proved that he had no reason to believe that the copy in question was an infringing copy of the copyright work.

- (7) In determining whether the person charged has proved under subsection (6) that he had no reason to believe that the copy in question was an infringing copy of the work, the court may have regard to, including but not limited to, the following—
 - (a) whether he had made enquiries with a relevant trade body in respect of that category of work;
 - (b) whether he had given any notice drawing attention of the copyright owner or exclusive licensee to his interest to import and to sell the copy of the work;
 - (c) whether he had complied with any code of practice that may exist in respect of the supply of that category of work;
 - (d) whether the response, if any, to those enquiries made by the defendant was reasonable and timely;
 - (e) whether he was provided with the name, address and contact details of the copyright owner or exclusive licensee (as the case may be);
 - (f) whether he was provided with the date of first day of publication of the work;
 - (g) whether he was provided with proof of any relevant exclusive licence.
- (8) A person commits an offence if he has in his possession an article knowing or having reason to believe that it is used or is intended to be used to make infringing copies of any copyright work for sale or hire or for use for the purpose of or in the course of any trade or business. (*Amended 64 of 2000 s. 7; 15 of 2007 s. 31*)
- (8A) (*Repealed 15 of 2007 s. 31*)

- (9) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section.
- (10) In this section, “dealing in” (經銷) means selling, letting for hire, or distributing for profit or reward. (*Added 15 of 2007 s. 31*)

[cf. 1988 c. 48 s. 107 U.K.]

Editorial Note:

* (*Amended 15 of 2007 s. 31*)

118A. Application of sections 60 and 61 to offences under section 118(1)

For the purpose of any proceedings for an offence under section 118(1)—

- (a) a person is a lawful user of a computer program for the purposes of sections 60 and 61 if he has a contractual right to use the program in any place in or outside Hong Kong, and section 60(2) shall have effect accordingly; and
- (b) sections 60 and 61 apply in relation to a copy of a work other than a computer program to which section 35A(1) applies as they apply in relation to a copy of a computer program and, accordingly, any act that may under section 60 or 61 be done in relation to a copy of a computer program without infringing the copyright in the program may be done in relation to a copy of a work other than a computer program to which section 35A(1) applies without infringing the copyright in the work.

(Added 27 of 2003 s. 4)

119. Penalties for offences under section 118

- (1) A person who commits an offence under section 118(1) or (2A) is liable on conviction on indictment to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years. (*Amended 64 of 2000 s. 8; 15 of 2007 s. 32*)
- (2) A person who commits an offence under section 118(4) or (8) is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 8 years.

119A. Offence in relation to possession of infringing copies in a copying service business

- (1) In this section—

“copying service business” (複製服務業務) means a business, conducted for profit, that includes the offering of reprographic copying services to the public and, in the case of a business that includes the offering of reprographic copying services to the public at more than one place, means any part of the business carried on at such a place;

“reward” (報酬) means reward other than reward of a nominal value.

- (2) A person commits an offence if, for the purpose of or in the course of a copying service business, he possesses a reprographic copy of a copyright work as published in a book, magazine or periodical, being a copy that is an infringing copy of the copyright work.
- (3) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that the infringing copy of a copyright work in question was not made for the purpose of and was not made in the course of the copying service business.
- (4) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that the infringing

copy of a copyright work in question was not made for profit and was not made for reward.

- (5) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that he did not know and had no reason to believe that the copy of a copyright work in question was an infringing copy of the copyright work.
- (6) A person who commits an offence under subsection (2) is liable on conviction on indictment to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years.
- (7) Sections 115, 116 and 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under subsection (2).

(Added 4 of 2004 s. 3)

119B. Offence in relation to making for distribution or distributing on a regular or frequent basis infringing copies of copyright works in printed form contained in books, etc.

- (1) A person commits an offence if he does any of the following acts on a regular or frequent basis for the purpose of or in the course of any trade or business—
 - (a) without the licence of the copyright owner of a copyright work described in subsection (2), makes an infringing copy of the work for distribution, resulting in a financial loss to the copyright owner; or
 - (b) without the licence of the copyright owner of a copyright work described in subsection (2), distributes an infringing copy of the work, resulting in a financial loss to the copyright owner.
- (2) The copyright work referred to in subsection (1)(a) and (b) is a copyright work in a printed form that is contained in—

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- (a) a book;
 - (b) a magazine;
 - (c) a periodical; or
 - (d) a newspaper.
- (3) Subsection (1) does not apply in the circumstances described in Schedules 1AA and 1AB. (*Replaced 15 of 2009 s. 3*)
- (4) Subsection (1) does not apply to an educational establishment of any of the following descriptions—
- (a) an educational establishment specified in section 1 of Schedule 1;
 - (b) an educational establishment exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112); or
 - (c) an educational establishment receiving direct recurrent subvention from the Government.
- (5) Subsection (1) does not apply to the distribution through a wire or wireless network of an infringing copy to which access is not restricted by procedures of authentication or identification.
- (6) Subsection (1) does not apply if the infringing copy—
- (a) forms part of the special collection of a library or archive owned by the Government, or a library or archive designated under subsection (10)(a); and
 - (b) is distributed solely—
 - (i) for on-the-spot reference use in, or during an activity organized by, a library or archive referred to in paragraph (a); or
 - (ii) for loan to other libraries or archives for the purpose of exhibition or research.

- (7) Subsection (1) does not apply to the making or distribution by a library or archive referred to in subsection (6)(a) of a single copy of any item forming the special collection for the purpose of preserving or replacing the item against loss, deterioration or damage, but the copy may only be distributed for the use referred to in subsection (6)(b).
- (8) In subsections (6) and (7), “special collection” (特別收藏品) —
 - (a) in the case of a library or archive owned by the Government, means a collection consisting primarily of works or articles, or copies of works or articles, donated or given by the public that are, in the opinion of the Director of Leisure and Cultural Services, of cultural, historical or heritage importance or value;
 - (b) in the case of a library or archive designated under subsection (10)(a), means a collection consisting primarily of works or articles, or copies of works or articles, donated or given by the public that are, in the opinion of the head or controlling body (by whatever name called) of the library or archive, of cultural, historical or heritage importance or value.
- (9) For the purposes of the exception under subsections (6) and (7), an archive owned by the Government includes a museum owned by the Government.
- (10) The Secretary for Commerce and Economic Development may, having regard to the advice of the Director of Leisure and Cultural Services —
 - (a) by notice published in the Gazette designate for the purposes of subsection (6)(a) any library or archive that is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112); and

- (b) by regulations prescribe the conditions that a library or archive designated under paragraph (a) must comply in order to be eligible for the exemption provided by subsections (6) and (7).
- (11) Without prejudice to section 125, where a body corporate or a partnership has done an act referred to in subsection (1), the following person shall, unless there is evidence showing that he did not authorize the act to be done, be presumed also to have done the act—
 - (a) in the case of the body corporate—
 - (i) any director of the body corporate who, at the time when the act was done, was responsible for the internal management of the body corporate; or
 - (ii) if there was no such director, any person who, at the time when the act was done, was responsible under the immediate authority of the directors of the body corporate for the internal management of the body corporate;
 - (b) in the case of the partnership—
 - (i) any partner in the partnership who, at the time when the act was done, was responsible for the internal management of the partnership; or
 - (ii) if there was no such partner, any person who, at the time when the act was done, was responsible under the immediate authority of the partners in the partnership for the internal management of the partnership.
- (12) A defendant charged with an offence under subsection (1) by virtue of subsection (11) is taken not to have done the act in question if—

- (a) sufficient evidence is adduced to raise an issue that he did not authorize the act to be done; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (13) For the purposes of subsection (12)(a)—
 - (a) the defendant shall be taken to have adduced sufficient evidence if the court is satisfied that—
 - (i) the defendant has caused the body corporate or partnership concerned to set aside financial resources, and has directed the use of the resources, for the acquisition of appropriate licences, in accordance with the needs of the body corporate or partnership, to make or distribute, or to make and distribute, copies of the copyright work to which the proceedings relate for the use of the body corporate or partnership;
 - (ii) the defendant has caused the body corporate or partnership concerned to set aside financial resources, and has directed the use of the resources, for the acquisition of a sufficient number of copies of the copyright work to which the proceedings relate, which are not infringing copies, for the use of the body corporate or partnership;
 - (iii) the body corporate or partnership concerned has incurred expenditure for the acquisition of appropriate licences, in accordance with the needs of the body corporate or partnership, to make or distribute, or to make and distribute, copies of the copyright work to which the proceedings relate for the use of the body corporate or partnership; or
 - (iv) the body corporate or partnership concerned has incurred expenditure for the acquisition of a

sufficient number of copies of the copyright work to which the proceedings relate, which are not infringing copies, for the use of the body corporate or partnership;

- (b) subject to paragraph (a), in determining whether sufficient evidence is adduced, the court may have regard to, including but not limited to, the following—
 - (i) whether the defendant has introduced policies or practices against the making and distribution of infringing copies of copyright works by the body corporate or partnership;
 - (ii) whether the defendant has taken action to prevent the making or distribution of infringing copies of copyright works by the body corporate or partnership.
- (14) It is a defence for the person charged with an offence under subsection (1) to prove that—
 - (a) he has taken adequate and reasonable steps to obtain a licence from the copyright owner in question but failed to get a timely response from the copyright owner;
 - (b) he has made reasonable efforts but failed to obtain commercially available copies of the copyright work in question and the copyright owner in question has refused to grant him a licence on reasonable commercial terms;
 - (c) he did not know and had no reason to believe that the copies made or distributed are infringing copies; or
 - (d) he cannot, after making reasonable enquiries, ascertain the identity and contact details of the copyright owner in question.

- (15) It is a defence for the person charged with an offence in respect of an act under subsection (1) to prove that—
 - (a) he did the act in the course of his employment; and
 - (b) he did the act in accordance with the instruction given to him by or on behalf of his employer in the course of his employment.
- (16) Subsection (15) does not apply to an employee who, at the time when the infringing copy in question was made or distributed, was in a position to make or influence a decision regarding the making or distribution of the infringing copy.
- (17) A person who commits an offence under subsection (1) is liable on conviction on indictment to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years.
- (18) Sections 115 and 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under subsection (1).
- (19)-(21) *(Repealed 15 of 2009 s. 3)*
- (22) The Secretary for Commerce and Economic Development may, by notice published in the Gazette, amend Schedules 1AA and 1AB. *(Added 15 of 2009 s. 3)*
(Added 15 of 2007 s. 33)

120. #Making infringing copies outside Hong Kong, etc.

- (1) A person commits an offence if he makes outside Hong Kong, for export to Hong Kong otherwise than for his private and domestic use, any article that he knows would, if it were made in Hong Kong, constitute an infringing copy of a copyright work.
- (2) A person commits an offence if he makes outside Hong Kong an article specifically designed or adapted for making copies

of a particular copyright work knowing or having reason to believe that it is to be used or is intended to be used in Hong Kong for making an infringing copy of the copyright work for sale or hire or for use for the purpose of or in the course of any trade or business. (*Amended 64 of 2000 s. 9; 15 of 2007 s. 34*)

- (2A) It is immaterial for the purpose of subsection (2) whether or not the trade or business consists of dealing in infringing copies of copyright works. (*Added 64 of 2000 s. 9*)
- (3) A person commits an offence if he makes outside Hong Kong or exports from Hong Kong an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that—
 - (a) the article is to be used or is intended to be used outside Hong Kong for making another article for export to Hong Kong; and
 - (b) the latter article mentioned in paragraph (a) would, if it were made in Hong Kong, constitute an infringing copy of the copyright work.
- (4) A person who, in Hong Kong or elsewhere, aids, abets, counsels or procures the commission by another person of an offence under subsection (1), (2) or (3) commits that offence as a principal.
- (5) The offences under subsections (1), (2) and (3) are without prejudice to the offences under section 118.
- (6) A person who commits an offence under subsection (1), (2) or (3) is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 8 years.
- (7) For the purpose of this section, “article” (物品) does not include an article in transit.

- (8) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section.

Editorial Note:

The Copyright (Suspension of Amendments) Ordinance (Cap. 568) provides for the suspension of the operation of certain amendments in relation to this section effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000).

120A. Time limit for prosecutions

No prosecution for an offence under this Ordinance shall be commenced after the expiration of 3 years from the date of commission of the offence.

(Added 22 of 1998 s. 44. Amended 15 of 2007 s. 35)

Supplementary

121. Affidavit evidence

- (1) For the purpose of facilitating the proof of subsistence and ownership of copyright, and without prejudice to the operation of sections 11 to 16 (authorship and ownership of copyright) and sections 17 to 21 (duration of copyright), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which states— *(Amended 15 of 2007 s. 36)*
- (a) the date and place that the work was made or first published;
 - (b) the name of the author of the work; *(Replaced 15 of 2007 s. 36)*
 - (ba) where the author of the work is an individual—
 - (i) the place of domicile of the author;

- (ii) the place of residence of the author; or
 - (iii) the place where the author has a right of abode;
(Added 15 of 2007 s. 36)
 - (bb) where the author of the work is a body corporate—
 - (i) the place of incorporation of the author; or
 - (ii) the principal place of business of the author; *(Added 15 of 2007 s. 36)*
 - (c) the name of the copyright owner; *(Amended 15 of 2007 s. 36)*
 - (d) that copyright subsists in the work; and
 - (e) that a copy of the work exhibited to the affidavit is a true copy of the work,
- shall, subject to the conditions contained in subsection (4), be admitted without further proof in any proceedings under this Ordinance.
- (2) For the purpose of facilitating the proof of subsistence and ownership of copyright, and without prejudice to subsection (1) and the operation of sections 11 to 16 (authorship and ownership of copyright) and sections 17 to 21 (duration of copyright), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which— *(Amended 15 of 2007 s. 36)*
- (a) states—
 - (i) that the copyright work has been registered with a Copyright Register prescribed under subsection (16); and *(Amended L.N. 29 of 2004)*
 - (ii) that copyright subsists in the work; and
 - (iii) the name of the copyright owner; and *(Amended 15 of 2007 s. 36)*

- (b) has exhibited to it a copy of the certificate of registration of the work issued by the authority in charge of the Copyright Register certified to be a true copy by a person specified in subsection (4)(a),
shall, subject to the conditions contained in subsection (4), be admitted without further proof in any proceedings under this Ordinance.
- (2A) For the purposes of facilitating the establishment of the matter referred to in section 35(3)(b), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which—
 - (a) states the name of the copyright owner;
 - (b) states that a copy of the work exhibited to the affidavit is a true copy of the work;
 - (c) states—
 - (i) that the copy of the work exhibited to the affidavit was made in a place outside Hong Kong by the copyright owner; or
 - (ii) that the copy of the work exhibited to the affidavit was made in a place outside Hong Kong by a person who has the licence of the copyright owner to make copies of the work in that place, but does not have the licence of the copyright owner to make copies of the work in Hong Kong; and
 - (d) states the name and address of the person (if any) referred to in paragraph (c)(ii),
shall, subject to the conditions contained in subsection (4), be admitted without further proof in any proceedings under this Ordinance. (*Added 15 of 2007 s. 36*)
- (2B) For the purposes of any proceedings instituted under section 118(1), an affidavit which purports to have been made by or

on behalf of the copyright owner of a copyright work and which—

- (a) states the name of the copyright owner; and
- (b) states that the person named in the affidavit does not have the licence of the copyright owner to do an act referred to in section 118(1)(a), (b), (c), (d), (e), (f) or (g) in respect of the work,

shall, subject to the conditions contained in subsection (4), be admitted without further proof in those proceedings. (*Added 15 of 2007 s. 36*)

- (2C) For the purposes of any proceedings instituted under section 118(2A), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which—

- (a) states the name of the copyright owner; and
- (b) states that the person named in the affidavit does not have the licence of the copyright owner to do an act referred to in section 118(2A) in respect of the work,

shall, subject to the conditions contained in subsection (4), be admitted without further proof in those proceedings. (*Added 15 of 2007 s. 36*)

- (2D) For the purposes of any proceedings instituted under section 119B(1), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which—

- (a) states the name of the copyright owner; and
- (b) states that the person named in the affidavit does not have the licence of the copyright owner to do an act referred to in section 119B(1) in respect of the work,

shall, subject to the conditions contained in subsection (4), be admitted without further proof in those proceedings. (*Added 15 of 2007 s. 36*)

- (3) The court before whom an affidavit which complies with the conditions in subsection (4) is produced under subsection (1), (2), (2A), (2B), (2C) or (2D) shall presume, in the absence of evidence to the contrary— (*Amended 15 of 2007 s. 36*)
 - (a) that the statements made in the affidavit are true; and
 - (b) that it was made and authenticated in accordance with subsection (4).
- (4) An affidavit may be tendered in evidence under subsection (1), (2), (2A), (2B), (2C) or (2D) if— (*Amended 15 of 2007 s. 36*)
 - (a) it is made on oath—
 - (i) before a solicitor or a commissioner as defined in the Oaths and Declarations Ordinance (Cap. 11), if it is made in Hong Kong; or
 - (ii) before a notary public, if it is made outside Hong Kong;
 - (b) it is authenticated, so far as relates to the making thereof, by the signature of the solicitor, commissioner or notary public before whom it is made;
 - (c) it contains a declaration by the deponent to the effect that it is true to the best of his knowledge and belief; and
 - (d) subject to subsection (6), not less than 10 days before the commencement of the hearing at which the affidavit is tendered in evidence, a copy of the affidavit is served, by or on behalf of the prosecution or plaintiff, on each of the defendants.

- (5) Notwithstanding that an affidavit is admissible as evidence by virtue of this section, a defendant or his solicitor may, within 3 days from the service of the copy of the affidavit, serve a notice requiring the attendance of the deponent to the affidavit in court.
- (6) The parties may agree before the hearing that the requirements of subsection (4)(d) may be dispensed with.
- (7) If an affidavit tendered in evidence under subsection (1), (2), (2A), (2B), (2C) or (2D)— (*Amended 15 of 2007 s. 36*)
 - (a) is made in a language other than English or Chinese, it must be accompanied by an English or Chinese translation thereof and, unless otherwise agreed by or on behalf of the prosecutor or plaintiff and defendant (or, if more than one, all the defendants), the translation must be certified by the court translator;
 - (b) refers to any other document as an exhibit, the copy served on any other party to the proceedings under subsection (4)(d) must be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.
- (8) Without prejudice to subsection (5)—
 - (a) the party by whom or on whose behalf the affidavit was served may call the deponent to give evidence; and
 - (b) the court may of its own motion or, if the defendant who has served a notice under subsection (5) in relation to an affidavit satisfies the court—
 - (i) that the ownership or subsistence of the copyright in a work is, insofar as that matter is stated in the affidavit, genuinely in issue;

- (ii) that whether a person has the licence of the copyright owner of a copyright work to do a particular act is, insofar as that matter is stated in the affidavit, genuinely in issue; or
 - (iii) where the affidavit is made under subsection (2A), that any matter stated in the affidavit, other than those referred to in subparagraphs (i) and (ii), is genuinely in issue,

either before or during the hearing, require the deponent to the affidavit to attend before the court and give evidence. *(Replaced 15 of 2007 s. 36)*
- (9) Without prejudice to subsection (8)(a), a deponent of an affidavit which is admissible under this section shall attend before the court and give evidence if, and only if, the court so requires under subsection (8)(b).
- (10) So much of an affidavit as is admitted in evidence by virtue of this section is, unless the court otherwise directs, to be read aloud at the hearing and where the court so directs an account is to be given orally of so much of any affidavit as is not read aloud.
- (11) Any document or object referred to as an exhibit and identified in an affidavit admitted in evidence under this section is treated as if it had been produced as an exhibit and identified in court by the deponent.
- (12) A document required by this section to be served on any person may be served—
 - (a) by delivering it to him or to his solicitor; or
 - (b) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office or by sending it by registered post addressed to the secretary or clerk of that body at that office.

- (13) Without prejudice to the powers of the court to award costs, the court may award costs against a defendant who—
 - (a) was served with an affidavit described in subsection (1), (2), (2A), (2B), (2C) or (2D); (*Amended 15 of 2007 s. 36*)
 - (b) by himself or through his solicitor served a notice under subsection (5); and
 - (c) was subsequently convicted of the relevant offence or found liable for the infringement, as the case may be.
- (14) In awarding awards under subsection (13), the court shall have regard to the actual costs incurred by the prosecution or plaintiff as a result of the notice under subsection (5) served by the defendant and the court may award costs under subsection (13) exceeding the limit of costs, if any, which that court may award.
- (15) For the purpose of subsection (1)(e), where the work is a computer program, whether in source codes or object codes, a copy of the program only in the form of object codes is also regarded as a true copy of the program.
- (16) The Secretary for Commerce and Economic Development may by regulation prescribe the Copyright Registers for the purpose of subsection (2). (*Amended L.N. 173 of 2000; L.N. 106 of 2002; L.N. 130 of 2007*)
- (17) In this section, “court” (法院) includes a magistrate.

122. Powers of investigating officers

- (1) An authorized officer may—
 - (a) (i) subject to section 123, enter and search any place; (*Amended 22 of 1998 s. 45*)

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- (ii) stop, board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft); or
 - (iii) stop and search any vehicle (other than a military vehicle),
in which he reasonably suspects that there is—
 - (A) an article which is an infringing copy of a copyright work;
 - (B) an article specifically designed or adapted for making copies of a particular copyright work which article is used or intended to be used for making infringing copies of any such work; or
 - (C) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Part; and
 - (b) seize, remove or detain—
 - (i) any article which appears to him to be an infringing copy of a copyright work or an article specifically designed or adapted for making copies of a particular copyright work which appears to him to be intended for use for making infringing copies of any such work;
 - (ii) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Part; and
 - (iii) any vessel, aircraft or vehicle (other than a ship of war or a military aircraft or vehicle) which he reasonably suspects to be or, has been used in connection with an offence under this Part.
 - (2) An authorized officer may—

- (a) break into and forcibly enter any place which he is empowered or authorized by this Part to enter and search; (*Amended 22 of 1998 s. 45*)
 - (b) forcibly board any vessel, aircraft or vehicle which he is empowered by this Part to stop, board and search;
 - (c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Part;
 - (d) detain any person found in any place which he is empowered or authorized by this Part to search until such place has been searched;
 - (e) prevent any person from approaching or boarding any vessel, aircraft or vehicle which he is empowered by this Part to stop, board and search until it has been searched.
- (3) An authorized officer may call upon any authorized officer to assist him in the exercise of any of his powers under this section. (*Added 22 of 1998 s. 45*)

123. Authority to issue warrant for entry and search

- (1) A magistrate may, if he is satisfied by information on oath that there are reasonable grounds for suspecting that there is in any place any article or thing which may be seized, removed or detained under section 122(1)(b), issue a warrant authorizing an authorized officer to enter and search the place.
- (2) Subject to subsection (3), an authorized officer shall not enter and search any place under section 122(1)(a)(i) except under the authority of a warrant issued under this section.
- (3) An authorized officer may enter and search any place under section 122(1)(a)(i) without a warrant issued under this section if the delay necessary to obtain a warrant could result in the loss or destruction of evidence or for any other reason it would not be reasonably practicable to obtain a warrant.

(Replaced 22 of 1998 s. 46)

124. Obstruction of investigating officers

- (1) Without prejudice to any other Ordinance, any person who—
 - (a) wilfully obstructs an authorized officer in the exercise of his powers or the performance of his duties under this Ordinance;
 - (b) wilfully fails to comply with any requirement properly made to him by any such authorized officer; or
 - (c) without reasonable excuse, fails to give such authorized officer any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Ordinance,is guilty of an offence and is liable on conviction to a fine at level 4 and to imprisonment for 3 months.
- (2) Any person who, when required to give information to an authorized officer in the exercise of his powers or the performance of his duties under this Ordinance, knowingly gives false or misleading information to any such authorized officer is guilty of an offence and is liable on conviction to a fine at level 4 and to imprisonment for 3 months.
- (3) Nothing in this section requires any person to give any information which may incriminate him.

125. Liability of persons other than principal offender

- (1) Where a body corporate commits an offence under this Ordinance in respect of any act which is shown to have been committed with the consent or connivance of, or to be attributable to any act on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity he, as well as the body corporate, commits the offence.

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Where an offence under this Ordinance committed by a partner in a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any act on the part of, any other partner of the partnership or any person concerned in the management of the partnership, that other partner or the person concerned in the management of the partnership commits the like offence.

126. Disclosure of information, etc.

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) Where any article seized or detained under section 122 is, or is reasonably suspected by the Commissioner to be—
 - (a) an infringing copy of a copyright work; or
 - (b) an article specifically designed or adapted for making copies of a particular copyright work which has been used, or is intended to be used, for the making of infringing copies of any such work,the Commissioner shall, wherever reasonably practicable, notify the owner of the copyright in question or his authorized agent of the seizure or detention, as the case may be.
- (2) In the circumstances specified in subsection (1), the Commissioner may disclose to the owner of the copyright or to his authorized agent—
 - (a) the time, and the address or place, of seizure or detention of the article;
 - (b) the name and address of the person from whom the article has been seized or detained;
 - (c) the nature and quantity of articles seized or detained;

- (d) any statement made to the Commissioner or an authorized officer by the person in connection with the seizure or detention, either with the prior consent in writing of that person or without such consent where the person is dead or cannot after reasonable enquiries by the Commissioner as to his whereabouts be found by the Commissioner; and
 - (e) any other information or document relating to the article seized or detained which the Commissioner thinks fit to disclose.
- (3) The owner of the copyright or his authorized agent—
 - (a) where he seeks disclosure of any information or document that is not referred to in subsection (2); or
 - (b) where information or a document that is referred to in subsection (2) is not disclosed by the Commissioner,

may apply to the Court of First Instance for an order requiring the Commissioner to disclose such information or document and the Court of First Instance may on such an application make such order for disclosure as it thinks fit. (*Amended 25 of 1998 s. 2*)
- (4) An application under subsection (3) may be begun by motion with previous notice to the Commissioner.

127. Protection of informers in criminal proceedings

- (1) Save where, in the opinion of the court, justice so requires, the name or identity of any informer and the information given by such informer shall not be disclosed in any criminal proceedings under this Part.
- (2) The court may make any order and adopt any procedure necessary to prevent any such disclosure.

128. Inspection of articles, release of samples, etc.

- (1) Where an article seized or detained under section 122 is, or is reasonably suspected by the Commissioner to be—
 - (a) an infringing copy of a copyright work; or
 - (b) an article specifically designed or adapted for making copies of a particular copyright work which has been used, or is intended to be used, for the making of infringing copies of any such work,the Commissioner or an authorized officer may give the owner of the copyright work in question or his authorized agent or the person from whom the article was seized sufficient opportunity to inspect the article for the purposes of ascertaining whether the article is an infringing copy of the copyright work or is an article specifically designed or adapted for making infringing copies of the copyright work.
- (2) Where more than one article is seized or detained under section 122, the Commissioner or an authorized officer may permit the owner of the copyright or his authorized agent or the person from whom the articles were seized or detained to remove samples of the seized or detained articles if the Commissioner or authorized officer considers it necessary for the purpose of ascertaining whether the articles are infringing copies of the copyright work or are articles specifically designed or adapted for making copies of the copyright work on condition that the owner or agent or person, as the case may be, gives the Commissioner or authorized officer the requisite undertakings.
- (3) For the purposes of subsection (2), the requisite undertakings are undertakings in writing that the person giving the undertaking will—
 - (a) return the samples to the Commissioner or authorized officer at a specified time that is satisfactory to the Commissioner or authorized officer; and

- (b) take reasonable care to prevent unnecessary damage to the samples.
- (4) If the Commissioner or an authorized officer permits the inspection of any seized or detained article, or the removal of a sample, by the copyright owner or his agent or the person from whom the article was seized in accordance with this section, the Government is not liable to the person from whom the article was seized or detained for any loss or damage suffered by him arising out of—
 - (a) damage to any article incurred during the inspection; or
 - (b) anything done by the copyright owner or any other person to, or in relation to, a sample removed by the copyright owner, his agent or the person or any use made by the owner or the person of such sample.

129. Multilateral co-operation

The Commissioner may, for the purpose of promoting multi-lateral co-operation in the protection of intellectual property rights, disclose information obtained in pursuance of this Ordinance to the customs authorities or other authorities responsible for the enforcement of intellectual property rights of—

- (a) any country, territory or area which is, at the relevant time, a member of the World Trade Organization; or
- (b) such other country, territory or area as the Commissioner thinks fit.

130. Offences relating to disclosure of information

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) Subject to subsection (2), any person who discloses to any other person any information obtained by him in pursuance of this Ordinance commits an offence unless the disclosure was made—

- (a) for the purpose of the performance by him or any other person of functions under this Ordinance; or
 - (b) under the direction or order of a court.
- (2) A person does not commit an offence under subsection (1) by—
 - (a) disclosing information under section 126(1) or (2) or under an order of the Court of First Instance under section 126(3);
 - (b) disclosing information under section 129;
 - (c) disclosing information under section 140(1) or under an order of the Court of First Instance made under section 140(2); or
 - (d) disclosing information under section 267(1) or under an order of the Court of First Instance made under section 267(2). (*Amended 25 of 1998 s. 2*)
- (3) Any person who commits an offence under subsection (1) is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

131. Seized articles, etc. liable to forfeiture

- (1) Any article, vessel, aircraft, vehicle or thing seized or detained by an authorized officer under section 122 is liable to forfeiture in accordance with the following provisions whether or not any person has been charged of an offence under section 118, 119A, 119B or 120. (*Amended 4 of 2004 s. 4; 15 of 2007 s. 37*)
- (2) The Commissioner shall, subject to subsection (3) and not later than 30 days beginning on the date of the seizure or detention of the article, vessel, aircraft, vehicle or thing serve notice of the seizure or detention on a person who was to the knowledge of the Commissioner at the time of,

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- or immediately after seizure or detention, an owner of the article, vessel, aircraft, vehicle or thing.
- (3) Subsection (2) does not apply if the article, vessel, aircraft, vehicle or thing was seized or detained in the presence of—
- (a) an owner, or an employee or agent of the owner, of the article, vessel, aircraft, vehicle or thing;
 - (b) the person whose offence or suspected offence gave rise to the seizure or detention; or
 - (c) in the case of a vessel, aircraft or vehicle, the master or person in charge.
- (4) A notice given under subsection (2) is deemed to have been duly served if—
- (a) it is delivered to the person on whom it is served;
 - (b) it is sent by registered post addressed to such person at the place of residence or business of such person, if any, known to the Commissioner; or
 - (c) where it cannot be served in accordance with paragraph (a) or (b), the notice is exhibited at the Customs and Excise Department, in a place to which the public have access, for a period of not less than 7 days commencing within 30 days from the date of the seizure or detention of the article, vessel, aircraft, vehicle or thing.
- (5) If an article, vessel, aircraft, vehicle or thing is liable to forfeiture under subsection (1), the owner or the authorized agent of the owner thereof, or a person who was in possession thereof at the time of seizure or detention, or a person who has a legal or equitable interest in it, may within 30 days beginning—
- (a) on the date of the seizure or detention; or
 - (b) where the notice under subsection (2) is—

- (i) served by delivery to the person to be served, on the date of service; or
- (ii) sent by registered post, 2 days after the date of posting; or
- (iii) exhibited as described in subsection (4)(c), on the first day it is so exhibited,

give notice in writing to the Commissioner of his full name and address for service in Hong Kong and claim that the article, vessel, aircraft, vehicle or thing is not liable to forfeiture.

- (6) A claimant may withdraw a notice of a claim at any time by notice in writing to the Commissioner.
- (7) Except where a person is charged with an offence under section 118, 119A, 119B or 120 in connection with the seized or detained article, vessel, aircraft, vehicle or thing, if on the date of the expiration of the appropriate period of time specified in subsection (5) for the giving of a notice of claim no such notice has been given in writing to the Commissioner, the article, vessel, aircraft, vehicle or thing is forfeited forthwith to the Government. (*Amended 22 of 1999 s. 3; 4 of 2004 s. 4; 15 of 2007 s. 37*)

132. Disposal of articles, etc. where a person is charged

Without prejudice to section 131, where a person is charged with an offence under section 118, 119A, 119B or 120 the court may, if it is satisfied that any article, vessel, aircraft, vehicle or thing seized or detained by an authorized officer under section 122 in connection with the offence— (*Amended 4 of 2004 s. 5; 15 of 2007 s. 38*)

- (a) is an infringing copy of a copyright work;
- (b) is an article specifically designed or adapted for making copies of a particular copyright work which article

has been used, or is intended to be used, for making infringing copies of any such work; or

- (c) has been used in connection with any offence under this Ordinance,

order that the article, vessel, aircraft, vehicle or thing be—

- (i) forfeited to the Government; (*Amended 22 of 1999 s. 3*)
- (ii) delivered up to the person who appears to the court to be the owner of the copyright concerned; or
- (iii) disposed of in such other way as the court may think fit,

whether or not the person charged is convicted of the offence with which he was charged.

133. Determination of application for forfeiture

- (1) Where a notice of claim is given under section 131, the Commissioner or an authorized officer shall apply to a magistrate, the District Court or the Court of First Instance for the forfeiture of the article, vessel, aircraft, vehicle or thing unless the Commissioner is satisfied, within a reasonable period after the receipt of the notice of claim, that, on the basis of the evidence of the case, the article, vessel, aircraft, vehicle or thing concerned should be delivered to the claimant. (*Amended 25 of 1998 s. 2*)
- (2) The Commissioner or authorized officer shall state in the application the name and address of the claimant.
- (3) Where an application under subsection (1) is made to a magistrate, the magistrate shall issue a summons to the claimant, requiring him to appear before a magistrate upon the hearing of the application, and shall cause a copy of such summons to be served upon the Commissioner.

- (4) Where an application under subsection (1) is made to the District Court or the Court of First Instance, it may be begun by motion. (*Amended 25 of 1998 s. 2*)
- (5) Where the claimant is the defendant in criminal proceedings under section 118, 119A, 119B or 120 in connection with the seized or detained article, vessel, aircraft, vehicle or thing and there is no other claimant, on an application made in that behalf by the Commissioner, the court may hear the forfeiture application immediately following the criminal proceedings and for the purposes of a hearing under this subsection, any requirement in respect of the issue or service of a summons or any notice of the hearing under or by virtue of subsection (3) or (4), as the case may be, does not apply. (*Amended 4 of 2004 s. 6; 15 of 2007 s. 39*)
- (6) Where there is more than one claimant and one of them is the defendant in criminal proceedings under section 118, 119A, 119B or 120 in connection with the seized or detained article, vessel, aircraft, vehicle or thing, on an application made in that behalf by the Commissioner, the court may hear the forfeiture application immediately following the criminal proceedings. (*Amended 4 of 2004 s. 6; 15 of 2007 s. 39*)
- (7) If, upon the hearing of an application under subsection (1), the claimant or some other person who, though not the claimant, was, or would have been, entitled to make a claim under section 131(5), appears before a court, the court shall hear the application.
- (8) A court may, at the hearing of a forfeiture application, or at an adjourned hearing, hear a person—
 - (a) who has not been served with a notice of seizure or detention and was not present when an article, vessel, aircraft, vehicle or thing, was seized or detained or whose identity was not known to the Commissioner at

the time of, or immediately after, seizure or detention;
and

- (b) who appears to the court to have a right to claim ownership of, or a legal or equitable interest in, the article, vessel, aircraft, vehicle or thing,

on his claim as to why it should not be forfeited.

- (9) If, upon the hearing of an application under subsection (1), neither the claimant nor any person who, though not the claimant, was, or would have been, entitled to make a claim under section 131(5), appears before a court and the court is satisfied—

- (a) that the summons or the notice of the hearing (if any) required to be served under subsection (3) or (4), as the case may be, was served;
- (b) that a person at the address for service or a solicitor nominated to accept service on behalf of a claimant has refused to accept service of the summons or notice of the hearing referred to in paragraph (a); or
- (c) that the address for service given to the Commissioner is inadequate for the purpose of effecting service of the summons or the notice of hearing referred to in paragraph (a),

the court shall hear and determine the application without requiring further inquiry as to the whereabouts of the claimant.

- (10) An application under subsection (1) to a magistrate is deemed to be a complaint for the purposes of section 8 of the Magistrates Ordinance (Cap. 227).
- (11) Without prejudice to section 132, upon the hearing of an application under subsection (1) a court shall order that the article, vessel, aircraft, vehicle or thing, as the case

may be, be forfeited to the Government where the court is satisfied that it is liable to forfeiture, and, if appropriate, that— (*Amended 22 of 1999 s. 3*)

- (a) the person who appears before the court fails to satisfy the court that he was, or would have been, entitled to make a claim under section 131(5) in respect of the seized or detained article, vessel, aircraft, vehicle or thing; and
 - (b) no other person appears before the court and satisfies that he was, or would have been, entitled to make such claim.
- (12) Without prejudice to section 132, upon the hearing of an application under subsection (1), in any case other than a case referred to in subsection (11) a court may, if it is satisfied—
- (a) that a person is, or would have been, entitled to make a claim under section 131(5) in respect of the seized or detained article, vessel, aircraft, vehicle or thing; and
 - (b) that the article, vessel, aircraft, vehicle or thing is liable to forfeiture,
- order that the article, vessel, aircraft, vehicle or thing—
- (i) be forfeited to the Government; (*Amended 22 of 1999 s. 3*)
 - (ii) subject to subsection (13), be delivered to the claimant subject to any condition which it may specify in the order; or
 - (iii) be disposed of in such manner and subject to such condition as it may specify in the order.
- (13) The court shall not make an order under subsection (12)(ii) in respect of an article unless the claimant satisfies the court that the article is not an infringing copy of any copyright work or, as the case may be, is not an article specifically designed

or adapted to make copies of any particular copyright work which article is used or is intended to be used, for making infringing copies of any such work.

- (14) If, after a court has ordered that an article, vessel, aircraft, vehicle or thing be delivered to a person, that person cannot be found or refuses to accept it, the Commissioner may apply to a court which may—
 - (a) order that the article, vessel, aircraft, vehicle or thing be forfeited to the Government; or (*Amended 22 of 1999 s. 3*)
 - (b) make any such other order as the court considers fit in the circumstances.
- (15) Unless the context otherwise requires, a reference to a court in this section or section 132 includes a reference to a magistrate.

134. Jurisdiction of District Court

- (1) The District Court may entertain proceedings under—
 - (a) section 109 (order for delivery up of infringing copy or other article);
 - (b) section 111 (order as to disposal of infringing copy or other article); or
 - (c) section 113(7) (order as to exercise of rights by copyright owner where exclusive licensee has concurrent rights),

where the value of the infringing copies, or the alleged infringing copies, and other articles in question does not exceed the limit for actions in tort set out in section 32(1) of the District Court Ordinance (Cap. 336). (*Amended 28 of 2000 s. 45*)

- (2) Nothing in this section affects the jurisdiction of the Court of First Instance. (*Amended 25 of 1998 s. 2*)

[*cf. 1988 c. 48 s. 115 U.K.*]

DIVISION VII—PROCEEDINGS RELATING TO IMPORTATION OF INFRINGING ARTICLES

135. Definitions

In this Division—

“detention order” (扣留令) means an order made under section 137(1);

“right holder” (權利持有人) means the owner or exclusive licensee of the copyright that subsists in a work under this Ordinance.

136. Application for detention order

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) A right holder may apply to the Court of First Instance for an order under section 137(1) where he has reasonable grounds for suspecting that the importation of an article that constitutes an infringing copy of the work in respect of which he is a right holder may take place. (*Amended 25 of 1998 s. 2*)
- (2) An application under subsection (1) may be made *ex parte* but with previous notice to the Commissioner.
- (3) An application under subsection (1) must be in such form as is prescribed by rules of court and must be supported by an affidavit of the right holder which—
 - (a) states that at the time the application is made copyright subsists under this Part in the work in question;
 - (b) states whether the deponent is the owner or the exclusive licensee of the copyright;

- (c) where the deponent purports to be the exclusive licensee, states the facts and exhibits such documents relied upon by the deponent to establish that he is the exclusive licensee;
 - (d) states that a copy of the work exhibited to the affidavit is an authorized copy of the work;
 - (e) states the grounds for the application, including the facts relied upon by the deponent as showing that the article in question is prima facie an infringing copy;
 - (f) sets out a sufficiently detailed description of the article in question to make it readily recognizable by the Commissioner;
 - (g) sets out particulars regarding the expected mode of transportation and the expected date of importation and, if available, particulars identifying the importer; and
 - (h) sets out such other information and exhibits such other documents as may be prescribed by rules of court.
- (4) No application may be made under subsection (1) with respect to an article in transit.
 - (5) No application may be made under subsection (1) with respect to the importation by a person of an article for his private and domestic use.
 - (6) Section 121 applies in respect of an affidavit made in accordance with subsection (3) by the exclusive licensee of the copyright that subsists in a work under this Part in the same manner as it would apply if the affidavit were made by the owner of the copyright.

137. Issuance of detention order

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) Where, on the hearing of an application made under section 136, the right holder presents adequate evidence to satisfy the Court of First Instance that the article in question is prima facie an infringing copy, the Court of First Instance may make an order directing the Commissioner or an authorized officer to take reasonable measures to seize or detain the article on or after its importation.
- (2) The Court of First Instance may require the right holder to provide security or an equivalent assurance in an amount sufficient to protect the importer and any other person having an interest in the article to be seized or detained, including the consignee and the owner of the article, from any loss or damage that may be incurred in the event that the seizure or detention is wrongful or the article is released to the importer under section 138(6).
- (3) A detention order may contain such terms and conditions as the Court of First Instance considers appropriate.
- (4) The Court of First Instance shall not make a detention order with respect to any article that has been seized or detained by, and that is in the custody of, the Commissioner or an authorized officer pursuant to any law.
- (5) Where the Commissioner or an authorized officer seizes or detains an article pursuant to any law, other than this Division or Division III of Part III, any detention order made with respect to that article ceases to have effect.
- (6) Where the Court of First Instance makes a detention order, the right holder shall forthwith serve a copy of the order on the Commissioner.
- (7) A detention order has effect from the date on which it is made or such later date as may be specified by the Court of First Instance and ceases to have effect 60 days from that date unless the Commissioner or an authorized officer

has, pursuant to the order and within that period, seized or detained any article to which the order applies.

(Amended 25 of 1998 s. 2)

138. Enforcement of detention order

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) Where a detention order is served on the Commissioner, the Commissioner or an authorized officer shall, subject to the terms and conditions of the order, seize or detain any article to which the order applies.
- (2) The right holder shall—
 - (a) supply to the Commissioner or an authorized officer sufficient information on the article and the particular importation to render the article recognizable and the shipment or particular importation identifiable and any other information the Commissioner or an authorized officer may reasonably require for the purpose of carrying out the detention order;
 - (b) deposit with the Commissioner an amount that is, in the opinion of the Commissioner, sufficient to reimburse the Government for the costs likely to be incurred in connection with the carrying out of the detention order; and
 - (c) upon notification in writing by the Commissioner or an authorized officer of the seizure or detention of the article, provide such storage space and other facilities as he may require.
- (3) The Commissioner or an authorized officer may refuse to carry out the detention order if the right holder fails to comply with subsection (2).
- (4) The Commissioner may, after giving written notice to the right holder, apply to the Court of First Instance for directions

in carrying out the detention order, and the Court of First Instance may, after giving the right holder an opportunity to be heard, give such directions as it thinks fit. (*Amended 25 of 1998 s. 2*)

- (5) The Commissioner or an authorized officer shall forthwith after an article is seized or detained pursuant to a detention order, give written notice of the seizure or detention to—
 - (a) the right holder;
 - (b) the importer; and
 - (c) any other person to whom notice is required to be given by the terms of the order.
- (6) Subject to subsection (7) and to any law authorizing the Commissioner or an authorized officer to seize or detain articles, the Commissioner or an authorized officer shall release any article that has been seized or detained pursuant to a detention order to the importer if the right holder has not, within a period of 10 days after notice of the seizure or detention is given to the right holder, notified the Commissioner in writing that an action for infringement in respect of the article has been brought under this Part.
- (7) The Court of First Instance may, on application by the right holder, after giving the Commissioner and each person to whom notice is required to be given under subsection (5) an opportunity to be heard, extend the period referred to in subsection (6) by a period not exceeding an additional 10 days if it is satisfied that the request for the extension is reasonable. (*Amended 25 of 1998 s. 2*)
- (8) In proceedings under subsection (7), the Court of First Instance may require the right holder to provide security or an equivalent assurance in addition to that provided in accordance with section 137(2). (*Amended 25 of 1998 s. 2*)

- (9) Where the right holder has, within the period referred to in subsection (6), as may be extended under subsection (7), notified the Commissioner in writing that an action for infringement in respect of the article has been brought under this Part, the Commissioner or an authorized officer shall retain custody of the article subject to the direction of the court in the infringement proceedings.
- (10) No public holiday, gale warning day or black rainstorm warning day is reckoned in the computation of the period referred to in subsection (6), as may be extended under subsection (7).
- (11) In this section—
“black rainstorm warning day” (黑色暴雨警告日) means any day throughout or for part of which a black rainstorm warning is in force, and “black rainstorm warning” (黑色暴雨警告) means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as Black; (*Amended L.N. 362 of 1997*)
“gale warning day” (烈風警告日) means any day throughout or for part of which a gale warning is in force, and “gale warning” (烈風警告) has the meaning assigned to it by section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62).

139. Variation or setting aside of detention order

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) The Commissioner or the right holder may at any time apply to the Court of First Instance to vary the detention order.
- (2) The importer or any other person affected by the detention order may at any time apply to the Court of First Instance to vary or set aside the order.

- (3) A person who makes an application under subsection (1) or (2) shall give to the other parties such notice of the day fixed for the hearing of the application as a judge of the Court of First Instance may order.
- (4) On the hearing of an application under subsection (1) or (2) to vary the detention order, the Court of First Instance may vary the order in such manner as it thinks just.
- (5) On the hearing of an application under subsection (2) to set aside the detention order, the Court of First Instance may set aside the order on such terms and conditions as it thinks just.
- (6) For the purposes of subsection (3)—
 - (a) the parties to an application under subsection (1) are the Commissioner, the right holder and, if the article in question has been seized or detained pursuant to the detention order, the importer and any other person to whom notice is required to be given under section 138(5); and
 - (b) the parties to an application under subsection (2) are the Commissioner, the right holder, the applicant and the importer, if the importer is not the applicant.

(Amended 25 of 1998 s. 2)

140. Disclosure of information

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) Where an article is seized or detained pursuant to a detention order, the Commissioner may disclose to the right holder—
 - (a) the names and addresses of the importer, the consignor and the consignee;
 - (b) the nature and quantity of articles seized or detained pursuant to the order;

- (c) any statement made to the Commissioner or an authorized officer by any person in connection with the seizure or detention, either with the prior consent in writing of that person or without such consent where the person is dead or cannot after reasonable enquiries by the Commissioner as to his whereabouts be found by the Commissioner; and
 - (d) any other information or document relating to any article seized or detained pursuant to the order which the Commissioner thinks fit to disclose.
- (2) Where the right holder seeks disclosure of—
 - (a) any information or document that is not referred to in subsection (1); or
 - (b) any information or document that is referred to in subsection (1) but which the Commissioner has not disclosed,

he may apply to the Court of First Instance for an order requiring the Commissioner to disclose such information or document and the Court of First Instance may on such an application make such order for disclosure as it deems fit.
(Amended 25 of 1998 s. 2)
- (3) An application under subsection (2) may be begun by motion with previous notice to the Commissioner.

141. Inspection of articles, release of samples, etc.

- (1) Where an article is seized or detained pursuant to a detention order, the Commissioner or an authorized officer shall—
 - (a) give the right holder sufficient opportunity to inspect the article for the purpose of substantiating his claim; and

- (b) give the importer an equivalent opportunity to inspect the article for the purpose of refuting the right holder's claim.
- (2) Where more than one article is seized or detained pursuant to a detention order, the Commissioner or an authorized officer may permit the right holder or the importer to remove samples of the seized or detained articles if the right holder or the importer, as the case may be, gives the Commissioner or authorized officer the requisite undertakings.
- (3) For the purposes of subsection (2), the requisite undertakings are undertakings in writing that the person giving the undertaking will—
 - (a) return the samples to the Commissioner or authorized officer at a specified time that is satisfactory to the Commissioner or authorized officer; and
 - (b) take reasonable care to prevent unnecessary damage to the samples.
- (4) If the Commissioner or an authorized officer permits the inspection of any seized or detained article, or the removal of a sample, by the right holder in accordance with this section, the Government is not liable to the importer for any loss or damage suffered by the importer arising out of—
 - (a) damage to any article incurred during the inspection; or
 - (b) anything done by the right holder or any other person to, or in relation to, a sample removed by the right holder or any use made by the right holder of such sample.

142. Costs payable

- (1) The Commissioner may assess the costs incurred by the Government in connection with the carrying out of a detention order and may deduct those costs from the amount paid as a deposit by the right holder under section 138(2).

- (2) Any costs assessed under subsection (1) shall be payable by the right holder to the Government and recoverable as a civil debt.

143. Compensation payable to importer, etc.

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) Where an article is seized or detained pursuant to a detention order and the article is released pursuant to section 138(6), the importer, the consignee or the owner of the article may, within 6 months after the date on which the order is made, apply to the Court of First Instance for compensation for any loss or damage suffered by him by reason of the seizure or detention.
- (2) Where—
 - (a) an article is seized or detained pursuant to a detention order;
 - (b) an action for infringement is brought under this Part in respect of the article within the period referred to in section 138(6), as may be extended under section 138(7); and
 - (c) the action is discontinued, the claim of infringement is withdrawn or the court in the infringement proceedings determines that the infringement is not proved,the importer, the consignee or the owner of the article may, within 6 months after the date on which the action is discontinued, the claim is withdrawn or the court renders its determination, as the case may be, apply to the Court of First Instance for compensation for any loss or damage suffered by him by reason of the seizure or detention.
- (3) On an application under subsection (1) or (2), the Court of First Instance may make such order for compensation as it deems fit.

(Amended 25 of 1998 s. 2)

144. Rules

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) includes power to make rules of court regulating and prescribing the procedure and the practice to be followed in the Court of First Instance under this Division, and any matter incidental to or relating to that procedure or practice, including rules prescribing any matter or thing that under this Division is to be or may be prescribed by rules of court.

(Amended 25 of 1998 s. 2)

DIVISION VIII—COPYRIGHT LICENSING

145. Licensing schemes and licensing bodies

(1) In this Part a “licensing scheme” (特許計劃) means a scheme setting out—

- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant copyright licences; and
- (b) the terms on which licences would be granted in those classes of case,

and for this purpose a “scheme” (計劃) includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) In this section “copyright licences” (版權特許) means licences to do, or authorize the doing of, any of the acts restricted by copyright.

(3) References in this Division to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only—

- (a) a single collective work or collective works of which the authors are the same; or
- (b) works made or distributed by, or by employees of or commissioned by, a single individual, firm, company or group of companies,

and for this purpose a “group of companies” (公司集團) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622). (*Amended 28 of 2012 ss. 912 & 920*)

(4) In this Division—

“licensing body” (特許機構) means a society or other organization, whether registered under section 149 or not, which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author;

“register” (註冊紀錄冊) means the register of copyright licensing bodies established under section 147;

“Registrar” (處長) means the Registrar of Copyright Licensing Bodies specified in section 146;

“registration” (註冊) means the entry of the name of a licensing body in the register in accordance with section 149 and “registered” (註冊) is construed accordingly.

[*cf. 1988 c. 48 s. 116 U.K.*]

Registration of licensing bodies

146. Registrar of Copyright Licensing Bodies

The Director of Intellectual Property is the Registrar of Copyright Licensing Bodies.

147. Maintenance of register and inspection

- (1) The Registrar shall establish and maintain a register of copyright licensing bodies in such form and manner as he determines and containing such particulars as he thinks fit.
- (2) The register is to be open for inspection in such place and in such manner and subject to the payment of such appropriate fee as may be specified by the Registrar by notice in the Gazette.

148. Application for registration and renewal

- (1) A licensing body may apply for registration or renewal of registration in such form and manner as may be specified by the Registrar.
- (2) An application must be accompanied by—
 - (a) the appropriate prescribed fee; and
 - (b) a statement in writing containing such particulars as may be specified by the Registrar either generally or in respect of the application.
- (3) An application by a body corporate may be signed by any person authorized in that behalf by such body corporate and the Registrar may require such proof of that authorization as he considers necessary.
- (4) An application by a partnership must be signed by each partner.
- (5) A fee paid under this section is not refundable whether the application is approved or not.

149. Registration, issue of certificate of registration

- (1) The Registrar may approve an application for registration and enter the name of the applicant in the register if the Registrar

is satisfied—

- (a) that the applicant is a fit and proper person to be registered; and
- (b) with respect to the future, with the availability to the public of information relating to the scales of copyright royalty charges by the applicant for different uses, at least by the following means—
 - (i) by setting the scales out in its brochures and licence application forms;
 - (ii) by exhibiting the scales in the registered office and places of business of the applicant conspicuously to the public; and
 - (iii) by publishing the scales in an English language newspaper and a Chinese language newspaper in Hong Kong on a day within the 2 weeks after the issue of the certificate of registration.
- (2) Upon entry of the name of the applicant in the register, the Registrar shall issue to the applicant a certificate of registration in such form as the Registrar determines specifying the requirements with respect to—
 - (a) the publication of scales of copyright royalty charges; and
 - (b) the charging of copyright royalty charges not exceeding the scales published,

which the licensing body must comply with.

150. Change of royalty charges during currency of certificate

- (1) A registered licensing body which proposes to charge copyright royalty charges otherwise than in accordance with the scales last published on registration or on renewal of registration shall notify the Registrar in writing together with

sufficient particulars of the proposed new scales of charges at least one month before the new scales come into effect.

- (2) The licensing body shall make available to the public the information relating to the new scales of copyright royalty charges for different uses at least by the means specified in section 149(1)(b) at least 14 days before the new scales come into effect.
- (3) The registration of a licensing body which fails to comply with subsection (1) or (2) or both subsections is deemed to be cancelled from the date when the new scales come into effect.

151. Duration of registration, renewal and cancellation

- (1) A certificate of registration is valid for a period of 12 months, or such lesser period as may be specified in the certificate, from the date on which it is granted.
- (2) A registered licensing body may apply for the renewal of its registration for a period not exceeding 12 months.
- (3) An application for the renewal of registration must be made at least one month before the expiry of the current registration.
- (4) The Registrar may decline an application for renewal of registration by a licensing body or cancel the registration of a licensing body if—
 - (a) the licensing body is no longer a fit and proper person to be registered; or
 - (b) any of the requirements of the Registrar specified under subsection (5) or section 149(2) in relation to the licensing body is not complied with.
- (5) On a renewal of registration, the Registrar shall issue to the licensing body a new certificate in such form as the Registrar determines specifying the requirements with respect to—

- (a) the publication of scales of copyright royalty charges; and
 - (b) the charging of copyright royalty charges not exceeding the scales published.
- (6) The Registrar shall remove the name of the licensing body from the register if its application for renewal of registration is declined or its registration is cancelled.

152. Regulations

(For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.)

The Secretary for Commerce and Economic Development may by regulation— (*Amended L.N. 173 of 2000; L.N. 106 of 2002; L.N. 130 of 2007*)

- (a) prescribe the fees for the application for registration and for renewal of registration; and
- (b) provide for the better carrying into effect of this system of registration.

153. No liability in the case of the bona fide exercise of functions under this Division

- (1) No liability is incurred by the Registrar in respect of anything done or omitted to be done by him bona fide in the exercise or purported exercise of any functions conferred or imposed by or under this Division.
- (2) In this section “functions” (職能) includes powers and duties.

References and applications with respect to licensing schemes

154. Licensing schemes to which sections 155 to 160 apply

Sections 155 to 160 (references and applications with respect

to licensing schemes) apply to licensing schemes operated by licensing bodies which cover works of more than one author, so far as they relate to licences for—

- (a) copying the work;
- (b) where the work is a work referred to in section 25(1)(a), (b), (c), (d), (e) or (f), the rental of copies of the work to the public; (*Amended 15 of 2007 s. 40*)
- (c) performing, playing or showing the work in public;
- (d) broadcasting the work or including it in a cable programme service;
- (e) issuing or making available copies of the work to the public;
- (f) making adaptations of the work; or
- (g) any other act restricted by the copyright in the work,

and references in those sections to a licensing scheme are to be construed accordingly.

[cf. 1988 c. 48 s. 117 U.K.]

155. Reference of proposed licensing scheme to Tribunal

- (1) An organization claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case, may refer the terms of a licensing scheme proposed to be operated by a licensing body to the Copyright Tribunal.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the matter referred and make such order, either

confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

[cf. 1988 c. 48 s. 118 U.K.]

156. Reference of licensing scheme to Tribunal

- (1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and—
 - (a) a person claiming that he requires a licence in a case of a description to which the scheme applies; or
 - (b) an organization claiming to be representative of such persons,that person or organization may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.
- (2) A scheme which has been referred to the Tribunal under this section remains in operation until proceedings on the reference are concluded.
- (3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

[cf. 1988 c. 48 s. 119 U.K.]

157. Further reference of scheme to Tribunal

- (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under section 155 or 156, or under this section, made an order with respect to the scheme, then, while the order remains in force—
 - (a) the operator of the scheme;
 - (b) a person claiming that he requires a licence in a case of the description to which the order applies; or
 - (c) an organization claiming to be representative of such persons,may refer the scheme again to the Tribunal so far as it relates to cases of that description.
- (2) A licensing scheme may not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases—
 - (a) within 12 months from the date of the order on the previous reference; or
 - (b) if the order was made so as to be in force for 15 months or less, until the last 3 months before the expiry of the order.
- (3) A scheme which has been referred to the Tribunal under this section and which is in operation remains in operation until proceedings on the reference are concluded.
- (4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

[cf. 1988 c. 48 s. 120 U.K.]

158. Application for grant of licence in connection with licensing scheme

- (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal for an order under this section.
- (2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either—
 - (a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted; or
 - (b) proposes terms for a licence which are unreasonable, may apply to the Tribunal for an order under this section.
- (3) A case is regarded as excluded from a licensing scheme for the purposes of subsection (2) if—
 - (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or
 - (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.
- (4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable

in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.

- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

[cf. 1988 c. 48 s. 121 U.K.]

159. Application for review of order as to entitlement to licence

- (1) Where the Copyright Tribunal has made an order under section 158 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.
- (2) An application may not be made, except with the special leave of the Tribunal—
 - (a) within 12 months from the date of the order, or of the decision on a previous application under this section; or
 - (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last 3 months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

[cf. 1988 c. 48 s. 122 U.K.]

160. Effect of order of Tribunal as to licensing scheme

- (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal—

- (a) under section 155 (reference of terms of proposed scheme); or
- (b) under section 156 or 157 (reference of existing scheme to Tribunal),

is in force or, as the case may be, remains in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

- (2) While the order is in force a person who in a case of a class to which the order applies—

- (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained; and
- (b) complies with the other terms applicable to such a licence under the scheme,

is in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

- (3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

If such a direction is made—

- (a) any necessary repayments, or further payments, must be made in respect of charges already paid; and
- (b) the reference in subsection (2)(a) to the charges payable under the scheme is to be construed as a reference to the charges so payable by virtue of the order.

- (4) Where the Tribunal has made an order under section 158 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made, if he—
- (a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained; and
 - (b) complies with the other terms specified in the order,
- is in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

[cf. 1988 c. 48 s. 123 U.K.]

References and applications with respect to licensing by licensing bodies

161. Licences to which sections 162 to 166 apply

Sections 162 to 166 (references and applications with respect to licensing by licensing bodies) apply to licences which are granted by a licensing body otherwise than in pursuance of a licensing scheme and which cover works of more than one author, so far as they authorize—

- (a) copying the work;
- (b) where the work is a work referred to in section 25(1)(a), (b), (c), (d), (e) or (f), the rental of copies of the work to the public; (*Amended 15 of 2007 s. 41*)
- (c) performing, playing or showing the work in public;
- (d) broadcasting the work or including it in a cable programme service;

- (e) issuing or making available copies of the work to the public;
 - (f) making adaptations of the work; or
 - (g) any other act restricted by the copyright in the work,
- and references in those sections to a licence are to be construed accordingly.

[cf. 1988 c. 48 s. 124 U.K.]

162. Reference to Tribunal of proposed licence

- (1) A prospective licensee may refer the terms on which a licensing body proposes to grant a licence to the Copyright Tribunal.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

[cf. 1988 c. 48 s. 125 U.K.]

163. Reference to Tribunal of expiring licence

- (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.
- (2) Such an application may not be made until the last 3 months before the licence is due to expire.

- (3) A licence in respect of which a reference has been made to the Tribunal remains in operation until proceedings on the reference are concluded.
- (4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee continues to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.
- (5) An order of the Tribunal under this section may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

[cf. 1988 c. 48 s. 126 U.K.]

164. Tribunal may award interim payment and restrict application for interlocutory injunction

- (1) Where an application has been made to the Copyright Tribunal under section 162 or 163, the Tribunal may of its own motion or on the application of the licensing body order the licensee to make such interim payment of such royalty as the Tribunal thinks just to the licensing body.
- (2) Where a reference or an application has been made to the Tribunal under section 162 or 163, the Tribunal may of its own motion or on the application of the prospective licensee or licensee make an order that pending the final determination of the reference or application or until further order by the Tribunal, the licensing body shall not apply for any interlocutory injunction against the prospective licensee (in the case of a reference under section 162) or the licensee (in the case of an application under section 163).
- (3) Where the Tribunal has made an order under subsection (2), any application for an interlocutory injunction in any court by the licensing body against the prospective licensee or licensee, as the case may be, shall not be entertained or, if it has been

entertained, shall be stayed until the final determination of the reference or application or further order by the Tribunal.

- (4) Subject to any earlier termination of the order, an order under subsection (2) ceases to have effect on the final determination of the reference or application, as the case may be.

165. Application for review of order as to licence

- (1) Where the Copyright Tribunal has made an order under section 162 or 163, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.
- (2) An application may not be made, except with the special leave of the Tribunal—
- (a) within 12 months from the date of the order or of the decision on a previous application under this section; or
- (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last 3 months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

[cf. 1988 c. 48 s. 127 U.K.]

166. Effect of order of Tribunal as to licence

- (1) Where the Copyright Tribunal has made an order under section 162 or 163 and the order remains in force, the person entitled to the benefit of the order shall if he—
- (a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be

- ascertained, gives an undertaking to pay the charges when ascertained; and
 - (b) complies with the other terms specified in the order, be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.
- (2) The benefit of the order may be assigned—
 - (a) in the case of an order under section 162, if assignment is not prohibited under the terms of the Tribunal's order; and
 - (b) in the case of an order under section 163, if assignment was not prohibited under the terms of the original licence.
 - (3) The Tribunal may direct that an order under section 162 or 163, or an order under section 165 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.
 - (4) If such a direction is made—
 - (a) any necessary repayments, or further payments, must be made in respect of charges already paid; and
 - (b) the reference in subsection (1)(a) to the charges payable in accordance with the order is to be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

[cf. 1988 c. 48 s. 128 U.K.]

Factors to be taken into account in certain classes of case

167. General considerations: unreasonable discrimination

- (1) The Copyright Tribunal shall, in every case before it, have regard to public interest, and in determining what is reasonable on a reference or application under this Division relating to a licensing scheme or licence, the Tribunal shall have regard to—
 - (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances;
 - (b) the terms of those schemes for licences;
 - (c) the nature of the work concerned;
 - (d) the relative bargaining power of the parties concerned; and
 - (e) the availability to the licensees or prospective licensees of relevant information relating to the terms of the licensing scheme or licence in question.
- (2) The Copyright Tribunal shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person or any other person.
- (3) The mention in subsections (1) and (2) of specific matters to which the Tribunal is to have regard does not affect the general obligation of the Tribunal to have regard to all relevant considerations and in particular, to whether the exercise of its power will result in a conflict with a normal exploitation of the work or will unreasonably prejudice the legitimate interests of the copyright owner.

[cf. 1988 c. 48 ss. 129 & 135 U.K.]

Implied indemnity in schemes or licences**168. Implied indemnity in certain schemes and licences**

- (1) This section applies to—
 - (a) schemes for licensing restricted acts in relation to copyright works; and
 - (b) licences granted by licensing bodies,
where the scheme or licence does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.
- (2) There is implied—
 - (a) in every scheme to which this section applies an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme; and
 - (b) in every licence to which this section applies an undertaking by the licensing body to indemnify the licensee,
against any liability incurred by him by reason of his having infringed copyright by making or authorizing an act restricted by the copyright in a work in circumstances within the apparent scope of his licence.
- (3) The circumstances of a case are within the apparent scope of a licence if—
 - (a) it is not apparent from inspection of the licence and the work that it does not fall within the description of works to which the licence applies; and
 - (b) the licence does not expressly provide that it does not extend to copyright to the description infringed.

- (4) In this section “liability” (法律責任) includes liability to pay costs; and this section applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against him for infringement of copyright as it applies to sums which he is liable to pay in respect of such infringement.
- (5) A scheme or licence to which this section applies may contain reasonable provision—
- (a) with respect to the manner in which, and time within which, claims under the undertaking implied by this section are to be made;
 - (b) enabling the operator of the scheme or, as the case may be, the licensing body to take over the conduct of any proceedings affecting the amount of his liability to indemnify.
- (6) When an indemnity is implied under subsection (2), subject to subsection (7), the amount of damages which a court may award in favour of the owner of the copyright of a work who is not a member of the scheme or, as the case may be, the licensing body for infringement of the copyright must not exceed the amount that owner would receive if he was a member of the scheme or the licensing body.
- (7) The court shall not award damages at an amount that will result in a conflict with a normal exploitation of the work or will unreasonably prejudice the legitimate interest of the copyright owner.

[cf. 1988 c. 48 s. 136 U.K.]

DIVISION IX—THE COPYRIGHT TRIBUNAL

The Tribunal

169. The Copyright Tribunal

(Adaptation amendments retroactively made - see 22 of 1999 s. 3)

- (1) There is established a tribunal called the Copyright Tribunal.
- (2) The Tribunal shall consist of the following members all of whom shall be appointed by the Chief Executive— (*Amended 22 of 1999 s. 3*)
 - (a) one Chairman and one Deputy Chairman each of whom must be qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336); and
 - (b) 7 ordinary members each of whom is to be appointed in his personal capacity.

170. Membership of Tribunal

(Adaptation amendments retroactively made - see 22 of 1999 s. 3)

- (1) The members of the Copyright Tribunal shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.
- (2) A member of the Tribunal may resign his office by notice in writing to the Chief Executive.
- (3) The Chief Executive may by notice in writing to the member concerned remove him from office if—
 - (a) he has become bankrupt or made an arrangement with his creditors;
 - (b) he is incapacitated by physical or mental illness; or
 - (c) he is in the opinion of the Chief Executive otherwise unable or unfit to perform his duties as member.
- (4) If a member of the Tribunal is by reason of illness, absence or other reasonable cause for the time being unable to perform the duties of his office, either generally or in relation

to particular proceedings, the Chief Executive may appoint a person who would be eligible for appointment to that office to discharge his duties for a period not exceeding 6 months at one time or, as the case may be, in relation to those proceedings.

- (5) A person appointed under subsection (4) shall have during the period of his appointment, or in relation to the proceedings in question, the same powers as the person in whose place he is appointed.

(Amended 22 of 1999 s. 3)

[cf. 1988 c. 48 s. 146 U.K.]

171. Financial provisions

(For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.)

- (1) There shall be paid to the members of the Copyright Tribunal who are not public officers such remuneration (whether by way of salaries or fees), and such allowances, as the Secretary for Commerce and Economic Development may determine.
- (2) The Secretary for Commerce and Economic Development may appoint such number of staff for the Tribunal and at such remuneration as he may determine.
- (3) The remuneration and allowances of members of the Tribunal, the remuneration of any staff and such other expenses of the Tribunal as the Secretary for Commerce and Economic Development may determine shall be paid out of the general revenue.

(Amended L.N. 173 of 2000; L.N. 106 of 2002; L.N. 130 of 2007)

[cf. 1988 c. 48 s. 147 U.K.]

172. Constitution for purposes of proceedings

- (1) For the purposes of any proceedings the Copyright Tribunal shall consist of—
 - (a) a chairman, who is either the Chairman or the Deputy Chairman of the Tribunal; and
 - (b) 2 or more ordinary members.
- (1A) Notwithstanding subsection (1), any proceedings specified for the purposes of this subsection in rules made under section 174 (general procedures rules) may be heard and determined by any of the following persons sitting alone—
 - (a) the Chairman of the Tribunal;
 - (b) the Deputy Chairman of the Tribunal; or
 - (c) a suitably qualified ordinary member of the Tribunal appointed by the Chairman of the Tribunal. (*Added 15 of 2007 s. 42*)
- (2) If the members of the Tribunal dealing with any matter are not unanimous, the decision shall be taken by majority vote; and if, in such a case, the votes are equal the chairman shall have a further, casting vote.
- (3) Where part of any proceedings before the Tribunal has been heard and one or more members of the Tribunal are unable to continue, the Tribunal remains duly constituted for the purpose of those proceedings so long as the number of members is not reduced to less than 3.
- (4) If the chairman is unable to continue, the Chairman of the Tribunal shall—
 - (a) appoint one of the remaining members to act as chairman; and
 - (b) appoint a suitably qualified person to attend the proceedings and advise the members on any questions of law arising.

- (5) A person is “suitably qualified” for the purposes of subsection (1A) or (4)(b) if he is, or is eligible for appointment as, a Deputy Chairman of the Tribunal. (*Amended 15 of 2007 s. 42*)

[*cf. 1988 c. 48 s. 148 U.K.*]

Jurisdiction and procedure

173. Jurisdiction of Tribunal

The Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under—

- (a) section 14 (determination of award to employee for use of work outside reasonable contemplation);
- (b) section 155, 156 or 157 (reference of licensing scheme);
- (c) section 158 or 159 (application with respect to entitlement to licence under licensing scheme);
- (d) section 162, 163 or 165 (reference or application with respect to licensing by licensing body);
- (e) paragraph 6 of Schedule 2 (contrary rights);
- (f) paragraph 14(3) of Schedule 2 (acts infringing copyright).

[*cf. 1988 c. 48 s. 149 U.K.*]

174. General power to make rules

- (1) The Chief Justice may make rules for regulating proceedings before the Copyright Tribunal, as to the fees chargeable in respect of such proceedings, and as to the enforcement of orders made by the Tribunal.
- (2) The rules may apply in relation to the Tribunal any of the provisions of the Arbitration Ordinance (Cap. 609) and any

provisions so applied must be set out in or scheduled to the rules. (*Amended 17 of 2010 s. 112*)

- (3) The rules may—
 - (a) prohibit the Tribunal from entertaining a reference under section 155, 156 or 157 by a representative organization unless the Tribunal is satisfied that the organization is reasonably representative of the class of persons which it claims to represent;
 - (b) specify the parties to any proceedings and enabling the Tribunal to make a party to the proceedings any person or organization satisfying the Tribunal that they have a substantial interest in the matter;
 - (c) require the Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide.
- (4) The rules may make provision for regulating or prescribing any matter incidental to or consequential upon any appeal from the Tribunal under section 176 (appeal to the court on point of law).

[cf. 1988 c. 48 s. 150 U.K.]

175. Costs, proof of orders, etc.

- (1) The Copyright Tribunal may, in special circumstances, order that the costs of a party to proceedings before it shall be paid by such other party as the Tribunal may direct; and the Tribunal may tax or settle the amount of the costs, or direct in what manner they are to be taxed.
- (2) The Chief Justice may by rules prescribe the special circumstances for the purpose of subsection (1).
- (3) A document purporting to be a copy of an order of the Tribunal and to be certified by the chairman to be a true copy

is, in any proceedings, sufficient evidence of the order unless the contrary is proved.

[cf. 1988 c. 48 s. 151 U.K.]

Appeals

176. Appeal to court on point of law

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) An appeal lies on any point of law arising from a decision of the Copyright Tribunal to the Court of First Instance.
(Amended 25 of 1998 s. 2)
- (2) The rules made under section 174 may limit the time within which an appeal may be brought.
- (3) The rules made under that section may provide—
 - (a) for suspending, or authorizing or requiring the Tribunal to suspend, the operation of orders of the Tribunal in cases where its decision is appealed against;
 - (b) for modifying in relation to an order of the Tribunal whose operation is suspended the operation of any provision of this Part as to the effect of the order;
 - (c) for the publication of notices or the taking of other steps for securing that persons affected by the suspension of an order of the Tribunal will be informed of its suspension.

[cf. 1988 c. 48 s. 152 U.K.]

DIVISION X—QUALIFICATION FOR COPYRIGHT PROTECTION

177. Qualification for copyright protection

- (1) Copyright subsists in a work if—

- (a) the author satisfies the qualification requirements set out in section 178; or
 - (b) it is published in Hong Kong or elsewhere; or
 - (c) in the case of a broadcast or cable programme, it is made or sent from Hong Kong or elsewhere.
- (2) If the qualification requirements of this Division, or section 182, 184 or 188 (Government copyright, Legislative Council copyright or copyright of certain international organizations) are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

[cf. 1988 c. 48 s. 153 U.K.]

178. Qualification by reference to author

- (1) A work qualifies for copyright protection if the author was at the material time—
 - (a) an individual domiciled or resident or having a right of abode in Hong Kong or elsewhere; or
 - (b) a body incorporated under the law of any country, territory or area.
- (2) A work of joint authorship qualifies for copyright protection if at the material time any of the authors satisfies the requirements of subsection (1); but where a work qualifies for copyright protection only under this section, only those authors who satisfy those requirements are taken into account for the purposes of—
 - sections 13 and 14(1) (first ownership of copyright; entitlement of author or author's employer);
 - sections 17 and 19 (duration of copyright) and section 11(4) (meaning of “unknown authorship”) so far as it applies for the purposes of sections 17 and 19; and

sections 66 and 75 (acts permitted on assumptions as to expiry of copyright, etc.).

[cf. 1988 c. 48 s. 154 U.K.]

179. Ships, aircraft and hovercraft registered in Hong Kong

This Part applies to things done on a ship, aircraft or hovercraft registered under the law of Hong Kong as it applies to things done in Hong Kong.

[cf. 1988 c. 48 s. 162 U.K.]

180. Denial of copyright protection to people of countries, etc. not giving adequate protection to Hong Kong works

(Adaptation amendments retroactively made - see 22 of 1999 s. 3)

- (1) Subject to subsection (4), if it appears to the Chief Executive in Council that Hong Kong works or one or more classes of those works are not adequately protected in a country, territory or area as a result of any prejudicial treatment given to those works by that country, territory or area, the Chief Executive in Council may by regulation in accordance with this section restrict the rights conferred by this Part in relation to works of authors connected with that country, territory or area.
- (2) The Chief Executive in Council shall designate in the regulation the country, territory or area concerned and provide that, for the purposes specified in the regulation, a work first published in that country, territory or area after a date specified in the regulation does not qualify for copyright protection by virtue of such publication if at the time of that publication the author is—
 - (a) an individual domiciled or resident or having a right of abode in that country, territory or area (and not at the same time domiciled or resident or having a right of abode in Hong Kong); or

- (b) a body incorporated under the law of that country, territory or area,
and the regulation may make such provision for all the purposes of this Part or for such purposes as are specified in the regulation, and either generally or in relation to such class of cases as are specified in the regulation, having regard to the nature and extent of that prejudicial treatment referred to in subsection (1).
- (3) In this section “Hong Kong works” (香港作品) means copyright works of which the author was at the material time—
 - (a) an individual domiciled or resident or having a right of abode in Hong Kong; or
 - (b) a body incorporated under the law of Hong Kong.
- (4) The Chief Executive in Council shall not exercise his power under this section in relation to a country, territory or area which is a party to a bilateral or multilateral copyright or related right convention to which Hong Kong is also a party or the application of which has been extended to Hong Kong.

(Amended 22 of 1999 s. 3)

[cf. 1988 c. 48 s. 160 U.K.]

181. Meaning of first publication and material time

- (1) For the purposes of section 180, publication in one country, territory or area is still regarded as first publication if simultaneous publication occurs elsewhere; and for this purpose publication elsewhere within the previous 30 days is treated as simultaneous.
- (2) For the purposes of sections 178 and 180, the material time in relation to a literary, dramatic, musical or artistic work is—

- (a) in the case of an unpublished work, when the work was made or, if the making of the work extended over a period, a substantial part of that period;
 - (b) in the case of a published work, when the work was first published or, if the author had died before that time, immediately before his death.
- (3) For the purposes of sections 178 and 180, the material time in relation to other descriptions of work is as follows—
- (a) in the case of a sound recording or film, when it was made;
 - (b) in the case of a broadcast, when the broadcast was made;
 - (c) in the case of a cable programme, when the programme was included in a cable programme service;
 - (d) in the case of the typographical arrangement of a published edition, when the edition was first published.

[cf. 1988 c. 48 ss. 154 & 155 U.K.]

DIVISION XI—MISCELLANEOUS AND GENERAL

Government and Legislative Council copyright

182. Government copyright

- (1) Where a work is made by an officer of the Government in the course of his duties—
 - (a) the work qualifies for copyright protection notwithstanding section 177 (ordinary requirement as to qualification for copyright protection); and
 - (b) the Government is the first owner of any copyright in the work.

- (2) Copyright in such a work is referred to in this Part as “Government copyright”, notwithstanding that it may be, or have been, assigned to another person.
- (3) Government copyright in a work continues to subsist—
 - (a) until the end of the period of 125 years from the end of the calendar year in which the work was made; or
 - (b) if the work is published commercially before the end of the period of 75 years from the end of the calendar year in which it was made, until the end of the period of 50 years from the end of the calendar year in which it was first so published.
- (4) In the case of a work of joint authorship where one or more but not all of the authors are persons falling within subsection (1), this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.
- (5) Except as mentioned above, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to Government copyright as to other copyright.
- (6) This section does not apply to a work if, or to the extent that, Legislative Council copyright subsists in the work (see sections 184 and 185).

[cf. 1988 c. 48 s. 163 U.K.]

183. Copyright in Ordinances

- (1) The Government is entitled to copyright in every Ordinance.
- (2) The copyright subsists from the date of publication in the Gazette until the end of the period of 50 years from the end of the calendar year of publication.

- (3) References in this Part to Government copyright (except in section 182) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Government copyright.
- (4) No other copyright, or right in the nature of copyright, subsists in an Ordinance.

[cf. 1988 c. 48 s. 164 U.K.]

184. Legislative Council copyright

- (1) Where a work is made by or under the direction or control of the Legislative Council—
 - (a) the work qualifies for copyright protection notwithstanding section 177 (ordinary requirement as to qualification for copyright protection); and
 - (b) the Legislative Council is the first owner of any copyright in the work.
- (2) Copyright in such a work is referred to in this Part as “Legislative Council copyright”, notwithstanding that it may be, or have been, assigned to another person.
- (3) Legislative Council copyright in a literary, dramatic, musical or artistic work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made.
- (4) For the purposes of this section, works made by or under the direction or control of the Legislative Council include—
 - (a) any work made by an officer or employee of the Legislative Council in the course of his duties; and
 - (b) any sound recording, film, live broadcast or live cable programme of the proceedings of the Legislative Council,

but a work is not regarded as made by or under the direction or control of the Legislative Council by reason only of its being commissioned by or on behalf of the Legislative Council.

- (5) In the case of a work of joint authorship where one or more but not all of the authors are acting on behalf of, or under the direction or control of the Legislative Council, this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.
- (6) Except as mentioned above, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to Legislative Council copyright as to other copyright.

[cf. 1988 c. 48 s. 165 U.K.]

185. Copyright in bills

(Adaptation amendments retroactively made - see 22 of 1999 s. 3)

- (1) Copyright in every bill, other than a member's bill, introduced into the Legislative Council belongs, in accordance with the following provisions, to the Government.
- (2) Copyright in a member's bill belongs to the Legislative Council.
- (3) Copyright under this section subsists from the date of the first publication of a bill in the Gazette until—
 - (a) in the case of a bill which was published in the Gazette before 1 July 1997—
 - (i) the bill received assent; or
 - (ii) if the bill did not receive assent, the end of the period of 50 years from the end of the calendar year of the first publication; and

- (b) in the case of a bill which is published in the Gazette on or after 1 July 1997—
 - (i) the bill is signed by the Chief Executive; or
 - (ii) if the bill is not signed by the Chief Executive, the end of the period of 50 years from the end of the calendar year of the first publication. (*Replaced 22 of 1999 s. 3*)
- (4) References in this Part to Government copyright (except in section 182) include copyright under subsection (1); and, except as mentioned above, the provisions of this Part apply in relation to copyright under subsection (1) as to other Government copyright.
- (5) References in this Part to Legislative Council copyright (except in section 184) include copyright under subsection (2); and, except as mentioned above, the provisions of this Part apply in relation to copyright under subsection (2) as to other Legislative Council copyright.
- (6) No other copyright, or right in the nature of copyright, subsists in a bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a bill which, not having passed in one session, is reintroduced in a subsequent session.
- (7) In this section “member’s bill” (議員條例草案) means a bill, other than a Government measure, which is to be presented by a Member of the Legislative Council.

[cf. 1988 c. 48 s. 166 U.K.]

186. Legislative Council: supplementary provisions with respect to copyright

- (1) For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, the Legislative Council is to be treated

as having the legal capacities of a body corporate, which is not affected by a dissolution of the Legislative Council.

- (2) The functions of the Legislative Council as owner of copyright are exercisable by the President on behalf of the Legislative Council; and if so authorized by the President, or in case of a vacancy in the office of President, those functions may be discharged by the Secretary General of the Legislative Council Secretariat.
- (3) For this purpose a person who on the dissolution of the Legislative Council was President of the Legislative Council may continue to act until the corresponding appointment is made in the next session of the Legislative Council.

[cf. 1988 c. 48 s. 167 U.K.]

Other miscellaneous provisions

187. Groundless threat of proceedings in relation to “parallel-imported” copies of works

Groundless threat of proceedings in relation to “parallel-imported” copies of works

(Amended 15 of 2007 s. 43)

- (1) Where a person threatens another person with proceedings for infringement of copyright under sections 30 and 31 in respect of a copy of a work which is alleged to be an infringing copy by virtue only of section 35(3) and which was lawfully made in the country, territory or area where it was made, the person aggrieved by the threats may apply to the court for any one or more of the following reliefs— *(Amended 15 of 2007 s. 43)*
 - (a) a declaration to the effect that the threats are unjustifiable;
 - (b) an injunction against the continuance of the threats;

- (c) damages in respect of any loss which he had sustained by the threats.
- (2) If the person proves that the threats were made and that he is a person aggrieved by them, he is entitled to the relief claimed unless the defendant shows that the acts in respect of which proceedings were threatened did constitute, or if done would have constituted, an infringement of copyright under that section.
- (3) The mere notification of the existence of a copyright does not constitute a threat of proceedings for the purposes of this section.
- (4) Nothing in this section makes a barrister or solicitor liable to an action under this section in respect of an act done by him in his professional capacity on behalf of his client.
- (5) The defendant in an action under this section may apply, by way of counterclaim, for relief to which he would be entitled in a separate action in respect of an infringement by the plaintiff of the copyright to which the threats relate and, in any such case, the provisions of this Ordinance with respect to an action for infringement of copyright are, *mutatis mutandis*, applicable in relation to the action.

[cf. 1988 c. 48 s. 253 U.K.]

188. Copyright vesting in international organizations

(Adaptation amendments retroactively made - see 22 of 1999 s. 3)

- (1) Where an original literary, dramatic, musical or artistic work—
 - (a) is made by an officer or employee of, or is published by, any international organization; and
 - (b) does not qualify for copyright protection under section 178 (qualification by reference to author),

copyright nevertheless subsists in the work by virtue of this section and the organization is the first owner of that copyright.

- (2) Copyright of which an international organization is first owner by virtue of this section continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made or such longer period as may be specified by the Chief Executive by regulation under subsection (4). (*Amended 22 of 1999 s. 3*)
- (3) An international organization is deemed to have, and to have had at all material times, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright.
- (4) The Chief Executive may, for the purpose of complying with the international obligations applicable to Hong Kong make regulation specifying a period longer than 50 years for the purposes of this section in relation to any international organization. (*Amended 22 of 1999 s. 3*)

[*cf. 1988 c. 48 s. 168 U.K.*]

189. Folklore, etc.: anonymous unpublished works

(For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.)

- (1) Where in the case of an unpublished literary, dramatic, musical or artistic work of unknown authorship there is evidence that the author (or, in the case of a joint work, any of the authors) was a qualifying individual by connection with a country, territory or area outside Hong Kong, it is presumed, until the contrary is proved, that he was such a qualifying individual and that copyright accordingly subsists in the work, subject to the provisions of this Part.

- (2) If under the law of that country, territory or area a body is appointed to protect and enforce copyright in such works, the Secretary for Commerce and Economic Development may by regulation designate that body for the purposes of this section. (*Amended L.N. 173 of 2000; L.N. 106 of 2002; L.N. 130 of 2007*)
- (3) A body so designated is recognized in Hong Kong as having authority to do in place of the copyright owner anything, other than assign copyright, which it is empowered to do under the law of that country; and it may, in particular, bring proceedings in its own name.
- (4) In subsection (1) a “qualifying individual” (合資格的個人) means an individual who at the material time (within the meaning of section 178) was a person whose works qualified under that section for copyright protection.
- (5) This section does not apply if there has been an assignment of copyright in the work by the author of which notice has been given to the designated body; and nothing in this section affects the validity of an assignment of copyright made, or licence granted, by the author or a person lawfully claiming under him.

[cf. 1988 c. 48 s. 169 U.K.]

190. Protection of Commissioner and authorized officers

- (1) The Commissioner and authorized officers are not liable for any loss or damage suffered by any person as a result of any action taken or omitted to be taken in good faith in connection with the carrying out of any of their duties under this Part.
- (2) The protection conferred by subsection (1) on the Commissioner and authorized officers in respect of any action taken or omitted to be taken in good faith in connection with

the carrying out of those duties shall not affect in any manner any liability of the Government for that action taken or omitted to be taken.

Transitional provisions and savings

191. Transitional provisions and savings

Schedule 2 contains transitional provisions and savings relating to works made, and acts or events occurring, before the commencement of this Part, and otherwise with respect to the operation of the provisions of this Part.

[cf. 1988 c. 48 s. 170 U.K.]

192. Rights and privileges under other enactments or the common law

(1) Nothing in this Part affects—

- (a) any right or privilege of any person under any enactment (except where the enactment is expressly repealed, amended or modified by this Ordinance);
- (b) any right or privilege of the Government subsisting otherwise than under an enactment;
- (c) any right or privilege of the Legislative Council;
- (d) the right of the Government or any person deriving title from the Government to sell, use or otherwise deal with the articles forfeited under the law of Hong Kong;
- (e) the operation of any rule of equity relating to breaches of trust or confidence.

(2) Subject to those savings, no copyright or right in the nature of copyright subsists otherwise than by virtue of this Part or some other enactment in that behalf.

- (3) Nothing in this Part affects any rule of law preventing or restricting the enforcement of copyright, on grounds of public interest or otherwise.
- (4) Nothing in this Part affects any right of action or other remedy, whether civil or criminal, available otherwise than under this Part in respect of acts infringing any of the rights conferred by Division IV (moral rights).
- (5) The savings in subsection (1) have effect subject to sections 183(4) and 185(6) (copyright in Ordinances and bills: exclusion of other rights in the nature of copyright).

[cf. 1988 c. 48 s. 171 U.K.]

Interpretation

193. General provisions as to construction

- (1) This Part restates and amends the law of copyright, that is, the provisions of the Copyright Act 1956 (1956 c. 74 U.K.) as amended and extended to Hong Kong and the provisions of the Copyright Ordinance (Cap. 39), as amended.
- (2) A provision of this Part which corresponds to a provision of the previous law shall not be construed as departing from the previous law merely because of a change of expression.
- (3) Decisions under the previous law may be referred to for the purpose of establishing whether a provision of this Part departs from the previous law, or otherwise for establishing the true construction of this Part.

[cf. 1988 c. 48 s. 172 U.K.]

194. Construction of references to copyright owner

- (1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of copyright in a work, the copyright owner for any purpose

of this Part is the person who is entitled to the aspect of copyright relevant for that purpose.

- (2) Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in this Part to the copyright owner are to all the owners, so that, in particular, any requirement of the licence of the copyright owner requires the licence of all of them.

[cf. 1988 c. 48 s. 173 U.K.]

195. Meaning of “educational establishment” and related expressions

(For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.)

- (1) The expression “educational establishment” (教育機構) means an educational establishment specified in Schedule 1.
- (2) In relation to an educational establishment the expressions “teacher” (教師) and “pupil” (學生) in this Part include, respectively, any person who gives and any person who receives instruction.
- (3) References in this Part to anything being done “on behalf of” an educational establishment are to its being done for the purposes of that establishment by any person.
- (4) The Secretary for Education may, by notice in the Gazette, amend Schedule 1. (*Amended L.N. 130 of 2007*)

[cf. 1988 c. 48 s. 174 U.K.]

196. Meaning of “publication” and “commercial publication”

- (1) In this Part “publication” (發表), in relation to a work, means the issue or making available of copies of the work to the public; and related expressions are construed accordingly.

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- (2) In this Part “commercial publication” (商業發表), in relation to a literary, dramatic, musical or artistic work means issuing or making available copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public, and related expressions are construed accordingly.
- (3) In the case of a work of architecture in the form of a building, or an artistic work incorporated in a building, construction of the building is treated as equivalent to publication of the work.
- (4) The following do not constitute publication for the purposes of this Part and references to commercial publication are construed accordingly—
- (a) in the case of a literary, dramatic or musical work—
 - (i) the performance of the work; or
 - (ii) the broadcasting of the work or its inclusion in a cable programme service;
 - (b) in the case of an artistic work—
 - (i) the exhibition of the work;
 - (ii) the issue or making available to the public of copies of a graphic work representing, or of photographs of, a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship;
 - (iii) the issue or making available to the public of copies of a film including the work; or
 - (iv) the broadcasting of the work or its inclusion in a cable programme service ;
 - (c) in the case of a sound recording or film—

- (i) the work being played or shown in public; or
 - (ii) the broadcasting of the work or its inclusion in a cable programme service.
- (5) References in this Part to publication or commercial publication do not include publication which is merely colourable and not intended to satisfy the reasonable requirements of the public.
- (6) No account is taken for the purposes of this section of any unauthorized act.

[cf. 1988 c. 48 s. 175 U.K.]

197. Requirement of signature: application in relation to body corporate

- (1) The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal—
- section 90(3)(b) (assertion by licensor of right to identification of author in case of public exhibition of copy made in pursuance of the licence);
- section 101(3) (assignment of copyright);
- section 102(1) (assignment of future copyright);
- section 103(1) (grant of exclusive licence).
- (2) The requirement in the following provisions that an instrument be signed by a person is satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal—
- section 90(2)(b) (assertion by instrument in writing of right to have author identified);
- section 98(2) (waiver of moral rights).

[cf. 1988 c. 48 s. 176 U.K.]

198. Minor definitions

(* Italicized part is not yet in operation.)

(1) In this Part— (*Amended 64 of 2000 s. 10*)

“article” (文章), in the context of an article in a periodical, includes an item of any description;

“article in transit” (過境物品) means an article which—

- (a) is brought into Hong Kong solely for the purpose of taking it out of Hong Kong; and
- (b) remains at all times in or on the vessel or aircraft in or on which it is brought into Hong Kong;

“authorized officer” (獲授權人員) means any public officer authorized in writing by the Commissioner to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer under this Ordinance;

“business” (業務) includes—

- (a) a trade or profession; and
- (b) business conducted otherwise than for profit; (*Replaced 15 of 2007 s. 47*)

“collective work” (匯集作品) means—

- (a) a work of joint authorship; or
- (b) a work in which there are distinct contributions by different authors or in which works or parts of works of different authors are incorporated;

“Commissioner” (關長) means the Commissioner of Customs and Excise and any Deputy or Assistant Commissioner of Customs and Excise; (*Replaced 22 of 1999 s. 3*)

“computer-generated” (電腦產生), in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work;

- “electronic” (電子) means actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, and
 “in electronic form” (電子形式) means in a form usable only by electronic means;
- “employed” (受僱), “employee” (僱員), “employer” (僱主) and
 “employment” (僱用) refer to employment under a contract of service or of apprenticeship;
- “export” (輸出) means to take, or cause to be taken, out of Hong Kong any article;
- “facsimile copy” (精確複製品) includes a copy which is reduced or enlarged in scale;
- “import” (輸入) means to bring, or cause to be brought, into Hong Kong any article;
- “international organization” (國際組織) means an organization the members of which include one or more countries, territories or areas;
- “judicial proceedings” (司法程序) includes proceedings before any court, tribunal or person having authority to decide any matter affecting a person’s legal rights or liabilities;
- “movie” (電影) means a film of the kind commonly known as a movie; (*Added 27 of 2003 s. 5*)
- “musical sound recording” (音樂聲音紀錄) means a sound recording the whole or a predominant part of which consists of the whole or any part of a musical work or a musical work and a related literary work; (*Added 27 of 2003 s. 5*)
- “musical visual recording” (音樂視像紀錄) means a film with an accompanying sound-track, the whole or a predominant part of which sound-track consists of the whole or any part of a musical work or a musical work and a related literary work; (*Added 27 of 2003 s. 5*)

“producer” (製作人), in relation to a sound recording or a film, means the person by whom the arrangements necessary for the making of the sound recording or film are undertaken;

“rental right” (租賃權) means the right of a copyright owner to authorize or prohibit the rental of copies of any of the following works—

- (a) a computer program;
- (b) a sound recording;
- (c) a film;
- (d) a literary, dramatic or musical work included in a sound recording;

*[(e) *a literary or artistic work included in a comic book; or*
(f) *the typographical arrangement of a published edition of a comic book;*] (Replaced 15 of 2007 s. 47)

“reprographic copy” (翻印複製品) refers to a copy made by means of a reprographic process;

“reprographic process” (翻印程序) means a process—

- (a) for making facsimile copies; or
- (b) involving the use of an appliance for making multiple copies,

and includes, in relation to a work held in electronic form, any copying by electronic means, but does not include the making of a sound recording or film;

“specified course of study” (指明課程) means a course of study of any of the following descriptions—

- (a) a course of study which is provided for the delivery of a curriculum (however described) developed on the basis of curriculum guidelines issued or endorsed by a body or authority specified in Schedule 1A; or

- (b) a course of study which consists of an assessment of a pupil's competence in the area covered by the course, and leads to the award of a qualification; (*Added 15 of 2007 s. 47*)

“sufficient acknowledgement” (足夠的確認聲明) means an acknowledgement identifying the work in question by its title or other description, and identifying the author unless—

- (a) in the case of a published work, it is published anonymously;
- (b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry;

“sufficient disclaimer” (足夠的卸責聲明), in relation to an act capable of infringing the right conferred by section 92 (right to object to derogatory treatment of work), means a clear and reasonably prominent indication—

- (a) given at the time of the act; and
- (b) if the author or director is then identified, appearing along with the identification,

that the work has been subjected to treatment to which the author or director has not consented;

“telecommunications system” (電訊系統) means a system for transmitting visual images, sounds or other information by electronic means;

“television drama” (電視劇或電視電影) means a film of the kind commonly known as a television drama; (*Added 27 of 2003 s. 5*)

“typeface” (字體) includes an ornamental motif used in printing;

“unauthorized” (未經授權), as regards anything done in relation to a work, means done otherwise than—

- (a) by or with the licence of the copyright owner;

- (b) if copyright does not subsist in the work, by or with the licence of the author or, in a case where section 14(1) would have applied, the author's employer or, in either case, persons lawfully claiming under him; or
- (c) in pursuance of section 57 (copying, etc. of certain material by the Government);

“wireless telegraphy” (無線電訊) means the sending of electromagnetic energy over paths which are not provided by any material substance constructed or arranged for that purpose;

“writing” (書面) includes any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded, and “written” (寫出) is construed accordingly.

- (2) In sections 31(2), 32(3), 95(1A), 96(6A), 109(1A) and 120(2A), “dealing in” (經營) includes buying, selling, letting for hire, importing, exporting and distributing. (*Added 64 of 2000 s. 10. Amended 15 of 2007 s. 47*)
- (3) In this Part, “lawfully made” (合法地製作), in relation to a copy of a work made in a country, territory or area—
 - (a) means that the copy was made by—
 - (i) a person who is entitled to the copyright in the work in the country, territory or area, as the case may be; or
 - (ii) a person who is licensed by the person referred to in subparagraph (i) to make the copy in the country, territory or area, as the case may be; but
 - (b) does not include a copy that was made in a country, territory or area where there is no law protecting copyright in the work or where the copyright in the work has expired. (*Replaced 15 of 2007 s. 47*)

- (4) The Secretary for Commerce and Economic Development may, by notice published in the Gazette, amend Schedule 1A.
(*Added 15 of 2007 s. 47*)

[cf. 1988 c. 48 s. 178 U.K.]

199. Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)—

acts restricted by copyright	section 22(1)
adaptation	section 29(3)
archivist (in sections 46 to 53)	section 46(5)
article (in a periodical)	section 198(1)
article in transit	section 198(1)
artistic work	section 5
author	sections 11 and 12(4)
authorized officer	section 198(1)
broadcast (and related expressions)	section 8
building	section 5
business	section 198(1)
cable programme, cable programme service (and related expressions)	section 9
collective work	section 198(1)
commencement (in Schedule 2)	paragraph 1(2) of that Schedule
commercial publication	section 196
Commissioner	section 198(1)

COPYRIGHT ORDINANCE

PART II—DIVISION XI

2-446

Section 199

Cap. 528

computer-generated	section 198(1)
copy and copying	section 23
copyright (generally)	section 2
copyright (in Schedule 2)	paragraph 2(2) of that Schedule
copyright owner	sections 112(2) and 194
Copyright Tribunal	section 169
copyright work	section 2(2)
dealing in (<i>Added 64 of 2000 s. 11</i>)	section 198(2)
detention order	section 135
dramatic work	section 4(1)
educational establishment	section 195(1)
electronic and electronic form	section 198(1)
employed, employee, employer and employment	section 198(1)
exclusive licence	section 103(1)
export	section 198(1)
facsimile copy	section 198(1)
film	section 7
future copyright	section 102(2)
Government copyright	sections 182(2) and 183(3)
graphic work	section 5
import	section 198(1)
infringing copy	section 35
international organization	section 198(1)
issue of copies to the public	section 24

COPYRIGHT ORDINANCE

PART II—DIVISION XI

2-448

Section 199

Cap. 528

joint authorship (work of)	section 12
judicial proceedings	section 198(1)
lawfully made (<i>Added 27 of 2003 s. 6</i>)	section 198(3)
Legislative Council copyright	sections 184(2) and 185(5)
librarian (in sections 45 to 52)	section 46(5)
licence (in sections 158 to 162)	section 161
licence of copyright owner	sections 101(4), 102(3) and 194
licensing body (in Division VIII)	section 145(2)
licensing scheme (generally)	section 145(1)
licensing scheme (in sections 151 to 156)	section 154
literary work	section 4(1)
made (in relation to a literary, dramatic or musical work)	section 4(2)
make available copies to the public	section 26
movie (<i>Added 27 of 2003 s. 6</i>)	section 198(1)
musical sound recording (<i>Added 27 of 2003 s. 6</i>)	section 198(1)
musical visual recording (<i>Added 27 of 2003 s. 6</i>)	section 198(1)
musical work	section 4(1)
on behalf of (in relation to an educational establishment)	section 195(3)
performance	section 27(2)
photograph	section 5

COPYRIGHT ORDINANCE

PART II—DIVISION XI

2-450

Section 199

Cap. 528

prescribed conditions (in sections section 46(2)(a)
46 to 52)

producer (in relation to a sound section 198(1)
recording or film)

programme (in the context of section 8(3)
broadcasting)

prospective owner (of copyright) section 102(2)

publication and related expressions section 196

published edition (in the context section 10
of copyright in the typographical
arrangement)

pupil section 195(2)

rental right section 198(1)

reprographic copies and section 198(1)
reprographic copying

reprographic process section 198(1)

right holder section 135

sculpture section 5

signed section 197

sound recording section 6

specified course of study (*Added* section 198(1)
15 of 2007 s. 48)

specified library or archive (in section 46(2)(b)
sections 46 to 52)

sufficient acknowledgement section 198(1)

sufficient disclaimer section 198(1)

teacher section 195(2)

telecommunications system section 198(1)

COPYRIGHT ORDINANCE

PART II—DIVISION XI

2-452

Section 199

Cap. 528

television drama (*Added 27 of section 198(1)
2003 s. 6)*

typeface section 198(1)

unauthorized (as regards things section 198(1)
done in relation to a work)

unknown (in relation to the author section 11(5)
of a work)

unknown authorship (work of) section 11(4)

wireless telegraphy section 198(1)

work (in Schedule 2) paragraph 2(1) of that
Schedule

work of more than one author (in section 145(3)
Division VIII)

writing and written section 198(1)

(Amended 64 of 2000 s. 11)

[cf. 1988 c. 48 s. 179 U.K.]

PART III

RIGHTS IN PERFORMANCES

DIVISION I—THE RIGHTS, INFRINGEMENT OF THE RIGHTS AND REMEDIES FOR INFRINGEMENT

Introductory

200. Rights conferred on performers and persons having fixation rights

(1) This Part confers rights—

- (a) on a performer, by requiring his consent to the exploitation of his performances and thus enabling him to prohibit such exploitation without his consent (see sections 201 to 207A); and (*Amended 15 of 2007 s. 49*)
- (b) on a person having fixation rights in relation to a performance, in relation to fixations made without his consent or that of the performer (see sections 208 to 211).

(2) In this Part—

“fixation” (錄製品、錄製), in relation to a performance, means a film or sound recording—

- (a) made directly from the unfixed performance;
- (b) made from a broadcast of, or cable programme including, the performance; or
- (c) made, directly or indirectly, from another fixation of the performance;

“performance” (表演) means—

- (a) a dramatic performance (which includes dance and mime);
- (b) a musical performance;
- (c) a reading or recitation of a literary work;
- (ca) a performance of an artistic work; (*Added 15 of 2007 s. 49*)
- (cb) an expression of folklore; or (*Added 15 of 2007 s. 49*)
- (d) a performance of a variety act or any similar presentation,

which is, or so far as it is, an unfixed performance given by one or more individuals;

“performer” (表演者) means an actor, singer, musician, dancer or any other person who acts, sings, delivers, declaims, plays in, interprets, or otherwise performs a performance.

- (3) The rights conferred by this Part are independent of—
 - (a) any copyright in, or moral rights relating to, any work performed or any film or sound recording of, or broadcast or cable programme including, the performance; and
 - (b) any other right or obligation arising otherwise than under this Part.

[*cf. 1988 c. 48 s. 180 U.K.*]

Performers’ rights

201. Qualifying performances

A performance is a qualifying performance for the purposes of the provisions of this Part relating to performers’ rights if it is given in Hong Kong or elsewhere by an individual domiciled or resident or having a right of abode in Hong Kong or elsewhere.

[cf. 1988 c. 48 s. 181 U.K.]

202. Consent required for fixation, etc. of unfixed performance

- (1) A performer's rights are infringed by a person who, without the performer's consent—
 - (a) makes a fixation of the whole or any substantial part of a qualifying performance directly from the unfixed performance;
 - (b) broadcasts live, or includes live in a cable programme service, or makes available to the public live, the whole or any substantial part of a qualifying performance; or
 - (c) makes a fixation of the whole or any substantial part of a qualifying performance directly from a broadcast of, or cable programme including, the unfixed performance or directly from the unfixed performance which is made available to the public live.
- (2) A performer's rights are not infringed by the making of any such fixation by a person for his private and domestic use.
- (3) In an action for infringement of a performer's rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.
- (4) In this section “makes available to the public live” (即場向公眾提供), in relation to a performance, means the making available of the unfixed performance, by wire or wireless means, in such a way that members of the public in Hong Kong or elsewhere may access the performance from a place individually chosen by them.

[cf. 1988 c. 48 s. 182 U.K.]

203. Consent required for copying of fixation

- (1) A performer's rights are infringed by a person who, without the performer's consent, makes, otherwise than for his private and domestic use, a copy of a fixation of the whole or any substantial part of a qualifying performance; and references in this Part to copying and copies are construed as follows.
- (2) It is immaterial whether the copy is made directly or indirectly.
- (3) Making of a copy of a fixation means reproducing the fixation in any material form. This includes storing the fixation in any medium by electronic means.
- (4) The right of a performer under this section to authorize or prohibit the making of such copies is referred to in this Part as "the right of reproduction".

[cf. 1988 c. 48 s. 182A U.K.]

204. Consent required for issue of copies to public

- (1) A performer's rights are infringed by a person who, without the performer's consent, issues to the public copies of a fixation of the whole or any substantial part of a qualifying performance.
- (2) References in this Part to the issue to the public of copies of a fixation are to the act of putting into circulation copies not previously put into circulation, in Hong Kong or elsewhere, by or with the consent of the performer.
- (3) References in this Part to the issue to the public of copies of a fixation do not include—
 - (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation; or
 - (b) any subsequent importation of such copies into Hong Kong.

- (4) References in this Part to the issue of copies of a fixation of a performance include the issue of the original fixation of the unfixed performance.
- (5) The right of a performer under this section to authorize or prohibit the issue of copies to the public is referred to in this Part as “the right of distribution”.

[cf. 1988 c. 48 s. 182B U.K.]

205. Consent required for making available of copies to public

- (1) A performer’s rights are infringed by a person who, without the performer’s consent, makes available to the public copies of a fixation of the whole or any substantial part of a qualifying performance.
- (2) References in this Part to the making available to the public of copies of a fixation of a performance are to the making available of copies of the fixation, by wire or wireless means, in such a way that members of the public in Hong Kong or elsewhere may access the fixation from a place and at a time individually chosen by them (such as the making available of copies of works through the service commonly known as the INTERNET).
- (3) References in this Part to the making available of copies of a fixation of a performance include the making available of the original fixation of the unfixed performance.
- (4) The mere provision of physical facilities for enabling the making available to the public of copies of a fixation of a performance does not of itself constitute an act of making available to the public of copies of the fixations.
- (5) The right of a performer under this section to authorize or prohibit the making available of copies of a fixation to the public is referred to in this Part as “the right of making available to the public”.

206. Infringement of performer's rights by use of fixation made without consent

- (1) A performer's rights are infringed by a person who, without the performer's consent—
 - (a) shows or plays in public the whole or any substantial part of a qualifying performance; or
 - (b) broadcasts or includes in a cable programme service the whole or any substantial part of a qualifying performance,by means of a fixation which was, and which that person knows or has reason to believe was, made without the performer's consent.
- (2) A performer's rights are also infringed by a person who, without the performer's consent, shows or plays the whole or any substantial part of a qualifying performance in the course of making available to the public a fixation which was, and which that person knows or has reason to believe was, made without the performer's consent.

[cf. 1988 c. 48 s. 183 U.K.]

207. Infringement of performer's rights by importing, exporting, possessing or dealing with infringing fixation

- (1) A performer's rights are infringed by a person who, without the performer's consent—
 - (a) imports into Hong Kong or exports from Hong Kong, otherwise than for his private and domestic use; or
 - (b) for the purpose of or in the course of any trade or business— (*Amended 15 of 2007 s. 50*)
 - (i) possesses;
 - (ii) makes available to the public;

- (iii) sells or lets for hire;
- (iv) offers or exposes for sale or hire; or
- (v) distributes, (*Replaced 64 of 2000 s. 12*)

a fixation of a qualifying performance which is, and which that person knows or has reason to believe is, an infringing fixation.

(1A) It is immaterial for the purpose of subsection (1)(b) whether or not the trade or business consists of dealing in infringing fixations. (*Added 64 of 2000 s. 12*)

- (2) Where in an action for infringement of a performer's rights brought by virtue of this section a defendant shows that the infringing fixation was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.
- (3) In subsection (2) “innocently acquired” (不知情地取得) means that the person acquiring the fixation did not know and had no reason to believe that it was an infringing fixation.

[*cf. 1988 c. 48 s. 184 U.K.*]

207A. Infringement of performers' rights by renting copies to the public without consent

- (1) A performer's rights are infringed by a person who, without the performer's consent, rents to the public copies of a sound recording in which the whole or any substantial part of a qualifying performance is fixed.
- (2) In this Part, “rent” (租賃), in relation to a sound recording—
 - (a) subject to paragraph (b), means making a copy of the sound recording available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage;

- (b) does not include—
 - (i) making a copy of the sound recording available for the purpose of public performance, playing or showing in public, broadcasting or inclusion in a cable programme service;
 - (ii) making a copy of the sound recording available for the purpose of exhibition in public; or
 - (iii) making a copy of the sound recording available for on-the-spot reference use.
- (3) A reference in this Part to the renting of copies of a sound recording includes the renting of the original.
- (4) The right of a performer under this section to rent copies of a sound recording to the public is referred to in this Part as “rental right”.

(Added 15 of 2007 s. 51)

Rights of person having fixation rights

208. Exclusive fixation contracts and persons having fixation rights

- (1) In this Part an “exclusive fixation contract” (獨有錄製合約) means a contract between a performer and another person under which that person is entitled to the exclusion of all other persons (including the performer) to make fixations of one or more of the performer’s performances with a view to their commercial exploitation.
- (2) References in this Part to a “person having fixation rights”, in relation to a performance, are (subject to subsection (3)) to a person—
 - (a) who is a party to and has the benefit of an exclusive fixation contract to which the performance is subject; or

- (b) to whom the benefit of such a contract has been assigned,
and who is a qualifying person.
- (3) If a performance is subject to an exclusive fixation contract but the person mentioned in subsection (2) is not a qualifying person, references in this Part to a “person having fixation rights” in relation to the performance are to any person—
 - (a) who is licensed by such a person to make fixations of the performance with a view to their commercial exploitation; or
 - (b) to whom the benefit of such a licence has been assigned, and who is a qualifying person.
- (4) In this section “with a view to commercial exploitation” (以期作商業利用) means with a view to the fixations being sold or let for hire, or shown or played in public, or issued or made available to the public.

[cf. 1988 c. 48 s. 185 U.K.]

209. Consent required for fixation of performance subject to exclusive contract

- (1) A person infringes the rights of a person having fixation rights in relation to a performance who, without the latter’s consent or that of the performer, makes a fixation of the whole or any substantial part of the performance, otherwise than for his private and domestic use.
- (2) In an action for infringement of those rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

[cf. 1988 c. 48 s. 186 U.K.]

210. Infringement of fixation rights by use of fixation made without consent

- (1) A person infringes the rights of a person having fixation rights in relation to a performance who, without the latter's consent or, in the case of a qualifying performance, that of the performer—
 - (a) shows or plays in public the whole or any substantial part of the performance; or
 - (b) broadcasts or includes in a cable programme service the whole or any substantial part of the performance,by means of a fixation which was, and which that person knows or has reason to believe was, made without the appropriate consent.
- (2) A person infringes the rights of a person having fixation rights in relation to a performance who, without the latter's consent or, in the case of a qualifying performance, that of the performer, shows or plays the whole or any substantial part of the performance in the course of making available to the public a fixation which was, and which that person knows or has reason to believe was, made without the appropriate consent.
- (3) The reference in subsection (1) or (2) to “the appropriate consent” is to the consent of—
 - (a) the performer; or
 - (b) the person who at the time the consent was given had fixation rights in relation to the performance (or, if there was more than one such person, of all of them).

[cf. 1988 c. 48 s. 187 U.K.]

211. Infringement of fixation rights by importing, exporting,

possessing or dealing with infringing fixation

- (1) A person infringes the rights of a person having fixation rights in relation to a performance who, without the latter's consent or, in the case of a qualifying performance, that of the performer—
 - (a) imports into Hong Kong or exports from Hong Kong, otherwise than for his private and domestic use; or
 - (b) for the purpose of or in the course of any trade or business— (*Amended 15 of 2007 s. 52*)
 - (i) possesses;
 - (ii) makes available to the public;
 - (iii) sells or lets for hire;
 - (iv) offers or exposes for sale or hire; or
 - (v) distributes, (*Replaced 64 of 2000 s. 13*)

a fixation of the performance which is, and which that person knows or has reason to believe is, an infringing fixation.

(1A) It is immaterial for the purpose of subsection (1)(b) whether or not the trade or business consists of dealing in infringing fixations. (*Added 64 of 2000 s. 13*)
- (2) Where in an action for infringement of those rights brought by virtue of this section a defendant shows that the infringing fixation was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.
- (3) In subsection (2) “innocently acquired” (不知情地取得) means that the person acquiring the fixation did not know and had no reason to believe that it was an infringing fixation.

[*cf. 1988 c. 48 s. 188 U.K.*]

Exceptions to rights conferred

212. Acts permitted notwithstanding rights conferred by this Division

The provisions of Division II specify acts which may be done notwithstanding the rights conferred by this Part, being acts which correspond broadly to certain of those specified in Division III of Part II (acts permitted notwithstanding copyright).

[cf. 1988 c. 48 s. 189 U.K.]

213. Power of Tribunal to give consent on behalf of owner of right of reproduction in certain cases

- (1) The Copyright Tribunal may, on the application of a person wishing to make a copy of a fixation of a performance, give consent in a case where the identity or whereabouts of the person entitled to the right of reproduction cannot be ascertained by reasonable inquiry.
- (2) Consent given by the Tribunal has effect as consent of the person entitled to the right of reproduction for the purposes of the provision of this Part relating to performers' rights and may be given subject to any conditions specified in the Tribunal's order.
- (3) The Tribunal shall not give consent under subsection (1) except after the service of such notices as may be required by rules made under section 174 (general procedural rules) or as the Tribunal may in any particular case direct.
- (4) In any case the Tribunal shall take into account the following factors—
 - (a) whether the original fixation was made with the performer's consent and is lawfully in the possession

or control of the person proposing to make the further fixation;

- (b) whether the making of the further fixation is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which, the original fixation was made.
- (5) Where the Tribunal gives consent under this section it shall, in default of agreement between the applicant and the person entitled to the right of reproduction, make such order as it thinks fit as to the payment to be made to that person in consideration of consent being given.

[cf. 1988 c. 48 s. 190 U.K.]

213A. Power of Tribunal to give consent on behalf of owners of performers' rental right in certain cases

- (1) The Copyright Tribunal may, on the application of a person wishing to rent a copy of a sound recording in which a performance is fixed, give consent in a case where that person cannot, after making reasonable enquiries, ascertain the identity or whereabouts of the person entitled to the rental right.
- (2) Consent given by the Tribunal has effect as consent of the person entitled to the rental right for the purposes of the provision of this Part relating to performers' rental right and may be given subject to any conditions specified in the Tribunal's order.
- (3) The Tribunal shall not give consent under subsection (1) except after the service of such notices as may be required by rules made under section 174 (general procedural rules) or as the Tribunal may in any particular case direct.
- (4) Where the Tribunal gives consent under this section, it shall, in default of agreement between the applicant and the person

entitled to the rental right, make such order as it thinks fit as to the payment to be made to that person in consideration of consent being given.

(Added 15 of 2007 s. 53)

Duration of rights

214. Duration of rights

- (1) The following provisions have effect with respect to the duration of the rights conferred by this Part.
- (2) The rights conferred by this Part in relation to a performance expire—
 - (a) at the end of the period of 50 years from the end of the calendar year in which the performance takes place; or
 - (b) if during that period a fixation of the performance is released, 50 years from the end of the calendar year in which it is released,subject as follows.
- (3) For the purposes of subsection (2) a fixation is “released” when it is first published, played or shown in public, broadcast, included in a cable programme service or made available to the public; but in determining whether a fixation has been released no account shall be taken of any unauthorized act.

[cf. 1988 c. 48 s. 191 U.K.]

Performers’ economic rights

215. Performers’ economic rights

- (1) The following rights conferred by this Part on a performer are property rights (“a performer’s economic rights”)—

- (a) the right of reproduction (section 203);
 - (b) the right of distribution (section 204);
 - (c) the right of making available to the public (section 205);
 - (d) the rental right (section 207A). (*Replaced 15 of 2007 s. 54*)
- (2) References in this Part to the consent of the performer are to be construed in relation to a performer's economic rights as references to the consent of the rights owner.
- (3) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of a performer's economic rights in relation to a performance, the rights owner for any purpose of this Part is the person who is entitled to the aspect of those rights relevant for that purpose.
- (4) Where a performer's economic rights (or any aspect of them) is owned by more than one person jointly, references in this Part to the rights owner are to all the owners, so that, in particular, any requirement of the licence of the rights owner requires the licence of all of them.

[cf. 1988 c. 48 s. 191A U.K.]

216. Assignment and licences

- (1) A performer's economic rights are transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.
- (2) An assignment or other transmission of a performer's economic rights may be partial, that is, limited so as to apply—
 - (a) to one or more, but not all, of the things requiring the consent of the rights owner;

- (b) to part, but not the whole, of the period for which the rights are to subsist.
- (3) An assignment of a performer's economic rights is not effective unless it is in writing signed by or on behalf of the assignor.
- (4) A licence granted by the owner of a performer's economic rights is binding on every successor in title to his interest in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the rights owner are to be construed accordingly.

[cf. 1988 c. 48 s. 191B U.K.]

217. Prospective ownership of a performer's economic rights

- (1) This section applies where by an agreement made in relation to a future fixation of a performance, and signed by or on behalf of the performer, the performer purports to assign his performer's economic rights (wholly or partially) to another person.
- (2) If on the rights coming into existence the assignee or another person claiming under him would be entitled as against all other persons to require the rights to be vested in him, they shall vest in the assignee or his successor in title by virtue of this subsection.
- (3) A licence granted by a prospective owner of a performer's economic rights is binding on every successor in title to his interest (or prospective interest) in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser.

References in this Part to doing anything with, or without, the licence of the rights owner are to be construed accordingly.

- (4) In subsection (3) “prospective owner” (準擁有人), in relation to a performer’s economic rights, means a person who is prospectively entitled to those rights, by virtue of such an agreement as is mentioned in subsection (1).

[cf. 1988 c. 48 s. 191C U.K.]

218. Exclusive licences

- (1) In this Part an “exclusive licence” (專用特許) means a licence in writing signed by or on behalf of the owner of a performer’s economic rights authorizing the licensee to the exclusion of all other persons, including the person granting the licence, to do anything requiring the consent of the rights owner.
- (2) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

[cf. 1988 c. 48 s. 191D U.K.]

219. Performer’s economic right to pass under will with unpublished original fixation

Where under a bequest (whether general or specific) a person is entitled beneficially or otherwise to any material thing containing an original fixation of a performance which was not published before the death of the testator, the bequest is, unless a contrary intention is indicated in the testator’s will or a codicil to it, to be construed as including any performer’s rights in relation to the fixation to which the testator was entitled immediately before his death.

[cf. 1988 c. 48 s. 191E U.K.]

220. Infringement actionable by rights owner

- (1) An infringement of a performer's economic rights or of any right conferred by this Part on a person having fixation rights is actionable by the rights owner.
- (2) In an action for infringement of a performer's economic rights or of any right conferred by this Part on a person having fixation rights all such relief by way of damages, injunctions, accounts or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.
- (3) This section has effect subject to the following provisions of this Part.

[cf. 1988 c. 48 s. 19(1) U.K.]

221. Provisions as to damages in infringement action

- (1) Where in an action for infringement of a performer's economic rights or of any right conferred by this Part on a person having fixation rights it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that the rights subsisted in the fixation to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.
- (2) The court may in an action for infringement of a performer's economic rights or of any right conferred by this Part on a person having fixation rights having regard to all the circumstances, and in particular to—
 - (a) the flagrancy of the infringement;
 - (b) any benefit accruing to the defendant by reason of the infringement; and

- (c) the completeness, accuracy and reliability of the defendant's business accounts and records,
award such additional damages as the justice of the case may require.

[cf. 1988 c. 48 s. 191J U.K.]

222. Right and remedies for exclusive licensee

- (1) An exclusive licensee has, except against the owner of a performer's economic rights, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.
- (2) His rights and remedies are concurrent with those of the rights owner; and references in the relevant provisions of this Part to the rights owner are to be construed accordingly.
- (3) In an action brought by an exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the rights owner.

[cf. 1988 c. 48 s. 191L U.K.]

223. Exercise of concurrent rights

- (1) Where an action for infringement of a performer's economic rights brought by the rights owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the rights owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as plaintiff or added as a defendant.
- (2) A rights owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

- (3) The above provisions do not affect the granting of interlocutory relief on an application by the rights owner or exclusive licensee alone.
- (4) Where an action for infringement of a performer's economic rights is brought which relates (wholly or partly) to an infringement in respect of which the rights owner and an exclusive licensee have or had concurrent rights of action—
 - (a) the court shall in assessing damages take into account—
 - (i) the terms of the licence; and
 - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
 - (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
 - (c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them,and these provisions apply whether or not the rights owner and the exclusive licensee are both parties to the action.
- (5) The owner of a performer's economic rights shall notify any exclusive licensee having concurrent rights before applying for an order under section 228 (order for delivery up); and the court may on the application of the licensee make such order under section 228 as it thinks fit having regard to the terms of the licence.

[cf. 1988 c. 48 s. 191M U.K.]

Non-economic rights

224. Performers' non-economic rights

- (1) The rights conferred on a performer by—
section 202 (consent required for fixation, etc. of unfixed performance);
section 206 (infringement of performer's rights by use of fixation made without consent); and
section 207 (infringement of performer's rights by importing, exporting, possessing or dealing with infringing fixation),
are not assignable or transmissible, except to the following extent.

They are referred to in this Part as “a performer's non-economic rights”.
- (2) On the death of a person entitled to any such right—
 - (a) the right passes to such person as he may by testamentary disposition specifically direct; and
 - (b) if or to the extent that there is no such direction, the right is exercisable by his personal representatives.
- (3) References in this Part to the performer, in the context of the person having any such right, are to be construed as references to the person for the time being entitled to exercise those rights.
- (4) Where by virtue of subsection (2)(a) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.
- (5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death devolves as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

[cf. 1988 c. 48 s. 192A U.K.]

225. Transmissibility of rights of person having fixation rights

- (1) The rights conferred by this Part on a person having fixation rights are not assignable or transmissible.
- (2) This does not affect section 208(2)(b) or (3)(b), so far as those provisions confer rights under this Part on a person to whom the benefit of a contract or licence is assigned.

[cf. 1988 c. 48 s. 192B U.K.]

226. Consent

- (1) Consent for the purposes of this Part by a person having a performer's non-economic rights, or by a person having fixation rights, may be given in relation to a specific performance, to a specified description of performances or to performances generally, and may relate to past or future performances.
- (2) A person having fixation rights in a performance is bound by any consent given by a person through whom he derives his rights under the exclusive fixation contract or licence in question, in the same way as if the consent had been given by him.
- (3) Where a performer's non-economic right passes to another person, any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by him.

[cf. 1988 c. 48 s. 193 U.K.]

Remedies for infringement

227. Infringement actionable

An infringement of a performer's non-economic rights is actionable as a breach of statutory duty owed to the person entitled to the

rights.

Delivery up of infringing fixation

228. Order for delivery up

- (1) Where a person has in his possession, custody or control for the purpose of or in the course of any trade or business an infringing fixation of a performance, a person having performer's rights or fixation rights in relation to the performance under this Part may apply to the court for an order that the fixation be delivered up to him or to such other person as the court may direct. (*Amended 64 of 2000 s. 14; 15 of 2007 s. 55*)
- (1A) It is immaterial for the purpose of subsection (1) whether or not the trade or business consists of dealing in infringing fixations. (*Added 64 of 2000 s. 14*)
- (2) An application may not be made after the end of the period specified in section 230; and the court shall not make an order unless the court also makes, or it appears to the court that there are grounds for making, an order under section 231 (order as to disposal of infringing fixation).
- (3) A person to whom a fixation is delivered up in pursuance of an order under this section shall, if an order under section 231 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.
- (4) Nothing in this section affects any other power of the court.

[cf. 1988 c. 48 s. 195 U.K.]

229. Meaning of “infringing fixation”

- (1) In this Part “infringing fixation” (侵犯權利的錄製品), in relation to a performance, is to be construed in accordance with this section.

- (2) For the purposes of a performer's rights, a fixation of the whole or any substantial part of a performance of his is an infringing fixation if it is made, otherwise than for private purposes, without his consent.
- (3) For the purposes of the rights of a person having fixation rights, a fixation of the whole or any substantial part of a performance subject to the exclusive fixation contract is an infringing fixation if it is made, otherwise than for private purposes, without his consent or that of the performer.
- (4) Except as provided in section 229A, a fixation of a performance is also an infringing fixation if— (*Amended 15 of 2007 s. 56*)
 - (a) it has been or is proposed to be imported into Hong Kong; and
 - (b) its making in Hong Kong would have constituted an infringement of the rights conferred by this Part in the performance in question, or a breach of an exclusive licence agreement relating to that performance.
- (5) For the purposes of Division III (proceedings relating to importation of infringing fixations) “infringing fixation” (侵犯權利的錄製品) does not include a fixation of a performance—
 - (a) that was lawfully made in the country, territory or area where it was made;
 - (b) that has been or is proposed to be imported into Hong Kong; and
 - (c) its making in Hong Kong would have constituted an infringement of the rights conferred by this Part in the performance in question, or a breach

of an exclusive licence agreement relating to that performance.

- (6) Where in any proceedings the question arises whether a fixation is an infringing fixation and it is shown—
 - (a) that the fixation is a fixation of the unfixed performance; and
 - (b) that rights conferred by this Part subsist in the performance or have subsisted at any time,it shall be presumed until the contrary is proved that the fixation was made at a time when rights conferred by this Part subsisted in the performance.
- (7) In this Part, “infringing fixation” (侵犯權利的錄製品) includes a fixation which is to be treated as an infringing fixation by virtue of any of the following provisions—
 - (a) section 229A(5) (imported fixation not an “infringing fixation” for purposes of section 229(4));
 - (b) section 242A(3) (fixations made for purposes of giving or receiving instruction);
 - (c) section 243(3) (fixations made for purposes of instruction or examination);
 - (d) section 245(3) (fixations made by educational establishments for educational purposes);
 - (e) section 246A(3) (fixations made for purposes of public administration);
 - (f) section 251(2) (fixations of performance in electronic form retained on transfer of principal fixation); or
 - (g) section 256(3) (fixations made for purposes of broadcast or cable programme). (*Replaced 15 of 2007 s. 56*)

- (8) In subsection (5)(a), “lawfully made” (合法地製作), in relation to a fixation of a performance made in a country, territory or area—
- (a) means that the fixation was made by—
 - (i) the performer;
 - (ii) a person having fixation rights in relation to the performance in the country, territory or area, as the case may be; or
 - (iii) a person having the consent of the performer or the person referred to in subparagraph (ii) to make the fixation in the country, territory or area, as the case may be; but
 - (b) does not include a fixation that was made in a country, territory or area where there is no law protecting rights in performances in the performance or where the rights in performances in the performance has expired.
(Replaced 15 of 2007 s. 56)

[cf. 1988 c. 48 s. 197 U.K.]

229A. Imported fixation not an “infringing fixation” for the purposes of section 229(4)

- (1) A fixation of a performance to which this subsection applies is not—
- (a) in relation to the person who imports it into Hong Kong, an infringing fixation for the purposes of section 229(4) if—
 - (i) it was lawfully made in the country, territory or area where it was made; and

- (ii) it is not imported with a view to its being dealt in by any person for the purpose of or in the course of any trade or business; or
 - (b) in relation to the person who possesses it, an infringing fixation for the purposes of section 229(4) if—
 - (i) it was lawfully made in the country, territory or area where it was made; and
 - (ii) it is not possessed with a view to its being dealt in by any person for the purpose of or in the course of any trade or business.
- (2) Subsection (1) applies to a fixation of any performance except a fixation of a performance—
 - (a) that is—
 - (i) a musical sound recording;
 - (ii) a musical visual recording;
 - (iii) a television drama; or
 - (iv) a movie; and
 - (b) that is, or is intended to be, played or shown in public.
- (3) Notwithstanding the exception in subsection (2), subsection (1) applies to a fixation of a performance that is referred to in subsection (2)(a) and that is, or is intended to be, played or shown in public—
 - (a) by an educational establishment for the educational purposes of the establishment; or
 - (b) by a specified library for use of the library.
- (4) For the purposes of subsection (3)(b), a library is regarded as a specified library if it falls within the description of any library specified under section 46(1)(b).

- (5) Where a fixation of a performance which is not an infringing fixation by virtue of subsection (1) is subsequently dealt in for the purpose of or in the course of any trade or business, it is to be treated, in relation to that dealing and the person who deals in it, as an infringing fixation.
- (6) In this section, “lawfully made” (合法地製作), in relation to a fixation of a performance made in a country, territory or area—
 - (a) means that the fixation was made by—
 - (i) the performer;
 - (ii) a person having fixation rights in relation to the performance in the country, territory or area, as the case may be; or
 - (iii) a person having the consent of the performer or the person referred to in subparagraph (ii) to make the fixation in the country, territory or area, as the case may be; but
 - (b) does not include a fixation that was made in a country, territory or area where there is no law protecting rights in performances in the performance or where the rights in performances in the performance has expired.
- (7) Subject to subsection (6), expressions used in this section have the same meaning as in section 35B.

(Added 15 of 2007 s. 57)

Supplementary provisions with respect to delivery up

230. Period after which remedy of delivery up not available

- (1) An application for an order under section 228 (order for delivery up in civil proceedings) may not be made after the end of the period of 6 years from the date on which

the infringing fixation in question was made, subject to the following provisions of this section.

- (2) If during the whole or any part of that period a person entitled to apply for an order—
 - (a) is under a disability; or
 - (b) is prevented by fraud or concealment from discovering the facts entitling him to apply,an application may be made by him at any time before the end of the period of 6 years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.
- (3) In subsection (2) “disability” (無行為能力) has the same meaning as in the Limitation Ordinance (Cap. 347).

[cf. 1988 c. 48 s. 203 U.K.]

231. Order as to disposal of infringing fixation

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) An application may be made to the court for an order that an infringing fixation of a performance delivered up in pursuance of an order under section 228 should be—
 - (a) forfeited to such person having performer’s rights or fixation rights in relation to the performance as the court may direct; or
 - (b) destroyed or otherwise dealt with as the court may think fit,or for a decision that no such order should be made.
- (2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of the rights conferred by this Part would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

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- (3) The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) includes power to make rules of court for the purposes of this section. (*Amended 25 of 1998 s. 2*)
- (4) The rules of court for the purposes of this section may include rules as to the service of notice on persons having an interest in the fixation, and any such person is entitled—
- (a) to appear in proceedings for an order under this section, whether or not he was served with notice; and
 - (b) to appeal against any order made, whether or not he appeared.
- (5) An order under this section does not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.
- (6) Where there is more than one person interested in a fixation, the court shall make such order as it thinks just and may (in particular) direct that the fixation be sold, or otherwise dealt with, and the proceeds divided.
- (7) If the court decides that no order should be made under this section, the person in whose possession, custody or control the fixation was before being delivered up is entitled to its return.
- (8) References in this section to a person having an interest in a fixation include any person in whose favour an order could be made in respect of the fixation under this section or under section 111 (which makes similar provision in relation to infringement of copyright).

[*cf. 1988 c. 48 s. 204 U.K.*]

232. Jurisdiction of District Court

- (1) The District Court may entertain proceedings under—
 - (a) section 228 (order for delivery up of infringing fixation); or
 - (b) section 231 (order as to disposal of infringing fixation), where the value of the infringing fixation in question does not exceed the limit for actions in tort set out in section 32(1) of the District Court Ordinance (Cap. 336). (*Amended 28 of 2000 s. 45*)
- (2) Nothing in this section affects the jurisdiction of the Court of First Instance. (*Amended 25 of 1998 s. 2*)
[cf. 1988 c. 48 s. 205 U.K.]

Jurisdiction of Copyright Tribunal

233. Jurisdiction of Copyright Tribunal

- (1) The Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under—
 - (a) section 213 (application to give consent on behalf of owner of the right of reproduction);
 - (aa) section 213A (application to give consent on behalf of owners of performers' rental right); (*Added 15 of 2007 s. 58*)
 - (b) paragraph 6 of Schedule 3 (contrary rights).
- (2) The provisions of Division IX of Part II (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this Part.
[cf. 1988 c. 48 s. 205B U.K.]

234. Qualifying person

In this Part “qualifying person” (合資格的人) means—

- (a) an individual domiciled or resident or having a right of abode in Hong Kong or elsewhere; or
 - (b) a body incorporated under the law of any country, territory or area,
- subject to section 236.

[cf. 1988 c. 48 s. 206 U.K.]

235. Ships, aircraft and hovercraft registered in Hong Kong

This Part applies to things done on a ship, aircraft or hovercraft registered under the law of Hong Kong as it applies to things done in Hong Kong.

[cf. 1988 c. 48 s. 210 U.K.]

236. Denial of protection to people of countries, etc. not giving adequate protection to Hong Kong performers

(Adaptation amendments retroactively made - see 22 of 1999 s. 3)

- (1) Subject to subsection (5), if it appears to the Chief Executive in Council that performer's rights of Hong Kong performers or fixation rights of Hong Kong qualifying persons are not adequately protected in a country, territory or area as a result of any prejudicial treatment given to those performers or qualifying persons by that country, territory or area, the Chief Executive in Council may by regulation in accordance with this section restrict the rights conferred by this Part in relation to the performances of the performers connected with that country, territory or area or in relation to fixations made by qualifying persons connected with that country, territory or area.
- (2) The Chief Executive in Council shall designate in the regulation the country, territory or area concerned and provide that, for the purposes specified in the regulation, a performance given or a fixation made after a date specified

in the regulation does not qualify for protection under this Part—

- (a) in the case of a performance, if at the time of the performance the performer is an individual domiciled or resident or having a right of abode in that country, territory or area (and not at the same time domiciled or resident or having a right of abode in Hong Kong); or
- (b) in the case of a fixation, if at the time of the making of the fixation, the maker is—
 - (i) an individual domiciled or resident or having a right of abode in that country, territory or area (and not at the same time domiciled or resident or having a right of abode in Hong Kong); or
 - (ii) a body incorporated under the law of that country, territory or area,

and the regulation may make such provision for all the purposes of this Part or for such purposes as are specified in the regulation, and either generally or in relation to such class of cases as are specified in the regulation, having regard to the nature and extent of that prejudicial treatment referred to in subsection (1).

- (3) In this section “Hong Kong performers” (香港表演者) means a performer who is an individual domiciled or resident or having a right of abode in Hong Kong.
- (4) In this section “Hong Kong qualifying persons” (香港合資格的人) means a qualifying person who is—
 - (a) an individual domiciled or resident or having a right of abode in Hong Kong; or
 - (b) a body incorporated under the law of Hong Kong.
- (5) The Chief Executive in Council shall not exercise his power under this section in relation to a country, territory or area

which is a party to a bilateral or multilateral copyright or related right convention to which Hong Kong is also a party or the application of which has been extended to Hong Kong.

(Amended 22 of 1999 s. 3)

237. Transitional provisions and savings

Schedule 3 contains transitional provisions and savings relating to performances given and acts or events occurring, before the commencement of this Part, and otherwise with respect to the operation of the provisions of this Part.

Interpretation

238. Expressions having same meaning as in copyright provisions

- (1) The following expressions have the same meaning in this Part as in Part II (copyright)—

article in transit;

artistic work; *(Added 15 of 2007 s. 59)*

authorized officer;

broadcast;

business;

cable programme;

cable programme service;

Commissioner;

Copyright Tribunal;

export;

film;

import;

literary work;

published; and
sound recording.

- (1A) In sections 207(1A), 211(1A) and 228(1A), “dealing in” (經營) includes buying, selling, letting for hire, importing, exporting and distributing. (*Added 64 of 2000 s. 15*)
- (2) The provisions of section 8(3) to (5), sections 9(4) and 27(4) (supplementary provisions relating to broadcasting and cable programme services) apply for the purposes of this Part, and in relation to an infringement of the rights conferred by this Part, as they apply for the purposes of Part II and in relation to an infringement of copyright.

[*cf. 1988 c. 48 s. 211 U.K.*]

239. Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)—

artistic work (*Added 15 of 2007* section 238(1) (and section 5)
s. 60)

broadcast (and related expressions) section 238 (and section 8)

business (*Amended 64 of 2000* section 238(1) (and section
s. 16) 198(1))

cable programme, cable section 238 (and section 9)
programme service (and related
expressions)

consent of performer (in relation section 215(2)
to performer’s economic rights)

copy and copying section 203

dealing in (<i>Added 64 of 2000</i> s. 16)	section 238(1A)
exclusive fixation contract	section 208(1)
exclusive licence	section 218
film	section 238(1) (and section 7)
fixation (of a performance)	section 200(2)
fixation rights (person having)	section 208(2) and (3)
infringing fixation	section 229
literary work	section 238(1) (and section 4(1))
performance	section 200(2)
performer	section 200(2)
performer's economic rights	section 215(1)
performer's non-economic rights	section 224(1)
published	section 238(1) (and section 196)
qualifying performance	section 201
qualifying person	section 234
rental right (<i>Added 15 of 2007</i> s. 60)	section 207A(4)
right of distribution	section 204(5)
right of making available to the public	section 205(5)
right of reproduction	section 203(4)
rights owner (in relation to performer's economic rights)	section 215(3) and (4)
sound recording	section 238(1) (and section 6)

[cf. 1988 c. 48 s. 212 U.K.]

DIVISION II—RIGHTS IN PERFORMANCES: PERMITTED ACTS

240. Introductory

- (1) The provisions of this Division specify acts which may be done in relation to a performance or fixation notwithstanding the rights conferred by this Part; they relate only to the question of infringement of those rights and do not affect any other right or obligation restricting the doing of any of the specified acts.
- (2) In determining whether an act specified in this Division may be done in relation to a performance or fixation notwithstanding the rights conferred by this Part, the primary consideration is that the act does not conflict with a normal exploitation of the performance or fixation by the rights owner of the rights conferred by this Part and does not unreasonably prejudice the legitimate interests of the rights owner of those rights.
- (3) No inference is to be drawn from the description of any act which may by virtue of this Division be done without infringing the rights conferred by this Part as to the scope of those rights.
- (4) The provisions of this Division are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

[cf. 1988 c. 48 Sch. 2 para. 1 U.K.]

241. Criticism, reviews and news reporting

- (1) Fair dealing with a performance or fixation—

- (a) for the purpose of criticism or review, of that or another performance or fixation, or of a work; or
 - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by this Part.
- (2) Expressions used in this section have the same meaning as in section 39.

[cf. 1988 c. 48 Sch. 2 para. 2 U.K.]

242. Incidental inclusion of performance or fixation

- (1) The rights conferred by this Part are not infringed by the incidental inclusion of a performance or fixation in a sound recording, film, broadcast or cable programme.
- (2) Those rights are also not infringed by anything done in relation to copies of, or the playing, showing, broadcasting or inclusion in a cable programme service of, anything whose making was, by virtue of subsection (1), not an infringement of those rights.
- (3) A performance or fixation so far as it consists of music, or words spoken or sung with music, is not regarded as incidentally included in a sound recording, broadcast or cable programme if it is deliberately included.
- (4) Expressions used in this section have the same meaning as in section 40.

[cf. 1988 c. 48 Sch. 2 para. 3 U.K.]

242A. Fair dealing for purposes of giving or receiving instruction

- (1) Fair dealing with a performance or fixation by or on behalf of a teacher or by a pupil for the purposes of giving or receiving instruction in a specified course of study provided by an educational establishment does not infringe any of the rights conferred by this Part.

- (2) In determining whether any dealing with a performance or fixation is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—
 - (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the performance or fixation;
 - (c) the amount and substantiality of the portion dealt with in relation to the performance or fixation as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the performance or fixation.
- (3) Where a fixation which apart from this section would be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing fixation—
 - (a) for the purpose of that dealing; and
 - (b) if that dealing infringes any of the rights conferred by this Part, for all subsequent purposes.
- (4) Where any dealing with a fixation involves the making available of copies of the fixation through a wire or wireless network wholly or partly controlled by an educational establishment—
 - (a) if the educational establishment fails to—
 - (i) adopt technological measures to restrict access to the copies of the fixation through the network so that the copies of the fixation are made available only to persons who need to use the copies of the fixation for the purposes of giving or receiving instruction in the specified course of study in

question or for the purposes of maintaining or managing the network; or

- (ii) ensure that the copies of the fixation are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,

the dealing is not fair dealing under subsection (1); and

- (b) if the educational establishment—

- (i) adopts technological measures to restrict access to the copies of the fixation through the network so that the copies of the fixation are made available only to persons who need to use the copies of the fixation for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; and

- (ii) ensures that the copies of the fixation are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,

subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).

- (5) Expressions used in this section have the same meaning as in section 41A.

(Added 15 of 2007 s. 61)

243. Things done for purposes of instruction or examination

- (1) The rights conferred by this Part are not infringed by the copying of a fixation of a performance, to a reasonable extent, in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, if the copying is done by a person giving or receiving instruction.
- (2) The rights conferred by this Part are not infringed—
 - (a) by the copying of a fixation of a performance for the purposes of setting or answering the questions in an examination; or
 - (b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.
- (3) Where a fixation which would otherwise be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is treated as an infringing fixation for the purposes of that dealing, and if that dealing infringes any right conferred by this Part, for all subsequent purposes.

For this purpose “dealt with” (進行交易) means sold or let for hire, or offered or exposed for sale or hire.

- (4) Expressions used in this section have the same meaning as in section 41.

[cf. 1988 c. 48 Sch. 2 para. 4 U.K.]

244. Playing or showing sound recording, film, broadcast or cable programme at educational establishment

- (1) The playing or showing of a sound recording, film, broadcast or cable programme at an educational establishment for the purposes of instruction before an audience consisting wholly or mainly of teachers and pupils at the establishment, parents or guardians of pupils at the establishment, and other persons directly connected with the activities of the establishment is not a playing or showing of a performance in public for the

purposes of infringement of the rights conferred by this Part.
(*Amended 15 of 2007 s. 62*)

(2) (*Repealed 15 of 2007 s. 62*)

(3) Expressions used in this section have the same meaning as in section 43.

[*cf. 1988 c. 48 Sch. 2 para. 5 U.K.*]

245. Recording of broadcasts and cable programmes by educational establishments

(1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing any of the rights conferred by this Part in relation to any performance or fixation included in it.

(2) Recording or copying is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the recording or copying in question and the person making the recordings or copies knew or ought to have been aware of that fact.

(3) Where a recording or copy which would otherwise be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is treated as an infringing fixation for the purposes of that dealing, and if that dealing infringes any right conferred by this Part, for all subsequent purposes.

For this purpose “dealt with” (進行交易) means sold or let for hire, or offered or exposed for sale or hire.

(4) Expressions used in this section have the same meaning as in section 44.

[*cf. 1988 c. 48 Sch. 2 para. 6 U.K.*]

246. Copying by librarians or archivists: articles of cultural or historical importance

- (1) The librarian or archivist of a specified library or archive may make a copy of an article of cultural or historical importance or interest and deposit the copy at the library or archive without infringing any right conferred by this Part in respect of that article if the article is likely to be lost to Hong Kong through sale or export.
- (2) Expressions used in this section have the same meaning as in section 53.

[cf. 1988 c. 48 Sch. 2 para. 7 U.K.]

246A. Fair dealing for purposes of public administration

- (1) Fair dealing with a performance or fixation by the Government, the Executive Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe any of the rights conferred by this Part.
- (2) In determining whether any dealing with a performance or fixation is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—
 - (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
 - (b) the nature of the performance or fixation;
 - (c) the amount and substantiality of the portion dealt with in relation to the performance or fixation as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the performance or fixation.

- (3) Where a fixation which apart from this section would be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing fixation—
 - (a) for the purpose of that dealing; and
 - (b) if that dealing infringes any of the rights conferred by this Part, for all subsequent purposes.
- (4) Expressions used in this section have the same meaning as in section 54A.

(Added 15 of 2007 s. 63)

246B. Legislative Council

- (1) The rights conferred by this Part are not infringed by—
 - (a) anything done for the purposes of the proceedings of the Legislative Council or for the purposes of reporting such proceedings; or
 - (b) anything done by or on behalf of—
 - (i) the members of the Legislative Council; or
 - (ii) The Legislative Council Commission,
for the purposes of the exercise and discharge by the Legislative Council of its powers and functions.
- (2) Expressions used in this section have the same meaning as in section 54B.

(Added 15 of 2007 s. 63)

247. Judicial proceedings

Judicial proceedings

(Amended 15 of 2007 s. 64)

- (1) The rights conferred by this Part are not infringed by anything done for the purposes of judicial proceedings or for the purpose of reporting such proceedings. (*Amended 15 of 2007 s. 64*)
- (2) Expressions used in this section have the same meaning as in section 54.

[cf. 1988 c. 48 Sch. 2 para. 8 U.K.]

248. Statutory inquiries

- (1) The rights conferred by this Part are not infringed by anything done for the purposes of the proceedings of a statutory inquiry or for the purpose of reporting any such proceedings held in public.
- (2) Expressions used in this section have the same meaning as in section 55.

[cf. 1988 c. 48 Sch. 2 para. 9 U.K.]

249. Public records

- (1) Material which is comprised in public records which are open to public inspection may be copied, and a copy may be supplied to any person without infringing any right conferred by this Part.
- (2) Expressions used in this section have the same meaning as in section 58.

[cf. 1988 c. 48 Sch. 2 para. 10 U.K.]

250. Acts done under statutory authority

- (1) Where the doing of a particular act is specifically authorized by an Ordinance, whenever enacted, then, unless the Ordinance provides otherwise, the doing of that act does not infringe the rights conferred by this Part.

- (2) Nothing in this section is to be construed as excluding any defence of statutory authority otherwise available under or by virtue of any Ordinance.
- (3) Expressions used in this section have the same meaning as in section 59.

[cf. 1988 c. 48 Sch. 2 para. 11 U.K.]

251. Transfer of fixations of performances in electronic form

- (1) This section applies where a fixation of a performance in electronic form (other than such a fixation which was made available to the public) has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to make further fixations in connection with his use of the fixation.
- (2) If there are no express terms—
 - (a) prohibiting the transfer of the fixation by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any consent or terminating any consent on a transfer; or
 - (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do, anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by this Part, but any fixation made by the purchaser which is not also transferred is to be treated as an infringing fixation for all purposes after the transfer.
- (3) Subsection (2) applies where the original purchased fixation is no longer usable and what is transferred is a further copy used in its place.

- (4) The above provisions also apply on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.
- (5) This section does not apply in relation to a fixation purchased before the commencement of this Part.
- (6) Expressions used in this section have the same meaning as in section 64.

[cf. 1988 c. 48 Sch. 2 para. 12 U.K.]

252. Certain copying permitted when performances made available to the public

The rights conferred by this Part in a fixed performance are not infringed by the copying of a fixation which is reasonably required for the viewing or listening of the fixation by a member of the public to whom the fixation is made available (within the meaning of section 205) provided that such act does not conflict with a normal exploitation of the fixation and does not unreasonably prejudice the legitimate interests of the performer or the person who has fixation rights in relation to the performance.

253. Use of fixations of spoken words in certain cases

- (1) Where a fixation of the reading or recitation of a literary work is made for the purpose—
 - (a) of reporting current events; or
 - (b) of broadcasting or including in a cable programme service the whole or part of the reading or recitation,it is not an infringement of the rights conferred by this Part to use the fixation (or to copy the fixation and use the copy) for that purpose, if the conditions in subsection (2) are met.
- (2) The conditions are that—

- (a) the fixation is a direct fixation of the reading or recitation and is not taken from a previous fixation or from a broadcast or cable programme;
 - (b) the making of the fixation was not prohibited by or on behalf of the person giving the reading or recitation;
 - (c) the use made of the fixation is not of a kind prohibited by or on behalf of that person before the fixation was made; and
 - (d) the use is by or with the authority of a person who is lawfully in possession of the fixation.
- (3) Expressions used in this section have the same meaning as in section 67.

[cf. 1988 c. 48 Sch. 2 para. 13 U.K.]

254. Fixations of folksongs

- (1) A fixation of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body without infringing any of the rights conferred by this Part, if the conditions in subsection (2) are met.
- (2) The conditions are that—
 - (a) the words are unpublished and of unknown authorship at the time the fixation is made;
 - (b) the making of the fixation does not infringe any copyright; and
 - (c) its making is not prohibited by any performer.
- (3) Copies of a fixation made in reliance on subsection (1) and included in an archive maintained by a designated body may, if the prescribed conditions are met, be made and supplied by the archivist without infringing any of the rights conferred by this Part.

(4) In this section—

“designated body” (指定機構) means a body designated for the purposes of section 70; and

“the prescribed conditions” (訂明條件) means the conditions prescribed for the purposes of that section,

and other expressions used in this section have the same meaning as in that section.

[cf. 1988 c. 48 Sch. 2 para. 14 U.K.]

255. Performance, showing or playing of works for purposes of club, society, etc.

(1) It is not an infringement of any right conferred by this Part to perform, show or play a work (other than a broadcast or a cable programme) as part of the activities of, or for the benefit of, a club, society or other organization if the following conditions are met.

(2) The conditions are—

(a) that the club, society or organization is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and

(b) that the proceeds of any charge for admission to the place where the work is to be performed, shown or played are applied solely for the purposes of the club, society or organization.

(3) Expressions used in this section have the same meaning as in section 76.

[cf. 1988 c. 48 Sch. 2 para. 15 U.K.]

256. Incidental fixation for purposes of broadcast or cable programme

- (1) A person who proposes to broadcast a fixation of a performance, or include a fixation of a performance in a cable programme service, in circumstances not infringing the rights conferred by this Part is to be treated as having consent for the purposes of this Part for the making of a further fixation for the purposes of the broadcast or cable programme.
- (2) That consent is subject to the condition that the further fixation—
 - (a) must not be used for any other purpose; and
 - (b) must be destroyed within 3 months of being first used for broadcasting the performance or including it in a cable programme service.
- (3) A fixation made in accordance with this section is treated as an infringing fixation—
 - (a) for the purposes of any use in breach of the condition mentioned in subsection (2)(a); and
 - (b) for all purposes after that condition or the condition mentioned in subsection (2)(b) is broken.
- (4) Expressions used in this section have the same meaning as in section 77.

[cf. 1988 c. 48 Sch. 2 para. 16 U.K.]

257. Recordings for purposes of supervision and control of broadcasts and cable programmes

- (1) The rights conferred by this Part are not infringed by the making or use by Radio Television Hong Kong for the purpose of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.
- (2) The rights conferred by this Part are not infringed by the making or use of recordings—

- (a) by the Communications Authority for the performance of its functions mentioned in section 9 of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391); or
(Amended 17 of 2011 s. 28)
- (b) pursuant to the instructions of the Communications Authority in the performance of those functions.
(Amended 17 of 2011 s. 28)
- (3) Expressions used in this section have the same meaning as in section 78.

[cf. 1988 c. 48 Sch. 2 para. 17 U.K.]

258. Free public showing or playing of broadcast or cable programme

- (1) The showing or playing in public of a broadcast or cable programme (other than an encrypted broadcast or cable programme) to an audience who have not paid for admission to the place where the broadcast or programme is to be seen or heard does not infringe any right conferred by this Part in relation to a performance or fixation included in—
 - (a) the broadcast or cable programme; or
 - (b) any sound recording or film which is played or shown in public by reception of the broadcast or cable programme.
- (2) The audience are treated as having paid for admission to a place—
 - (a) if they have paid for admission to a place of which that place forms part; or
 - (b) if goods or services are supplied at that place (or a place of which it forms part)—

- (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or programme; or
 - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.
- (3) The following are not regarded as having paid for admission to a place—
 - (a) persons admitted as residents or inmates of the place which is operated by a charitable organization and the facilities therein are provided not for profit;
 - (b) persons admitted as members of a club or society whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare and where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts or programmes is only incidental to the main purposes of the club or society.
- (4) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the rights conferred by this Part in relation to a performance or fixation, the fact that it was heard or seen in public by the reception of the broadcast or programme is to be taken into account in assessing the damages for that infringement.
- (5) Expressions used in this section have the same meaning as in section 81.

[cf. 1988 c. 48 Sch. 2 para. 18 U.K.]

258A. Playing of sound broadcasts inside vehicles

- (1) The playing of a sound broadcast inside a vehicle primarily for the purpose of affording the driver of the vehicle access to public information (including but not limited to news reports,

weather forecasts and information relating to road traffic) does not infringe any of the rights conferred by this Part.

- (2) Expressions used in this section have the same meaning as in section 81A.

(Added 15 of 2007 s. 65)

259. Reception and re-transmission of broadcast in cable programme service

- (1) The rights conferred by this Part are not infringed by the inclusion of a performance or fixation in a television broadcast or a sound broadcast that is, by reception and immediate re-transmission without any alteration, included in a service provided by—
- (a) a communal aerial broadcast distribution system within the scope of section 8(4)(e) of the Telecommunications Ordinance (Cap. 106);
 - (b) an interconnection between a communal aerial broadcast distribution system within the scope of section 8(4)(e) of the Telecommunications Ordinance (Cap. 106) and a subscription television network licensed, or deemed to be licensed, under the Telecommunications Ordinance (Cap. 106), where the re-transmission is for the reception of the users of the communal aerial broadcast distribution system; or *(Amended 48 of 2000 s. 44)*
 - (c) a system licensed under a broadcast relay station licence issued under the Telecommunications Ordinance (Cap. 106). *(Amended 36 of 2000 s. 28; 17 of 2011 s. 28)*
- (2) The rights conferred by this Part are not infringed by the inclusion of a performance or fixation in a television broadcast or sound broadcast that is not encrypted and that

is, by reception and immediate re-transmission without any alteration, included in a service provided—

- (a) by a system licensed under a satellite master antenna television licence issued under the Telecommunications Ordinance (Cap. 106); or (*Amended 17 of 2011 s. 28*)
- (b) by an interconnection between a system licensed under a satellite master antenna television licence issued under the Telecommunications Ordinance (Cap. 106) and a subscription television network licensed, or deemed to be licensed, under the Telecommunications Ordinance (Cap. 106) and where the re-transmission is for the reception of the users of the satellite master antenna television system, (*Amended 48 of 2000 s. 44; 17 of 2011 s. 28*)

until the expiration of 6 months beginning on the day of publication of the notice in accordance with subsection (6). (*Amended 36 of 2000 s. 28*)

- (3) Where a television broadcast or sound broadcast is made or uplinked from a place in Hong Kong or elsewhere, and the broadcast is a lawful broadcast, then any person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or an interconnection specified in subsection (1) or (2), being a programme comprising a performance, shall be in a like position, in any proceedings for infringement of the performer's right (if any) in the performance, as if he had been the holder of a licence granted by the performer to include the performance in any programme so included in that service.
- (4) Notwithstanding subsections (1) and (2), where the making of the broadcast was in infringement of those rights, the fact that the broadcast was re-transmitted as a programme in a cable

programme service is to be taken into account in assessing the damages for that infringement.

- (5) Where a television broadcast or a sound broadcast is not encrypted, the person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or interconnection specified in subsection (2) is deemed to have been granted an implied licence by the maker of the broadcast to receive and re-transmit the broadcast using the system which is only revocable by notice given in accordance with subsection (6).
- (6) The maker of a broadcast in respect of which a licence is deemed to have been granted under subsection (5) may revoke the licence by publishing a notice of revocation in—
 - (a) 1 Chinese language newspaper circulating in Hong Kong; and
 - (b) 1 English language newspaper circulating in Hong Kong.
- (7) Expressions used in this section have the same meaning as in section 82.

(Amended E.R. 1 of 2013)

[cf. 1988 c. 48 Sch. 2 para. 19 U.K.]

260. Provision of sub-titled copies of broadcast or cable programme

- (1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make recordings of television broadcasts or cable programmes without infringing any right conferred by this Part in relation to a performance or fixation included in the broadcast or cable programme.

- (2) Recording is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the recording in question and the person making the recordings knew or ought to have been aware of that fact.
- (3) In this section “designated body” (指定機構) means a body designated for the purposes of section 83 and other expressions used in this section have the same meaning as in that section.

[cf. 1988 c. 48 Sch. 2 para. 20 U.K.]

261. Recording of broadcast or cable programme for archival purposes

- (1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any right conferred by this Part in relation to a performance or fixation included in the broadcast or cable programme.
- (2) In this section “designated class” (指定類別) and “designated body” (指定機構) mean a class and a body respectively designated for the purposes of section 84 and other expressions used in this section have the same meaning as in that section.

[cf. 1988 c. 48 Sch. 2 para. 21 U.K.]

DIVISION III—PROCEEDINGS RELATING TO IMPORTATION OF INFRINGING FIXATIONS

262. Definitions

In this Division—

“detention order” (扣留令) means an order made under section 264(1);

“right holder” (權利持有人) means—

- (a) the performer of a performance in which performer’s rights subsist under this Part or the exclusive licensee of the performer’s economic rights in such a performance; or
- (b) the person who has fixation rights in relation to the performance.

263. Application for detention order

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) A right holder may apply to the Court of First Instance for an order under section 264(1) where he has reasonable grounds for suspecting that the importation of an article that constitutes an infringing fixation of the performance in respect of which he is a right holder may take place. (*Amended 25 of 1998 s. 2*)
- (2) An application under subsection (1) may be made ex parte but with previous notice to the Commissioner.
- (3) An application under subsection (1) must be in such form as is prescribed by rules of court and must be supported by an affidavit of the right holder which—
 - (a) states that at the time the application is made rights in performances subsist under this Part in the performance in question;
 - (b) states whether the deponent is the owner or the exclusive licensee of the rights in performances conferred by this Part;
 - (c) where the deponent purports to be the exclusive licensee, states the facts and exhibits such documents relied upon by the deponent to establish that he is the exclusive licensee;

- (d) states that a copy of the fixation of the performance exhibited to the affidavit is an authorized copy of the fixation;
 - (e) states the grounds for the application, including the facts relied upon by the deponent as showing that the article in question is prima facie an infringing fixation;
 - (f) sets out a sufficiently detailed description of the article in question to make it readily recognizable by the Commissioner;
 - (g) sets out particulars regarding the expected mode of transportation and the expected date of importation and, if available, particulars identifying the importer; and
 - (h) sets out such other information and exhibits such other documents as may be prescribed by rules of court.
- (4) No application may be made under subsection (1) with respect to an article in transit.
 - (5) No application may be made under subsection (1) with respect to the importation by a person of an article for his private and domestic use.
 - (6) Section 121 applies in respect of an affidavit made in accordance with subsection (3) by the exclusive licensee of the performer's economic rights that subsist in a qualifying performance under this Part in the same manner as it would apply if the affidavit were made by the owner of those rights.

264. Issuance of detention order

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) Where, on the hearing of an application made under section 263, the right holder presents adequate evidence to satisfy the Court of First Instance that the article in question is prima facie an infringing fixation, the Court of First Instance may make an order directing the Commissioner or an authorized

officer to take reasonable measures to seize or detain the article on or after its importation.

- (2) The Court of First Instance may require the right holder to provide security or an equivalent assurance in an amount sufficient to protect the importer and any other person having an interest in the article to be seized or detained, including the consignee and the owner of the article, from any loss or damage that may be incurred in the event that the seizure or detention is wrongful or the article is released to the importer under section 265(6).
- (3) A detention order may contain such terms and conditions as the Court of First Instance considers appropriate.
- (4) The Court of First Instance shall not make a detention order with respect to any article that has been seized or detained by, and that is in the custody of, the Commissioner or an authorized officer pursuant to any law.
- (5) Where the Commissioner or an authorized officer seizes or detains an article pursuant to any law, other than this Division or Division VII of Part II, any detention order made with respect to that article ceases to have effect.
- (6) Where the Court of First Instance makes a detention order, the right holder shall forthwith serve a copy of the order on the Commissioner.
- (7) A detention order has effect from the date on which it is made or such later date as may be specified by the Court of First Instance and ceases to have effect 60 days from that date unless the Commissioner or an authorized officer has, pursuant to the order and within that period, seized or detained any article to which the order applies.

(Amended 25 of 1998 s. 2)

265. Enforcement of detention order

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) Where a detention order is served on the Commissioner, the Commissioner or an authorized officer shall, subject to the terms and conditions of the order, seize or detain any article to which the order applies.
- (2) The right holder shall—
 - (a) supply to the Commissioner or an authorized officer sufficient information on the article and the particular importation to render the article recognizable and the shipment or particular importation identifiable and any other information the Commissioner or an authorized officer may reasonably require for the purpose of carrying out the detention order;
 - (b) deposit with the Commissioner an amount that is, in the opinion of the Commissioner, sufficient to reimburse the Government for the costs likely to be incurred in connection with the carrying out of the detention order; and
 - (c) upon notification in writing by the Commissioner or an authorized officer of the seizure or detention of the article, provide such storage space and other facilities as he may require.
- (3) The Commissioner or an authorized officer may refuse to carry out the detention order if the right holder fails to comply with subsection (2).
- (4) The Commissioner may, after giving written notice to the right holder, apply to the Court of First Instance for directions in carrying out the detention order, and the Court of First Instance may, after giving the right holder an opportunity to be heard, give such directions as it thinks fit. (*Amended 25 of 1998 s. 2*)

- (5) The Commissioner or an authorized officer shall forthwith after an article is seized or detained pursuant to a detention order, give written notice of the seizure or detention to—
 - (a) the right holder;
 - (b) the importer; and
 - (c) any other person to whom notice is required to be given by the terms of the order.
- (6) Subject to subsection (7) and to any law authorizing the Commissioner or an authorized officer to seize or detain articles, the Commissioner or an authorized officer shall release any article that has been seized or detained pursuant to a detention order to the importer if the right holder has not, within a period of 10 days after notice of the seizure or detention is given to the right holder, notified the Commissioner in writing that an action for infringement in respect of the article has been brought under this Part.
- (7) The Court of First Instance may, on application by the right holder, after giving the Commissioner and each person to whom notice is required to be given under subsection (5) an opportunity to be heard, extend the period referred to in subsection (6) by a period not exceeding an additional 10 days if it is satisfied that the request for the extension is reasonable. (*Amended 25 of 1998 s. 2*)
- (8) In proceedings under subsection (7), the Court of First Instance may require the right holder to provide security or an equivalent assurance in addition to that provided in accordance with section 264(2). (*Amended 25 of 1998 s. 2*)
- (9) Where the right holder has, within the period referred to in subsection (6), as may be extended under subsection (7), notified the Commissioner in writing that an action for infringement in respect of the article has been brought under this Part, the Commissioner or an authorized officer shall

retain custody of the article subject to the direction of the court in the infringement proceedings.

- (10) No public holiday, gale warning day or black rainstorm warning day is reckoned in the computation of the period referred to in subsection (6), as may be extended under subsection (7).

- (11) In this section—

“black rainstorm warning day” (黑色暴雨警告日) means any day throughout or for part of which a black rainstorm warning is in force, and “black rainstorm warning” (黑色暴雨警告) means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as Black; (*Amended L.N. 362 of 1997*)

“gale warning day” (烈風警告日) means any day throughout or for part of which a gale warning is in force, and “gale warning” (烈風警告) has the meaning assigned to it by section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62).

266. Variation or setting aside of detention order

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) The Commissioner or the right holder may at any time apply to the Court of First Instance to vary the detention order.
- (2) The importer or any other person affected by the detention order may at any time apply to the Court of First Instance to vary or set aside the order.
- (3) A person who makes an application under subsection (1) or (2) shall give to the other parties such notice of the day fixed for the hearing of the application as a judge of the Court of First Instance may order.

- (4) On the hearing of an application under subsection (1) or (2) to vary the detention order, the Court of First Instance may vary the order in such manner as it thinks just.
- (5) On the hearing of an application under subsection (2) to set aside the detention order, the Court of First Instance may set aside the order on such terms and conditions as it thinks just.
- (6) For the purposes of subsection (3)—
 - (a) the parties to an application under subsection (1) are the Commissioner, the right holder and, if the article in question has been seized or detained pursuant to the detention order, the importer and any other person to whom notice is required to be given under section 265(5); and
 - (b) the parties to an application under subsection (2) are the Commissioner, the right holder, the applicant and the importer, if the importer is not the applicant.

(Amended 25 of 1998 s. 2)

267. Disclosure of information

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) Where an article is seized or detained pursuant to a detention order, the Commissioner may disclose to the right holder—
 - (a) the names and addresses of the importer, the consignor and the consignee;
 - (b) the nature and quantity of articles seized or detained pursuant to the order;
 - (c) any statement made to the Commissioner or an authorized officer by any person in connection with the seizure or detention, either with the prior consent in writing of that person or without such consent where the person is dead or cannot after reasonable enquiries by

the Commissioner as to his whereabouts be found by the Commissioner; and

- (d) any other information or document relating to any article seized or detained pursuant to the order which the Commissioner thinks fit to disclose.

- (2) Where the right holder seeks disclosure of—

- (a) any information or document that is not referred to in subsection (1); or
- (b) any information or document that is referred to in subsection (1) but which the Commissioner has not disclosed,

he may apply to the Court of First Instance for an order requiring the Commissioner to disclose such information or document and the Court of First Instance may on such an application make such order for disclosure as it deems fit.
(*Amended 25 of 1998 s. 2*)

- (3) An application under subsection (2) may be begun by motion with previous notice to the Commissioner.

268. Inspection of articles, release of samples, etc.

- (1) Where an article is seized or detained pursuant to a detention order, the Commissioner or an authorized officer shall—
 - (a) give the right holder sufficient opportunity to inspect the article for the purpose of substantiating his claim; and
 - (b) give the importer an equivalent opportunity to inspect the article for the purpose of refuting the right holder's claim.
- (2) Where more than one article is seized or detained pursuant to a detention order, the Commissioner or an authorized officer may permit the right holder or the importer to remove samples of the seized or detained articles if the right holder or

the importer, as the case may be, gives the Commissioner or authorized officer the requisite undertakings.

- (3) For the purposes of subsection (2), the requisite undertakings are undertakings in writing that the person giving the undertaking will—
 - (a) return the samples to the Commissioner or authorized officer at a specified time that is satisfactory to the Commissioner or authorized officer; and
 - (b) take reasonable care to prevent unnecessary damage to the samples.
- (4) If the Commissioner or an authorized officer permits the inspection of any seized or detained article, or the removal of a sample, by the right holder in accordance with this section, the Government is not liable to the importer for any loss or damage suffered by the importer arising out of—
 - (a) damage to any article incurred during the inspection; or
 - (b) anything done by the right holder or any other person to, or in relation to, a sample removed by the right holder or any use made by the right holder of such sample.

269. Costs payable

- (1) The Commissioner may assess the costs incurred by the Government in connection with the carrying out of a detention order and may deduct those costs from the amount paid as a deposit by the right holder under section 265(2).
- (2) Any costs assessed under subsection (1) shall be payable by the right holder to the Government and recoverable as a civil debt.

270. Compensation payable to importer, etc.

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

- (1) Where an article is seized or detained pursuant to a detention order and the article is released pursuant to section 265(6), the importer, the consignee or the owner of the article may, within 6 months after the date on which the order is made, apply to the Court of First Instance for compensation for any loss or damage suffered by him by reason of the seizure or detention.
- (2) Where—
 - (a) an article is seized or detained pursuant to a detention order;
 - (b) an action for infringement is brought under this Part in respect of the article within the period referred to in section 265(6), as may be extended under section 265(7); and
 - (c) the action is discontinued, the claim of infringement is withdrawn or the court in the infringement proceedings determines that the infringement is not proved,the importer, the consignee or the owner of the article may, within 6 months after the date on which the action is discontinued, the claim is withdrawn or the court renders its determination, as the case may be, apply to the Court of First Instance for compensation for any loss or damage suffered by him by reason of the seizure or detention.
- (3) On an application under subsection (1) or (2), the Court of First Instance may make such order for compensation as it deems fit.

(Amended 25 of 1998 s. 2)

271. Rules

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) includes power to make rules of court

regulating and prescribing the procedure and the practice to be followed in the Court of First Instance under this Division, and any matter incidental to or relating to that procedure or practice, including rules prescribing any matter or thing that under this Division is to be or may be prescribed by rules of court.

(Amended 25 of 1998 s. 2)

272. Protection of Commissioner and authorized officers

- (1) The Commissioner and authorized officers are not liable for any loss or damage suffered by any person as a result of any action taken or omitted to be taken in good faith in connection with the carrying out of a detention order.
 - (2) The protection conferred by subsection (1) on the Commissioner and authorized officers in respect of any action taken or omitted to be taken in good faith in connection with the carrying out of those duties shall not affect in any manner any liability of the Government for that action taken or omitted to be taken.
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PART IIIA

PERFORMERS' MORAL RIGHTS

(Part IIIA added 15 of 2007 s. 66)

Introductory

272A. Moral rights conferred on certain performers

- (1) This part confers the following moral rights on a performer of a live aural performance or a performer whose performance is fixed in a sound recording—
 - (a) the right to be identified as a performer (section 272B); and
 - (b) the right not to have his performance subjected to derogatory treatment (section 272F).
- (2) The moral rights are conferred on the performer only if the performance is a qualifying performance.
- (3) The moral rights conferred on the performer are in addition to any other rights in relation to the performance that the performer or any other person may have under this Ordinance.
- (4) In this Part—

“aural performance” (聲藝表演)—

 - (a) means a performance which may be perceived by the human ear; or
 - (b) where part of a performance may be perceived by the human ear, means that part of the performance, and includes a musical performance, a spoken performance and a performance in any intermediate forms between singing and speaking;

- “make available to the public live” (即場向公眾提供), in relation to a performance, means to make available of the unfixed performance, by wire or wireless means, in such a way that members of the public in Hong Kong or elsewhere may access the performance from a place individually chosen by them;
- “performership” (演出) means participation in a performance, as the performer or one of the performers;
- “sound recording” (聲音紀錄)—
- (a) subject to paragraph (b), has the same meaning as in Part II (copyright);
 - (b) does not include a film sound-track which accompanies a film within the meaning of Part II.
- (5) The following expressions have the same meaning in this Part as in Part II (copyright)—
- broadcast;
- business;
- cable programme;
- cable programme service; and
- published.
- (6) The following expressions have the same meaning in this Part as in Part III (rights in performances)—
- fixation;
- performance;
- performer; and
- qualifying performance.
- (7) For the purposes of this Part, if a performance of a musical work is conducted by a conductor, the sounds of the performance are treated as having been made by the conductor and the person who actually made those sounds,

and a reference to a performer includes a reference to the conductor.

- (8) Section 204(2), (3) and (4) applies, with the necessary modifications, to references in this Part to the issue to the public of copies of a sound recording, as it applies to references in Part III to the issue to the public of copies of a fixation.
- (9) Section 205(2), (3) and (4) applies, with the necessary modifications, to references in this Part to the making available to the public of copies of a sound recording, as it applies to references in Part III to the making available to the public of copies of a fixation.

(Part IIIA added 15 of 2007 s. 66)

Right to be identified as performer

272B. Right to be identified as performer

- (1) A performer of a live aural performance or a performer whose performance is fixed in a sound recording has the right to be identified as a performer in the performance whenever—
 - (a) the performance is staged in public, made available to the public live, broadcast live or included live in a cable programme service; or
 - (b) copies of the sound recording in which the performance is fixed are issued or made available to the public, broadcast or included in a cable programme service.
- (2) The right of the performer under this section is, in the case of the issue or making available to the public of copies of a sound recording in which the performance is fixed, the right to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy.

- (3) The right of the performer under this section is, in any case other than the case referred to in subsection (2), the right to be identified in a manner likely to bring his identity to the notice of a person hearing the performance, broadcast or cable programme in question.
- (4) The rights of the performer referred to in subsections (2) and (3) include the right to be identified in a clear and reasonably prominent or audible manner.
- (5) If the performer in asserting his right to be identified specifies a pseudonym, initials or some other particular form of identification, that form must be used; otherwise any reasonable form of identification may be used.
- (6) If a performance is presented by performers who use a group name, identification by using the group name is sufficient identification of the performers in the group.

(Part IIIA added 15 of 2007 s. 66)

272C. Requirement that right under section 272B be asserted

- (1) A person does not infringe the right conferred by section 272B (right to be identified as performer) by doing any of the acts referred to in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.
- (2) The right may be asserted generally, or in relation to any specified act or description of acts—
 - (a) on an assignment of a performer's economic rights conferred by Part III in a live aural performance that has taken place or is to take place or in a performance that has been fixed or is to be fixed in a sound recording, by including in the instrument effecting the assignment a statement that the performer asserts in relation to that

- performance or that performance fixed in the sound recording his right to be identified; or
- (b) by instrument in writing signed by the performer.
- (3) The persons bound by an assertion of the right under subsection (2) are—
- (a) in the case of an assertion under subsection (2)(a), the assignee and anyone claiming through him, whether he has notice of the assertion;
- (b) in the case of an assertion under subsection (2)(b), anyone to whose notice the assertion is brought.
- (4) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.

(Part IIIA added 15 of 2007 s. 66)

272D. Exceptions to right under section 272B

- (1) The right conferred by section 272B (right to be identified as performer) does not apply where it is not reasonably practicable to identify the performer.
- (2) The right does not apply in relation to a performance given for the purposes of reporting current events.
- (3) The right does not apply in relation to a performance given for the purposes of advertising any goods or services or making announcements of matters of public interest.
- (4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe any right conferred by Part III—
- (a) section 241 (fair dealing for certain purposes), insofar as it relates to the reporting of current events by means of a sound recording, broadcast or cable programme;

- (b) section 242 (incidental inclusion of performance or fixation);
- (c) section 243(2) (examination questions);
- (d) section 246B (Legislative Council);
- (e) section 247 (judicial proceedings);
- (f) section 248 (statutory inquiries).

(Part IIIA added 15 of 2007 s. 66)

Right to object to derogatory treatment

272E. Right to object to derogatory treatment

- (1) A performer of a live aural performance or a performer whose performance is fixed in a sound recording has the right not to have his performance subjected to derogatory treatment.
- (2) The right is infringed by a person who does any of the following acts—
 - (a) in relation to a live aural performance, subjects the performance, or causes the performance to be subjected, to derogatory treatment when the performance is caused to be heard in public, broadcasted, included in a cable programme service or made available to the public live;
 - (b) in relation to a performance fixed in a sound recording—
 - (i) causes to be heard in public, broadcasts or includes in a cable programme service the performance by means of the sound recording in a manner which subjects the performance to derogatory treatment; or
 - (ii) makes available to the public copies of the sound recording in a manner which subjects the performance to derogatory treatment; or

- (c) in relation to a performance which has been subjected to derogatory treatment and is fixed in a sound recording—
 - (i) causes to be heard in public, broadcasts or includes in a cable programme service the sounding recording; or
 - (ii) makes available to the public copies of the sound recording.
- (3) For the purposes of this section—
 - (a) “treatment” (處理)—
 - (i) in relation to a live aural performance, means any addition to, deletion from, alteration to or adaptation of the performance; or
 - (ii) in relation to a performance fixed in a sound recording, means any addition to, deletion from, alteration to or adaptation of the sound recording; and
 - (b) the treatment of a live aural performance or a performance fixed in a sound recording is derogatory if it amounts to distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

(Part IIIA added 15 of 2007 s. 66)

272F. Infringing of right under section 272E by possessing or dealing with infringing articles

- (1) The right conferred by section 272E (right to object to derogatory treatment) is also infringed by a person who—
 - (a) possesses for the purpose of or in the course of any trade or business; or
 - (b) sells or lets for hire, or offers or exposes for sale or hire, or distributes,

an article which is, and which he knows or has reason to believe is, an infringing article.

(2) In this section—

“infringing article” (侵犯權利物品) means a performance fixed in a sound recording which—

- (a) has been subjected to derogatory treatment within the meaning of section 272E; and
- (b) has been or is likely to be the subject of any of the acts referred to in that section in circumstances infringing that right.

(Part IIIA added 15 of 2007 s. 66)

272G. Exceptions to right under section 272E

- (1) The right conferred by section 272E (right to object to derogatory treatment) does not apply in relation to any performance given for the purposes of reporting current events.
- (2) The right is not infringed by modifications made to a performance which are consistent with normal editorial or production practice.
- (3) Subject to subsection (4), the right is not infringed by an act done for the purpose of—
 - (a) avoiding the commission of an offence; or
 - (b) complying with a duty imposed by or under an enactment.
- (4) Where a performer is identified at the time of the relevant act under subsection (3) or has previously been identified in or on published copies of sound recordings in which the relevant performance is fixed, subsection (3) has effect only if there is a sufficient disclaimer.

- (5) In subsection (4), “sufficient disclaimer” (足夠的卸責聲明) means a clear and reasonably prominent indication—
- (a) given at the time of the relevant act under subsection (3); and
 - (b) if the performer is then identified, appearing along with the identification,
- that the live aural performance or the performance fixed in a sound recording has been subjected to treatment to which the performer has not consented.

(Part IIIA added 15 of 2007 s. 66)

Supplementary

272H. Duration of rights

The rights conferred by section 272B (right to be identified as performer) and section 272E (right to object to derogatory treatment) continue to subsist so long as the performer’s rights conferred by Part III subsist in the sound recording in which the performance is fixed.

(Part IIIA added 15 of 2007 s. 66)

272I. Consent and waiver of rights

- (1) It is not an infringement of any of the rights conferred by section 272B (right to be identified as performer) and section 272E (right to object to derogatory treatment) to do any act to which the person entitled to the right has consented.
- (2) Any of the rights referred to in subsection (1) may be waived by instrument in writing signed by the person giving up the right.

- (3) A waiver may relate to a specific performance, to performances of a specified description or to performances generally, and may relate to existing or future performances.
- (4) A waiver may be conditional or unconditional, and may be expressed to be subject to revocation.
- (5) If a waiver is made in favour of the owner or prospective owner of the right in the performance, it is presumed to extend to his licensees and successors in title unless a contrary intention is expressed.
- (6) Nothing in this Part is to be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to any of the rights referred to in subsection (1).
- (7) In this section, “performance” (表演) means a live aural performance or a performance fixed in a sound recording.

(Part IIIA added 15 of 2007 s. 66)

272J. Application of provisions to joint performers

- (1) The right conferred by section 272B (right to be identified as performer) is, in the case of joint performership, a right of each joint performer to be identified as a joint performer and must be asserted in accordance with section 272C by each joint performer in relation to himself.
- (2) The right conferred by section 272E (right to object to derogatory treatment) is, in the case of joint performership, a right of each joint performer and his right is satisfied if he consents to the treatment in question.
- (3) A waiver under section 272I of those rights by one joint performer does not affect the rights of the other joint performer or performers.

- (4) If there are 2 or more performers in a live aural performance or a performance fixed in a sound recording, the performers may enter into a joint performership agreement in writing by which each of them agrees not to exercise his right conferred by section 272E (right to object to derogatory treatment) in respect of the live aural performance or the performance fixed in a sound recording, as the case may be, except jointly with the other performer or performers.

(Part IIIA added 15 of 2007 s. 66)

272K. Application of provisions to part of performance

- (1) The right conferred by section 272B (right to be identified as performer) applies in relation to the whole or any substantial part of a live aural performance or a performance fixed in a sound recording.
- (2) The right conferred by section 272E (right to object to derogatory treatment) applies in relation to the whole or any part of a live aural performance or a performance fixed in a sound recording.

(Part IIIA added 15 of 2007 s. 66)

272L. Moral rights not assignable

The rights conferred by section 272B (right to be identified as performer) and section 272E (right to object to derogatory treatment) are not assignable.

(Part IIIA added 15 of 2007 s. 66)

272M. Transmission of moral rights on death

- (1) On the death of a person entitled to the right conferred by section 272B (right to be identified as performer) or section 272E (right to object to derogatory treatment)—

- (a) the right passes to such person as he may by testamentary disposition specifically direct;
 - (b) if there is no such direction but the performer's economic rights conferred by Part III in respect of the performance in question form part of his estate, the right passes to the person to whom the economic rights pass; and
 - (c) if or to the extent that the right does not pass under paragraph (a) or (b), the right is exercisable by his personal representatives.
- (2) Where a performer's economic rights conferred by Part III and forming part of his estate pass in part to one person and in part to another, as for example where a bequest is limited so as to apply—
 - (a) to one or more, but not all, of the things the owner has the exclusive right to do or consent; or
 - (b) to part, but not the whole, of the period for which the rights subsist,any right which passes with the performer's economic rights by virtue of subsection (1)(b) is correspondingly divided.
- (3) Where by virtue of subsection (1)(a) or (b) a right becomes exercisable by more than one person, the following provisions have effect with respect to the right—
 - (a) it may, in the case of the right conferred by section 272B (right to be identified as performer), be asserted by any of them;
 - (b) it is, in the case of the right conferred by section 272E (right to object to derogatory treatment), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and

- (c) any waiver of the right in accordance with section 272I by any of them does not affect the rights of the others.
- (4) A consent or waiver previously given or made binds any person to whom a right passes by virtue of subsection (1).
- (5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

(Part IIIA added 15 of 2007 s. 66)

272N. Remedies for infringement of performers' moral rights

- (1) An infringement of the right conferred by section 272B (right to be identified as performer) or section 272E (right to object to derogatory treatment) is actionable as a breach of statutory duty owed to the person entitled to the right.
- (2) In proceedings for infringement of the right conferred by section 272E, the court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating a performer from the treatment of a live aural performance or a performance fixed in a sound recording.

(Part IIIA added 15 of 2007 s. 66)

272O. Presumptions relevant to sound recordings in which performances are fixed

In proceedings brought by virtue of this Part with respect to a sound recording in which a performance is fixed, where copies of the sound recording as issued or made available to the public bear a statement—

COPYRIGHT ORDINANCE

PART IIIA

3A-28

Section 272O

Cap. 528

- (a) that a named person was a performer in the performance;
or
- (b) that a named group of performers were the performers
in the performance,

the statement is admissible as evidence of the facts stated and is
presumed to be correct until the contrary is proved.

(Part IIIA added 15 of 2007 s. 66)

PART IV

TECHNOLOGICAL MEASURES AND GENERAL

Circumvention of effective technological measures

(Replaced 15 of 2007 s. 67)

273. Interpretation of sections 273 to 273H

- (1) In sections 273A to 273H, “circumvent” (規避), in relation to an effective technological measure which has been applied in relation to a copyright work—
- (a) where the use of the work is controlled through the measure by the copyright owner of the work, means to circumvent the measure without the authority of the copyright owner;
 - (b) where the use of the work is controlled through the measure by an exclusive licensee of the copyright owner of the work, means to circumvent the measure without the authority of the exclusive licensee; or
 - (c) where the use of the work is controlled through the measure by any other person who, with the licence of the copyright owner of the copyright work—
 - (i) issues to the public copies of the work;
 - (ii) makes available to the public copies of the work; or
 - (iii) broadcasts the work, or includes the work in a cable programme service,means to circumvent the measure without the authority of that other person.

- (2) For the purposes of this section and sections 273A to 273H, where a technological measure has been applied in relation to a copyright work, the measure is referred to as an effective technological measure if the use of the work is controlled by any person referred to in subsection (1)(a), (b) or (c) through—
 - (a) an access control or protection process (including the encryption, scrambling and any other transformation of the work) which achieves the intended protection of the work in the normal course of its operation; or
 - (b) a copy control mechanism which achieves the intended protection of the work in the normal course of its operation.
- (3) In subsection (2)—
 - (a) “technological measure” (科技措施) means any technology, device, component or means which is designed, in the normal course of its operation, to protect any description of copyright work;
 - (b) the reference to protection of a copyright work is to the prevention or restriction of acts which are done without the licence of the copyright owner of the work and are restricted by the copyright in the work;
 - (c) the reference to use of a copyright work does not extend to any use of the work which is outside the scope of the acts restricted by the copyright in the work.

(Replaced 15 of 2007 s. 68)

273A. Rights and remedies in respect of circumvention of effective technological measures

- (1) Subject to sections 273D and 273H, this section applies where an effective technological measure has been applied in relation to a copyright work, and a person does any act

which circumvents the measure, knowing, or having reason to believe, that he is doing an act which circumvents the measure.

- (2) The following persons have the same rights and remedies against the person referred to in subsection (1) as a copyright owner has in respect of an infringement of copyright—
 - (a) the copyright owner of the work;
 - (b) an exclusive licensee of the copyright owner of the work; and
 - (c) any other person who, with the licence of the copyright owner of the work—
 - (i) issues to the public copies of the work;
 - (ii) makes available to the public copies of the work; or
 - (iii) broadcasts the work, or includes the work in a cable programme service.
- (3) The rights and remedies conferred by subsection (2) on the copyright owner, the exclusive licensee and the person referred to in subsection (2)(c) are concurrent.
- (4) Sections 112(3) and 113(1), (4), (5) and (6) apply, with the necessary modifications, in proceedings in relation to the copyright owner, the exclusive licensee and the person referred to in subsection (2)(c), as they apply in proceedings in relation to a copyright owner and an exclusive licensee with concurrent rights and remedies.
- (5) Sections 115, 116 and 117 (presumptions as to certain matters relating to copyright) apply, with the necessary modifications, in proceedings instituted under this section, as they apply in proceedings instituted under Part II (copyright).

(Added 15 of 2007 s. 69)

273B. Rights and remedies in respect of devices and services designed to circumvent effective technological measures

- (1) Subject to sections 273E and 273H, this section applies where an effective technological measure has been applied in relation to a copyright work, and a person—
 - (a) makes, imports, exports, sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire, any relevant device;
 - (b) exhibits in public, possesses or distributes any relevant device for the purpose of or in the course of any trade or business;
 - (c) distributes (otherwise than for the purpose of or in the course of any trade or business) any relevant device to such an extent as to affect prejudicially the owner of the copyright; or
 - (d) provides any relevant service.
- (2) In subsection (1)—

“relevant device” (有關器件), in relation to the effective technological measure referred to in that subsection, means any device, product, component or means—

 - (a) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;
 - (b) which has only a limited commercially significant purpose or use other than to circumvent the measure; or
 - (c) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of the measure;

“relevant service” (有關服務), in relation to the effective technological measure referred to in that subsection, means any service—

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;
 - (b) which has only a limited commercially significant purpose or use other than to circumvent the measure; or
 - (c) which is performed for the purpose of enabling or facilitating the circumvention of the measure.
- (3) The following persons have the same rights and remedies against the person referred to in subsection (1) as a copyright owner has in respect of an infringement of copyright—
 - (a) the copyright owner of the work;
 - (b) an exclusive licensee of the copyright owner of the work; and
 - (c) any other person who, with the licence of the copyright owner of the work—
 - (i) issues to the public copies of the work;
 - (ii) makes available to the public copies of the work; or
 - (iii) broadcasts the work, or includes the work in a cable programme service.
- (4) The rights and remedies conferred by subsection (3) on the copyright owner, the exclusive licensee and the person referred to in subsection (3)(c) are concurrent.
- (5) Sections 112(3) and 113(1), (4), (5) and (6) apply, with the necessary modifications, in proceedings in relation to the copyright owner, the exclusive licensee and the person referred to in subsection (3)(c), as they apply in proceedings in relation to a copyright owner and an exclusive licensee with concurrent rights and remedies.
- (6) The copyright owner, the exclusive licensee and the person referred to in subsection (3)(c) have the same rights and

remedies under section 109 (order for delivery up) in relation to any device, product, component or means which a person has in his possession, custody or control with the intention that it is to be used to circumvent effective technological measures, as a copyright owner has in relation to an infringing copy.

- (7) The rights and remedies conferred by subsection (6) on the copyright owner, the exclusive licensee and the person referred to in subsection (3)(c) are concurrent.
- (8) Section 113(7) (order as to exercise of rights by copyright owner where exclusive licensee has concurrent rights) applies, with the necessary modifications, in respect of anything done under section 109 by virtue of subsection (6), in relation to the copyright owner, the exclusive licensee and the person referred to in subsection (3)(c), as it applies, in respect of anything done under section 109, in relation to a copyright owner and an exclusive licensee with concurrent rights and remedies.
- (9) Section 111 (order as to disposal of infringing copy or other article) applies, with the necessary modifications, in relation to the disposal of anything delivered up under section 109 by virtue of subsection (6).
- (10) Sections 115, 116 and 117 (presumptions as to certain matters relating to copyright) apply, with the necessary modifications, in proceedings instituted under this section, as they apply in proceedings instituted under Part II (copyright).

(Added 15 of 2007 s. 69)

273C. Offences in relation to circumvention of effective technological measures

- (1) Subject to sections 273F and 273H, where an effective technological measure has been applied in relation to a

copyright work, a person commits an offence if he—

- (a) makes for sale or hire any relevant device;
- (b) imports into Hong Kong for sale or hire any relevant device;
- (c) exports from Hong Kong for sale or hire any relevant device;
- (d) sells, lets for hire, or offers or exposes for sale or hire any relevant device for the purpose of or in the course of any trade or business;
- (e) exhibits in public or distributes any relevant device for the purpose of or in the course of any trade or business which consists of dealing in circumvention devices;
- (f) possesses any relevant device with a view to—
 - (i) its being sold or let for hire by any person for the purpose of or in the course of any trade or business; or
 - (ii) its being exhibited in public or distributed by any person for the purpose of or in the course of any trade or business which consists of dealing in circumvention devices; or
- (g) provides any relevant service for the purpose of or in the course of a circumvention business.

(2) In subsection (1)—

“circumvention business” (規避業務) means a business, conducted for profit, which includes the offering to the public of services which enable or facilitate the circumvention of effective technological measures;

“circumvention device” (規避器件) means any device, product, component or means—

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures;

“dealing in” (經銷) means selling, letting for hire, or distributing for profit or reward;

“relevant device” (有關器件), in relation to the effective technological measure referred to in that subsection—

- (a) subject to paragraph (b), means any device, product, component or means—
 - (i) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;
 - (ii) which has only a limited commercially significant purpose or use other than to circumvent the measure; or
 - (iii) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of the measure;
- (b) does not include any unauthorized decoder referred to in section 6, or any decoder referred to in section 7, of the Broadcasting Ordinance (Cap. 562);

“relevant service” (有關服務), in relation to the effective technological measure referred to in that subsection, means any service—

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;

- (b) which has only a limited commercially significant purpose or use other than to circumvent the measure; or
 - (c) which is performed for the purpose of enabling or facilitating the circumvention of the measure.
- (3) A person who commits an offence under subsection (1) is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 4 years.
- (4) It is a defence for the person charged with an offence in respect of an effective technological measure under subsection (1) to prove that he did not know and had no reason to believe that the relevant device or relevant service which is the subject of the offence enabled or facilitated the circumvention of the measure.

(Added 15 of 2007 s. 69)

273D. Exceptions to section 273A

- (1) Section 273A does not apply to an act which circumvents an effective technological measure if—
- (a) the measure has been applied in relation to a computer program;
 - (b) the act is done with respect to the identification or analysis of particular elements of the computer program that are not readily available to the person who does the act;
 - (c) the act is done for the sole purpose of achieving interoperability of an independently created computer program with the computer program or another computer program;
 - (d) the copy of computer program in relation to which the act is done is not an infringing copy; and

- (e) the act of identification or analysis referred to in paragraph (b) does not constitute an infringement of copyright.
 - (2) Section 273A does not apply to an act which circumvents an effective technological measure if—
 - (a) the act is done by or under the authority of the owner or operator of a computer, computer system or computer network; and
 - (b) the act is done for the sole purpose of testing, investigating or correcting a security flaw or vulnerability of the computer, computer system or computer network, as the case may be.
 - (3) Section 273A does not apply to an act which circumvents an effective technological measure if the act is done for the sole purpose of research into cryptography and—
 - (a) where the research is conducted by or on behalf of a specified educational establishment, or for the purposes of giving or receiving instruction in a specified course of study in the field of cryptography provided by a specified educational establishment—
 - (i) the research does not constitute an infringement of copyright;
 - (ii) it is necessary for the act to be done in order to conduct the research; and
 - (iii) the information derived from the research is not disseminated to the public except in a specified manner; or
 - (b) in any other case—
 - (i) the research does not constitute an infringement of copyright;

- (ii) it is necessary for the act to be done in order to conduct the research; and
 - (iii) the act or the dissemination to the public of information derived from the research does not affect prejudicially the copyright owner.
- (4) In subsection (3)—
 - “specified educational establishment” (指明教育機構) means—
 - (a) an educational establishment specified in section 4, 6, 7, 8, 9, 12, 14 or 15 of Schedule 1; or
 - (b) Hong Kong Shue Yan University registered under the Post Secondary Colleges Ordinance (Cap. 320);
 - “specified manner” (指明方式), in relation to the dissemination to the public of information derived from a research into cryptography—
 - (a) means a manner which is reasonably calculated to advance the state of knowledge or development of cryptography or related technology; and
 - (b) includes dissemination of the information in a journal or at a conference the target readers or audiences of which are primarily persons engaged in, or pursuing a course of study in, the field of cryptography or related technology.
- (5) Section 273A does not apply to an act which circumvents an effective technological measure if—
 - (a) the measure, or the copyright work in relation to which the measure has been applied, has the capability to collect or disseminate personally identifying information which tracks and records the manner of a person’s use of a computer network without providing conspicuous notice of such collection or dissemination to the person;

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- (b) the act is done for the sole purpose of identifying or disabling the function of the measure or work, as the case may be, in collecting or disseminating personally identifying information; and
 - (c) the act does not affect the ability of any person to gain access to any work.
 - (6) Section 273A does not apply to an act which circumvents an effective technological measure if—
 - (a) a person does the act when using a technology, product or device; and
 - (b) the sole purpose of the technology, product or device, as the case may be, is to prevent access of minors to harmful materials on the Internet.
 - (7) Section 273A does not apply to an act which circumvents an effective technological measure if—
 - (a) the measure has been applied in relation to a copyright work of any description issued to the public in a physical article;
 - (b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis;
 - (c) the act is done for the sole purpose of overcoming the regional coding, technology, device, component or means, as the case may be, contained in the measure so as to gain access to the work; and
 - (d) the copy of the work in relation to which the act is done—
 - (i) is not an infringing copy; or

- (ii) if it is an infringing copy, is an infringing copy by virtue only of section 35(3) and was lawfully made in the country, territory or area where it was made.
- (8) Section 273A does not apply to an act which circumvents an effective technological measure if—
 - (a) the measure has been applied in relation to a copy of any description mentioned in section 50(1), 51(1) or 53;
 - (b) the act of circumvention is done by the librarian or archivist of a specified library or archive; and
 - (c) the act is done for the sole purpose of the doing of any of the acts permitted under sections 50, 51 and 53.
- (9) Section 273A does not apply to an act which circumvents an effective technological measure if the act is done by, or on behalf of, law enforcement agencies for the purpose of the prevention, detection or investigation of an offence, or the conduct of a prosecution.

(Added 15 of 2007 s. 69)

273E. Exceptions to section 273B

- (1) In this section—
 - “relevant device” (有關器件) means any device, product, component or means—
 - (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
 - (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
 - (c) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures;

“relevant service” (有關服務) means any service—

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is performed for the purpose of enabling or facilitating the circumvention of effective technological measures.

(2) Section 273B does not apply if—

- (a) a person works collaboratively with another person to identify or analyse particular elements of a computer program for the sole purpose of achieving interoperability of an independently created computer program with the computer program or another computer program; and
- (b) that person, for the purpose of enabling that other person to do any relevant act—
 - (i) makes or imports any relevant device for that other person;
 - (ii) sells, lets for hire, exports or distributes any relevant device to that other person;
 - (iii) possesses any relevant device; or
 - (iv) provides any relevant service to that other person.

(3) In subsection (2), “relevant act” (有關作為) means—

- (a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(1); or

- (b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).
- (4) Section 273B does not apply if—
 - (a) a person works collaboratively with another person to test, investigate or correct a security flaw or vulnerability of a computer, computer system or computer network under the authority of the owner or operator of the computer, computer system or computer network, as the case may be; and
 - (b) that person, for the purpose of enabling that other person to do any relevant act—
 - (i) makes or imports any relevant device for that other person;
 - (ii) sells, lets for hire, exports or distributes any relevant device to that other person;
 - (iii) possesses any relevant device; or
 - (iv) provides any relevant service to that other person.
- (5) In subsection (4), “relevant act” (有關作為) means—
 - (a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(2); or
 - (b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).
- (6) Section 273B does not apply if—
 - (a) a person works collaboratively with another person to conduct research into cryptography; and
 - (b) that person, for the purpose of enabling that other person to do any relevant act—

- (i) makes or imports any relevant device for that other person;
 - (ii) sells, lets for hire, exports or distributes any relevant device to that other person;
 - (iii) possesses any relevant device; or
 - (iv) provides any relevant service to that other person.
- (7) In subsection (6), “relevant act” (有關作為) means—
 - (a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(3); or
 - (b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).
- (8) Section 273B does not apply to a relevant device or relevant service if—
 - (a) an effective technological measure, or a copyright work in relation to which an effective technological measure has been applied, has a function in collecting or disseminating personally identifying information which tracks and records the manner of a person’s use of a computer network; and
 - (b) the sole purpose of the device or service, as the case may be, is to identify or disable that function of the measure or work, as the case may be.
- (9) Section 273B does not apply to a relevant device if—
 - (a) the relevant device is incorporated, or is intended to be incorporated, into a technology, product or device; and
 - (b) the sole purpose of the technology, product or device, as the case may be, is to prevent access of minors to harmful materials on the Internet.

- (10) Section 273B does not apply to a relevant service if the sole purpose of the service is to prevent access of minors to harmful materials on the Internet.
- (11) Section 273B does not apply to a relevant device or relevant service if—
 - (a) an effective technological measure has been applied in relation to a copyright work issued to the public in a physical article;
 - (b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis; and
 - (c) the sole purpose of the relevant device or relevant service, as the case may be, is to overcome the regional coding, technology, device, component or means, as the case may be, contained in the measure.
- (12) Section 273B does not apply to an act done by, or on behalf of, law enforcement agencies for the purpose of the prevention, detection or investigation of an offence, or the conduct of a prosecution.

(Added 15 of 2007 s. 69)

273F. Exceptions to section 273C

- (1) In this section—

“relevant device” (有關器件) means any device, product, component or means—

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;

- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures;

“relevant service” (有關服務) means any service—

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is performed for the purpose of enabling or facilitating the circumvention of effective technological measures.

(2) Section 273C does not apply if—

- (a) a person works collaboratively with another person to identify or analyse particular elements of a computer program for the sole purpose of achieving interoperability of an independently created computer program with the computer program or another computer program; and
- (b) that person, for the purpose of enabling that other person to do any relevant act—
 - (i) makes or imports any relevant device for that other person;
 - (ii) sells, lets for hire, exports or distributes any relevant device to that other person;

- (iii) possesses any relevant device with a view to selling, letting for hire or distributing the device to that other person; or
 - (iv) provides any relevant service to that other person.
- (3) In subsection (2), “relevant act” (有關作為) means—
 - (a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(1); or
 - (b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).
- (4) Section 273C does not apply if—
 - (a) a person works collaboratively with another person to test, investigate or correct a security flaw or vulnerability of a computer, computer system or computer network under the authority of the owner or operator of the computer, computer system or computer network, as the case may be; and
 - (b) that person, for the purpose of enabling that other person to do any relevant act—
 - (i) makes or imports any relevant device for that other person;
 - (ii) sells, lets for hire, exports or distributes any relevant device to that other person;
 - (iii) possesses any relevant device with a view to selling, letting for hire or distributing the device to that other person; or
 - (iv) provides any relevant service to that other person.
- (5) In subsection (4), “relevant act” (有關作為) means—

- (a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(2); or
 - (b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).
- (6) Section 273C does not apply if—
 - (a) a person works collaboratively with another person to conduct research into cryptography; and
 - (b) that person, for the purpose of enabling that other person to do any relevant act—
 - (i) makes or imports any relevant device for that other person;
 - (ii) sells, lets for hire, exports or distributes any relevant device to that other person;
 - (iii) possesses any relevant device with a view to selling, letting for hire or distributing the device to that other person; or
 - (iv) provides any relevant service to that other person.
- (7) In subsection (6), “relevant act” (有關作為) means—
 - (a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(3); or
 - (b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).
- (8) Section 273C does not apply to a relevant device or relevant service if—
 - (a) an effective technological measure, or a copyright work in relation to which an effective technological

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- measure has been applied, has a function in collecting or disseminating personally identifying information which tracks and records the manner of a person's use of a computer network; and
- (b) the sole purpose of the device or service, as the case may be, is to identify or disable that function of the measure or work, as the case may be.
- (9) Section 273C does not apply to a relevant device if—
 - (a) the relevant device is incorporated, or is intended to be incorporated, into a technology, product or device; and
 - (b) the sole purpose of the technology, product or device, as the case may be, is to prevent access of minors to harmful materials on the Internet.
 - (10) Section 273C does not apply to a relevant service if the sole purpose of the service is to prevent access of minors to harmful materials on the Internet.
 - (11) Section 273C does not apply to a relevant device or relevant service if—
 - (a) an effective technological measure has been applied in relation to a copyright work issued to the public in a physical article;
 - (b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis; and
 - (c) the sole purpose of the relevant device or relevant service, as the case may be, is to overcome the regional coding, technology, device, component or means, as the case may be, contained in the measure.

- (12) Section 273C does not apply to an act done by, or on behalf of, law enforcement agencies for the purpose of the prevention, detection or investigation of an offence, or the conduct of a prosecution.

(Added 15 of 2007 s. 69)

273G. Application of sections 273, 273A, 273B, 273D and 273E to performances

Sections 273, 273A(1), (2), (3) and (4), 273B(1), (2), (3), (4), (5), (6), (7), (8) and (9), 273D and 273E apply, with the necessary modifications, in relation to—

- (a) an unfixed performance or a fixation of a performance;
- (b) a performer or a person having fixation rights in relation to a performance; and
- (c) the rights conferred by Part III on a performer or a person having fixation rights in relation to a performance.

(Added 15 of 2007 s. 69)

273H. Exceptions to sections 273A, 273B, 273C and 273G

The Secretary for Commerce and Economic Development may, by notice published in the Gazette, exclude from the application of any provisions of sections 273A, 273B, 273C and 273G any work or performance, class of works or performances or class of devices, products, components, means or services if he is satisfied—

- (a) that any use of or dealing with the work or performance, class of works or performances or class of devices, products, components, means or services, as the case may be, does not constitute or lead to an infringement of copyright or the rights conferred by Part III (rights in performances); and

- (b) that any such use or dealing has been, or is likely to be, adversely impaired or affected as a result of the application of the provisions.

(Added 15 of 2007 s. 69)

Rights management information

274. Rights and remedies in respect of unlawful acts to interfere with rights management information

- (1) A person who provides rights management information is entitled to the following rights and remedies.
- (2) He has the same rights and remedies against a person who—
 - (a) removes or alters any electronic rights management information provided by him without his authority; or
 - (b) issues or makes available to the public, sells or lets for hire, imports into or exports from Hong Kong, broadcasts or includes in a cable programme service, without his authority, works or copies of works, performances, fixations of performances to which the electronic rights management information is attached knowing that the electronic rights management information has been removed or altered without his authority,

as a copyright owner has in respect of an infringement of copyright.

- (2A) The person who provides rights management information does not have the rights and remedies against the person referred to in subsection (2) unless the second-mentioned person, when doing an act referred to in subsection (2)(a) or (b), knows or has reason to believe that by doing the act he is inducing, enabling, facilitating or concealing an infringement

of copyright or an infringement of rights conferred by Part III (rights in performances). *(Added 15 of 2007 s. 70)*

- (2B) If the copyright owner of a work to which rights management information is attached, or the copyright owner's exclusive licensee, is not the person who provides the rights management information, the copyright owner or the exclusive licensee, as the case may be, has the same rights and remedies as the person who provides the rights management information has against the person referred to in subsection (2). *(Added 15 of 2007 s. 70)*
- (2C) The rights and remedies conferred by subsection (1) on the person who provides rights management information and the rights and remedies conferred by subsection (2B) on the copyright owner and his exclusive licensee are concurrent. *(Added 15 of 2007 s. 70)*
- (2D) Sections 112(3) and 113(1), (4), (5) and (6) apply, with the necessary modifications, in proceedings in relation to the person who provides rights management information, the copyright owner and the exclusive licensee, as they apply in proceedings in relation to a copyright owner and an exclusive licensee with concurrent rights and remedies. *(Added 15 of 2007 s. 70)*
- (2E) Sections 115, 116 and 117 (presumptions as to certain matters relating to copyright) apply, with the necessary modifications, in proceedings instituted under this section, as they apply in proceedings instituted under Part II (copyright). *(Added 15 of 2007 s. 70)*
- (2F) This section, except subsection (2E), applies, with the necessary modifications, in relation to—
 - (a) a fixation of a performance;
 - (b) a performer or a person having fixation rights in relation to a performance; and

- (c) the rights conferred by Part III on a performer or a person having fixation rights in relation to a performance. (*Added 15 of 2007 s. 70*)
- (3) References in this section to rights management information means—
 - (a) information which identifies the work, the author of the work, the owner of any right in the work, the performer, or the performance of the performer;
 - (b) information about the terms and conditions of use of the work, the person having fixation rights in relation to the performance, or the performance; or
 - (c) any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or a fixed performance or appears in connection with the making available of a work or a fixed performance to the public.

Fraudulent reception of transmissions

275. Rights and remedies in respect of apparatus, etc. for unauthorized reception of transmissions

- (1) A person who—
 - (a) makes charges for the reception of programmes included in a broadcasting or cable programme service provided from a place in Hong Kong or elsewhere; or
 - (b) sends encrypted transmissions of any other description from a place in Hong Kong or elsewhere,
 is entitled to the following rights and remedies.
- (2) He has the same rights and remedies against a person who—
 - (a) makes, imports, exports or sells or lets for hire any apparatus or device designed or adapted to enable

or assist persons to receive the programmes or other transmissions when they are not entitled to do so; or

- (b) publishes any information which is calculated to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so,

as a copyright owner has in respect of an infringement of copyright.

- (3) Further, he has the same rights and remedies under section 109 (delivery up) in relation to any such apparatus or device as a copyright owner has in relation to an infringing copy.
- (4) In section 108(1) (innocent infringement of copyright) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work is construed as a reference to his not knowing or having reason to believe that his acts infringed the rights conferred by this section.
- (5) Section 111 applies, with the necessary modifications, in relation to the disposal of anything delivered up by virtue of subsection (3).

[cf. 1988 c. 48 s. 298 U.K.]

276. Denial of rights under section 275 to people of countries, etc. not giving adequate protection to Hong Kong broadcasts, cable programmes and encrypted transmissions

(Adaptation amendments retroactively made - see 22 of 1999 s. 3)

- (1) Subject to subsection (3), if it appears to the Chief Executive in Council that broadcasts made or cable programmes or encrypted transmissions sent from Hong Kong are not adequately protected in a country, territory or area as a result of any prejudicial treatment given to those broadcasts, cable programmes or transmissions by that country, territory or

area, the Chief Executive in Council may by regulation in accordance with this section restrict the rights conferred by section 275 in relation to broadcasters or providers of cable programme services or encrypted transmissions of that country, territory or area.

- (2) The Chief Executive in Council shall designate in the regulation the country, territory or area concerned and provide that, for the purposes specified in the regulation, a broadcast made or a cable programme or encrypted transmission sent after a date specified in the regulation does not qualify for protection conferred by section 275 if at the time of that making or sending the maker or sender is—
- (a) an individual domiciled or resident or having a right of abode in that country, territory or area (and not at the same time domiciled or resident or having a right of abode in Hong Kong); or
 - (b) a body incorporated under the law of that country, territory or area,

and the regulation may make such provision for all the purposes of section 275 or for such purposes as are specified in the regulation, and either generally or in relation to such class of cases as are specified in the regulation, having regard to the nature and extent of that prejudicial treatment referred to in subsection (1).

- (3) The Chief Executive in Council shall not exercise his power under this section in relation to a country, territory or area which is a party to a bilateral or multilateral copyright or related right convention to which Hong Kong is also a party or the application of which has been extended to Hong Kong.

(Amended 22 of 1999 s. 3)

277. Supplementary provisions as to fraudulent reception

Where section 275 applies in relation to a broadcasting service or cable programme service, it also applies to any service run for the person providing that service, or a person providing programmes for that service, which consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both.

[cf. 1988 c. 48 s. 299 U.K.]

General

278. Commissioner may authorize officers

The Commissioner may authorize any public officer to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer under this Ordinance.

279. Interpretation

Expressions used in this Part which are defined for the purposes of Parts II (copyright) and III (rights in performances) have the same meaning as in those Parts.

280. *(Omitted as spent)*

281. Repeals

The enactments specified in Schedule 5 are repealed to the extent specified.

282. Transitional provisions and savings in relation to amendments effected by the Copyright (Amendment) Ordinance 2003

Transitional provisions and savings in relation to amendments effected by the Copyright (Amendment) Ordinance 2003

(Amended 15 of 2007 s. 71)

Schedule 6 contains transitional provisions and savings in relation to certain amendments made to this Ordinance by the Copyright (Amendment) Ordinance 2003 (27 of 2003).

(Added 27 of 2003 s. 8. Amended 15 of 2007 s. 71)

283. Transitional provisions and savings in relation to amendments effected by the Copyright (Amendment) Ordinance 2007

- (1) In this section, “2007 Amendment Ordinance” (《2007年修訂條例》) means the Copyright (Amendment) Ordinance 2007 (15 of 2007).
- (2) Schedule 7 contains transitional provisions and savings in relation to certain amendments made to this Ordinance by the 2007 Amendment Ordinance.
- (3) The Chief Executive in Council may make regulations containing transitional provisions and savings consequent on the enactment of the 2007 Amendment Ordinance.
- (4) Without prejudice to the generality of subsection (3), the regulations may in particular provide for—
 - (a) the application of provisions of this Ordinance as amended by the 2007 Amendment Ordinance; or
 - (b) the continued application of provisions of this Ordinance as in force immediately before the commencement of any provisions of the 2007 Amendment Ordinance,
 in connection with any matter specified in the regulations.
- (5) Regulations made under this section may, if they so provide, be deemed to have come into operation on a date earlier than the date on which they are published in the Gazette but not earlier than the date on which the 2007 Amendment Ordinance is published in the Gazette.

- (6) To the extent that any regulations come into operation on a date earlier than the date on which they are published in the Gazette, those regulations shall be construed so as not to—
- (a) affect, in a manner prejudicial to any person, the rights of that person existing before the date on which the regulations are published in the Gazette; or
 - (b) impose liabilities on any person in respect of anything done, or omitted to be done, before that date.
- (7) In the event of an inconsistency between any regulations made under this section and the provisions of Schedule 7, Schedule 7 shall prevail to the extent of the inconsistency.

(Added 15 of 2007 s. 72)

SCHEDULE 1

[ss. 40A, 119B, 195 & 273D
& Schs. 2 & 3]

(Amended 15 of 2007 s. 73)

EDUCATIONAL ESTABLISHMENTS

1. Any school, within the meaning of section 3 of the Education Ordinance (Cap. 279), entirely maintained and controlled by the Government.
2. Any school which is registered or provisionally registered under the Education Ordinance (Cap. 279).
3. Any post secondary college registered under the Post Secondary Colleges Ordinance (Cap. 320).
4. Lingnan University established by the Lingnan University Ordinance (Cap. 1165). *(Replaced 54 of 1999 s. 36)*
5. The Education University of Hong Kong established by The Education University of Hong Kong Ordinance (Cap. 444). *(Amended 6 of 2016 s. 2)*
6. University of Hong Kong established by the University of Hong Kong Ordinance (Cap. 1053).
7. The Hong Kong Polytechnic University established by The Hong Kong Polytechnic University Ordinance (Cap. 1075).

COPYRIGHT ORDINANCE

SCHEDULE 1

S1-4

Section 8

Cap. 528

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8. The Chinese University of Hong Kong established by The Chinese University of Hong Kong Ordinance (Cap. 1109).
 9. Hong Kong Baptist University established by the Hong Kong Baptist University Ordinance (Cap. 1126).
 10. Any industrial training centre or skills centre defined in section 2 of the Vocational Training Council Ordinance (Cap. 1130).
 11. Any technical college or technical institute defined in section 2 of the Vocational Training Council Ordinance (Cap. 1130).
 12. City University of Hong Kong established by the City University of Hong Kong Ordinance (Cap. 1132).
 13. The Hong Kong Academy for Performing Arts established by The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135).
 14. The Hong Kong University of Science and Technology established by The Hong Kong University of Science and Technology Ordinance (Cap. 1141).
 15. The Open University of Hong Kong established by The Open University of Hong Kong Ordinance (Cap. 1145). (*Replaced 15 of 2007 s. 73*)
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SCHEDULE 1AA

[s. 119B]

CIRCUMSTANCES IN WHICH SECTION 119B(1) OF THIS ORDINANCE DOES NOT APPLY (EXTENT OF MAKING OR DISTRIBUTION OF INFRINGING COPIES)

PART 1

INTRODUCTORY

1. Interpretation

(1) In this Schedule—

“A4 size” (A4 尺寸) means a size measuring 29.7 cm × 21 cm;

“infringing page” (侵犯版權頁) means a page that embodies, whether in whole or in part, an infringing copy of any copyright work in a printed form that is contained in a magazine, periodical (other than a specified journal) or newspaper;

“marked retail price” (標示零售價)—

- (a) in relation to a copy of a book, means its retail price as printed in or on it by the publisher;
- (b) in relation to a copy of a publication series or multi-volume set of books, means its retail price as printed in or on it by the publisher; or

- (c) in relation to a copy of an issue of a specified journal, means its retail price as printed in or on it by the publisher;

“marked subscription price” (標示訂閱價), in relation to a specified journal, means the subscription price of the journal as printed in or on a copy of an issue of the journal by the publisher;

“qualifying copy” (限定複製品)—

- (a) in relation to a book, means a set of pages, whether in a printed or electronic form, that embodies, whether in whole or in part, an infringing copy of any copyright work in a printed form that is contained in a copy of the book, and corresponds to more than 25% of the printed pages of that copy of the book; or

- (b) in relation to a specified journal, means—

- (i) a set of pages, whether in a printed or electronic form, that embodies, whether in whole or in part, an infringing copy of any copyright work in a printed form that is contained in a copy of an issue of the journal, and corresponds to more than 25% of the printed pages of that copy of the issue; or

- (ii) a set of pages, whether in a printed or electronic form, that embodies an infringing copy made from the whole of an article in a printed copy of an issue of the journal, and corresponds to not more than 25% of the printed pages of that copy of the issue;

“recommended retail price” (建議零售價)—

- (a) in relation to a copy of a book, means its retail price as recommended by the publisher before any discount is given to traders or consumers;

COPYRIGHT ORDINANCE

SCHEDULE 1AA—PART 1

S1AA-6

Section 2

Cap. 528

- (b) in relation to a copy of a publication series or multi-volume set of books, means its retail price as recommended by the publisher before any discount is given to traders or consumers; or
- (c) in relation to a copy of an article in an issue of a specified journal, means its retail price as recommended by the publisher before any discount is given to traders or consumers;

“recommended subscription price” (建議訂閱價), in relation to a specified journal, means its subscription price as recommended by the publisher before any discount is given to traders or consumers;

“specified journal” (指明期刊) means a periodical that contains scholarly articles relating to a discipline, normally at least one of which in an issue has been peer-reviewed by one or more than one expert or scholar in the discipline.

- (2) Expressions used in this Schedule that are defined for the purposes of Part II (copyright) of this Ordinance have the same meaning as in that Part.

2. **Currency conversion**

For the purposes of converting into Hong Kong dollars a marked retail price, marked subscription price, recommended retail price, recommended subscription price or market value that is denominated in a currency other than the Hong Kong dollar, reference is to be made to—

- (a) the opening indicative counter exchange selling rate published by The Hong Kong Association of Banks in respect of that other currency; or

- (b) if no such rate is published, the representative exchange rate published by the International Monetary Fund in respect of that other currency.

PART 2

EXTENT OF MAKING OR DISTRIBUTION OF INFRINGING COPIES

3. **Magazines, periodicals (other than specified journals) and newspapers**

- (1) Section 119B(1) of this Ordinance does not apply to the making for distribution by a person, within any period of 14 days, of infringing copies of one or more than one copyright work in a printed form that is contained in magazines, periodicals (other than specified journals) or newspapers if the total number of infringing pages made by the person within that period does not exceed 500.
- (2) Section 119B(1) of this Ordinance does not apply to the distribution by a person, within any period of 14 days, of infringing copies of one or more than one copyright work in a printed form that is contained in magazines, periodicals (other than specified journals) or newspapers if the total number of infringing pages distributed by the person within that period does not exceed 500.
- (3) Part 3 of this Schedule sets out provisions relating to the calculation of the total number of infringing pages for the purposes of subsections (1) and (2).

COPYRIGHT ORDINANCE

SCHEDULE 1AA—PART 2

S1AA-10

Section 4

Cap. 528

4. **Books and specified journals**

- (1) Section 119B(1) of this Ordinance does not apply to the making for distribution by a person, within any period of 180 days, of infringing copies of one or more than one copyright work in a printed form that is contained in books or specified journals if the total value of qualifying copies made by the person within that period does not exceed \$6,000.
- (2) Section 119B(1) of this Ordinance does not apply to the distribution by a person, within any period of 180 days, of infringing copies of one or more than one copyright work in a printed form that is contained in books or specified journals if the total value of qualifying copies distributed by the person within that period does not exceed \$6,000.
- (3) Section 119B(1) of this Ordinance does not apply to the making for distribution by a person of infringing copies of one or more than one copyright work in a printed form that is contained in a book if the set of pages embodying such infringing copies made by the person does not fall within the meaning of paragraph (a) of the definition of “qualifying copy” in section 1(1) of this Schedule.
- (4) Section 119B(1) of this Ordinance does not apply to the making for distribution by a person of infringing copies of one or more than one copyright work in a printed form that is contained in a specified journal if the set of pages embodying such infringing copies made by the person does not fall within the meaning of paragraph (b)

of the definition of “qualifying copy” in section 1(1) of this Schedule.

- (5) Section 119B(1) of this Ordinance does not apply to the distribution by a person of infringing copies of one or more than one copyright work in a printed form that is contained in a book if the set of pages embodying such infringing copies distributed by the person does not fall within the meaning of paragraph (a) of the definition of “qualifying copy” in section 1(1) of this Schedule.
- (6) Section 119B(1) of this Ordinance does not apply to the distribution by a person of infringing copies of one or more than one copyright work in a printed form that is contained in a specified journal if the set of pages embodying such infringing copies distributed by the person does not fall within the meaning of paragraph (b) of the definition of “qualifying copy” in section 1(1) of this Schedule.
- (7) Part 4 of this Schedule sets out provisions relating to the determination of the value of qualifying copies for the purposes of subsections (1) and (2).

PART 3

CALCULATION OF TOTAL NUMBER OF INFRINGING PAGES

5. Calculation of total number of infringing pages

COPYRIGHT ORDINANCE

SCHEDULE 1AA—PART 3

S1AA-14

Section 5

Cap. 528

- (1) This section applies to the calculation of the total number of infringing pages for the purposes of section 3(1) and (2) of this Schedule.
- (2) In calculating the total number of infringing pages, the following formula is to be used—

$$A = B + C + D$$

where—

A means the total number of infringing pages;

B means the number of infringing pages of A4 size, as adjusted in accordance with subsections (3) and (4), if applicable;

C means the number of infringing pages smaller than A4 size, as adjusted in accordance with subsections (3) and (4), if applicable;

D means the number of infringing pages larger than A4 size, as adjusted in accordance with subsections (3) and (4), if applicable.

- (3) In calculating the total number of infringing pages made or distributed in a printed form—
 - (a) if any of the infringing pages are smaller than A4 size, the number of those infringing pages shall be adjusted downward in proportion to the difference between the size of those infringing pages and an infringing page of A4 size, with the result expressed to 2 decimal places without rounding off;
 - (b) if any of the infringing pages are larger than A4 size, the number of those infringing pages shall

- be adjusted upward in proportion to the difference between the size of those infringing pages and an infringing page of A4 size, with the result expressed to 2 decimal places without rounding off;
- (c) if any of the infringing pages embody, whether in whole or in part, an image (referred to in this paragraph as “the reduced image”) of an infringing copy that has been reduced in size from the image (referred to in this paragraph as “the original image”) of the work from which the infringing copy was made, the number of those infringing pages shall be adjusted upward in proportion to the difference between the size of the reduced image and that of the original image, with the result expressed to 2 decimal places without rounding off; and
- (d) if any of the infringing pages embody, whether in whole or in part, an image (referred to in this paragraph as “the enlarged image”) of an infringing copy that has been enlarged in size from the image (referred to in this paragraph as “the original image”) of the work from which the infringing copy was made, the number of those infringing pages shall be adjusted downward in proportion to the difference between the size of the enlarged image and that of the original image, with the result expressed to 2 decimal places without rounding off.
- (4) In calculating the total number of infringing pages made or distributed in electronic form—
- (a) all images of infringing copies embodied in the documents so made or distributed shall be printed

on paper of A4 size and each side of such printout is taken to be one infringing page;

- (b) if any of the infringing pages so printed embody, whether in whole or in part, an image (referred to in this paragraph as “the reduced image”) of an infringing copy that has been reduced in size from the image (referred to in this paragraph as “the original image”) of the work from which the infringing copy was made, the number of those infringing pages shall be adjusted upward in proportion to the difference between the size of the reduced image and that of the original image, with the result expressed to 2 decimal places without rounding off; and
- (c) if any of the infringing pages so printed embody, whether in whole or in part, an image (referred to in this paragraph as “the enlarged image”) of an infringing copy that has been enlarged in size from the image (referred to in this paragraph as “the original image”) of the work from which the infringing copy was made, the number of those infringing pages shall be adjusted downward in proportion to the difference between the size of the enlarged image and that of the original image, with the result expressed to 2 decimal places without rounding off.

PART 4

DETERMINATION OF VALUE OF QUALIFYING

COPIES

6. **Determination of value of qualifying copies made from books**

- (1) This section applies to the determination, for the purposes of section 4(1) and (2) of this Schedule, of the value of qualifying copies within the meaning of paragraph (a) of the definition of “qualifying copy” in section 1(1) of this Schedule.
- (2) A qualifying copy is taken to have the same value as a copy of a book (referred to in this section as a “comparable copy”) that—
 - (a) is not an infringing copy; and
 - (b) contains the copyright work that is the subject of the qualifying copy.
- (3) The value of a comparable copy is taken to be—
 - (a) the marked retail price of the comparable copy;
 - (b) if the comparable copy has no marked retail price, the recommended retail price of the comparable copy; or
 - (c) if the comparable copy has neither a marked retail price nor a recommended retail price, subject to subsection (4), the market value of the comparable copy in so far as it is readily ascertainable.
- (4) If the comparable copy forms one of the volumes in a copy of a publication series or multi-volume set (referred to in this section as a “comparable set”), and the comparable copy has neither a marked retail price nor a recommended retail price, the value of the comparable copy is taken to be—

COPYRIGHT ORDINANCE

SCHEDULE 1AA—PART 4

S1AA-22

Section 6

Cap. 528

- (a) a fraction of the marked retail price of the comparable set in which the denominator is the total number of printed pages of the comparable set and the numerator is the number of printed pages of the comparable copy, with the result expressed to 2 decimal places without rounding off; or
 - (b) if the comparable set has no marked retail price, a fraction of the recommended retail price of the comparable set in which the denominator is the total number of printed pages of the comparable set and the numerator is the number of printed pages of the comparable copy, with the result expressed to 2 decimal places without rounding off.
- (5) For the purposes of subsection (3)(a), if the comparable copy has 2 or more than 2 marked retail prices denominated in different currencies, the currency by reference to which the value of the comparable copy is to be calculated shall be determined in accordance with the following order—
 - (a) firstly, Hong Kong dollar;
 - (b) secondly, United States dollar; and
 - (c) thirdly, the currency in which the first marked retail price as printed in or on the comparable copy is denominated.
- (6) For the purposes of subsection (4)(a), if the comparable set has 2 or more than 2 marked retail prices denominated in different currencies, the currency by reference to which the value of the comparable copy is to be calculated shall be determined in accordance with the following order—
 - (a) firstly, Hong Kong dollar;
 - (b) secondly, United States dollar; and

- (c) thirdly, the currency in which the first marked retail price as printed in or on the comparable set is denominated.
- (7) If the marked retail price, recommended retail price or market value referred to in subsection (3) or (4) is denominated in a currency other than the Hong Kong dollar, section 2 of this Schedule applies to the conversion of that price or value into Hong Kong dollars.

7. Determination of value of qualifying copies made from specified journals (general provisions)

- (1) This section applies to the determination, for the purposes of section 4(1) and (2) of this Schedule, of the value of qualifying copies within the meaning of paragraph (b) of the definition of “qualifying copy” in section 1(1) of this Schedule.
- (2) If—
 - (a) a qualifying copy within the meaning of paragraph (b)(i) of the definition of “qualifying copy” in section 1(1) of this Schedule is made from a copy of an issue of a specified journal; and
 - (b) that qualifying copy consists of one or more than one qualifying copy within the meaning of paragraph (b)(ii) of the definition of “qualifying copy” in section 1(1) of this Schedule,

in determining the total value of the qualifying copies referred to in paragraphs (a) and (b), only the value of the qualifying copy referred to in paragraph (a) is to be taken into account.

8. Determination of value of qualifying copies made from specified journals (issues)

- (1) This section applies to the determination, for the purposes of section 4(1) and (2) of this Schedule, of the value of qualifying copies within the meaning of paragraph (b)(i) of the definition of “qualifying copy” in section 1(1) of this Schedule.
- (2) A qualifying copy is taken to have the same value as a copy of an issue of a specified journal (referred to in this section as a “comparable copy”) that—
 - (a) is not an infringing copy; and
 - (b) contains the copyright work that is the subject of the qualifying copy.
- (3) The value of a comparable copy is taken to be—
 - (a) the marked retail price of the comparable copy;
 - (b) if the comparable copy has no marked retail price, the marked subscription price of the specified journal concerned as printed in or on the comparable copy divided by the number of issues covered in the subscription, with the result expressed to 2 decimal places without rounding off; or
 - (c) if the comparable copy has no marked retail price and the specified journal concerned has no marked subscription price as printed in or on the comparable copy, the recommended subscription price of the specified journal concerned divided by the number of issues covered in the subscription,

COPYRIGHT ORDINANCE

SCHEDULE 1AA—PART 4

S1AA-28

Section 8

Cap. 528

with the result expressed to 2 decimal places without rounding off.

- (4) For the purposes of subsection (3)(a), if the comparable copy has 2 or more than 2 marked retail prices denominated in different currencies, the currency by reference to which the value of the comparable copy is to be calculated shall be determined in accordance with the following order—
- (a) firstly, Hong Kong dollar;
 - (b) secondly, United States dollar; and
 - (c) thirdly, the currency in which the first marked retail price as printed in or on the comparable copy is denominated.
- (5) For the purposes of subsection (3)(b), if the specified journal concerned has 2 or more than 2 marked subscription prices, as printed in or on the comparable copy, denominated in different currencies, the currency by reference to which the value of the comparable copy is to be calculated shall be determined in accordance with the following order—
- (a) firstly, Hong Kong dollar;
 - (b) secondly, United States dollar; and
 - (c) thirdly, the currency in which the first marked subscription price as printed in or on the comparable copy is denominated.
- (6) If the marked retail price, marked subscription price or recommended subscription price referred to in subsection (3) is denominated in a currency other than the Hong Kong dollar, section 2 of this Schedule applies to the conversion of that price into Hong Kong dollars.

9. Determination of value of qualifying copies made from specified journals (articles)

- (1) This section applies to the determination, for the purposes of section 4(1) and (2) of this Schedule, of the value of qualifying copies within the meaning of paragraph (b)(ii) of the definition of “qualifying copy” in section 1(1) of this Schedule.
- (2) A qualifying copy is taken to have the same value as a copy of an article in an issue of a specified journal (referred to in this section as a “comparable copy”) that—
 - (a) is not an infringing copy; and
 - (b) contains the copyright work that is the subject of the qualifying copy.
- (3) The value of a comparable copy is taken to be its recommended retail price.
- (4) If the recommended retail price referred to in subsection (3) is denominated in a currency other than the Hong Kong dollar, section 2 of this Schedule applies to the conversion of that price into Hong Kong dollars.

(Schedule 1AA added 15 of 2009 s. 4)

SCHEDULE 1AB

[s. 119B]

CIRCUMSTANCES IN WHICH SECTION 119B(1) OF THIS ORDINANCE DOES NOT APPLY (MANNER OF DISTRIBUTION OF INFRINGING COPIES)

1. Interpretation

Expressions used in this Schedule that are defined for the purposes of Part II (copyright) of this Ordinance have the same meaning as in that Part.

2. Manner of distribution of infringing copies

- (1) Subject to subsection (2), section 119B(1) of this Ordinance does not apply to the distribution through a wire or wireless network of an infringing copy to which access is restricted by procedures of authentication or identification.
- (2) Subsection (1) does not apply to an infringing copy embodied in a document that is distributed to an electronic mail address or facsimile number.

(Schedule 1AB added 15 of 2009 s. 4)

Schedule 1A

[s. 198]

BODIES AND AUTHORITIES SPECIFIED FOR PURPOSES OF DEFINITION OF “SPECIFIED COURSE OF STUDY”

1. Curriculum Development Council the members of which are appointed by the Chief Executive.

(Schedule 1A added 15 of 2007 s. 74)

SCHEDULE 2

[ss. 173, 191 & 199]

COPYRIGHT: TRANSITIONAL PROVISIONS AND SAVINGS

(For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.)

Introductory

1. (1) In this Schedule—
 - “the 1911 Act” (1911年法令) means the Copyright Act 1911 (1911 c. 46 U.K.) as extended to Hong Kong by Proclamation No. 3 of 1912 published in the Gazette of 28 June 1912;
 - “the 1956 Act” (1956年法令) means the Copyright Act 1956 (1956 c. 74 U.K.) as extended to Hong Kong by the Copyright (Hong Kong) Orders 1972 to 1990 (App. III, p. DD1);
 - “the Copyright Ordinance” (版權條例) means the Copyright Ordinance (Cap. 39) in force immediately before the commencement of Part II of this Ordinance;
 - “the new copyright provisions” (新的版權條文) means the provisions of this Ordinance relating to copyright, that is, Part II (including this Schedule and Schedule 1) and Schedules 4 and 5 so far as they make amendments or repeals consequential on the provisions of Part II;
 - “the WTO Ordinance” (世界貿易組織條例) means the Intellectual Property (World Trade Organization Amendments) Ordinance 1996 (11 of 1996).
- (2) References in this Schedule to “commencement”, without more, are to the date on which this Ordinance (other than the

COPYRIGHT ORDINANCE

SCHEDULE 2

S2-4

Section 2

Cap. 528

provisions specified in section 1(2) of this Ordinance) comes into force.

- (3) References in this Schedule to “existing works” are to works made before commencement; and for this purpose a work of which the making extended over a period is to be taken to have been made when its making was completed.

[cf. 1988 c. 48 Sch. 1 para. 1 U.K.]

2. (1) In relation to the 1956 Act, references in this Schedule to a work include any work or other subject-matter within the meaning of that Act.
- (2) In relation to the 1911 Act—
- (a) references in this Schedule to “copyright” include the right conferred by section 24 of that Act in substitution for a right subsisting immediately before the commencement of that Act;
 - (b) references in this Schedule to “copyright in a sound recording” are to the copyright under that Act in records embodying the recording; and
 - (c) references in this Schedule to “copyright in a film” are to any copyright under that Act in the film (so far as it constituted a dramatic work for the purposes of that Act) or in photographs forming part of the film.

[cf. 1988 c. 48 Sch. 1 para. 2 U.K.]

General principles: continuity of the law

3. The new copyright provisions apply in relation to things existing at commencement as they apply in relation to things coming into

COPYRIGHT ORDINANCE

SCHEDULE 2

S2-6

Section 4

Cap. 528

existence after commencement, subject to any express provision to the contrary.

[cf. 1988 c. 48 Sch. 1 para. 3 U.K.]

- 4.
- (1) The provisions of this paragraph have effect for securing the continuity of the law so far as the new copyright provisions re-enact (with or without modification) earlier provisions.
 - (2) A reference in an enactment, instrument or other document to copyright, or to a work or other subject-matter in which copyright subsists, which apart from this Ordinance would be construed as referring to copyright under the 1956 Act is to be construed, so far as may be required for continuing its effect, as being, or as the case may require, including, a reference to copyright under this Ordinance or to works in which copyright subsists under this Ordinance.
 - (3) Anything done (including subsidiary legislation made), or having effect as done, under or for the purposes of a provision repealed by this Ordinance has effect as if done under or for the purposes of the corresponding provision of the new copyright provisions.
 - (4) References (expressed or implied) in this Ordinance or any other enactment, instrument or document to any of the new copyright provisions are, so far as the context permits, to be construed as including, in relation to times, circumstances and purposes before commencement, a reference to corresponding earlier provisions.
 - (5) A reference (expressed or implied) in an enactment, instrument or other document to a provision repealed by this Ordinance is to be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of this Ordinance.

COPYRIGHT ORDINANCE

SCHEDULE 2

S2-8

Section 5

Cap. 528

- (6) The provisions of this paragraph have effect subject to any specific transitional provision or saving and to any express amendment made by this Ordinance.

[cf. 1988 c. 48 Sch. 1 para. 4 U.K.]

Subsistence of copyright: general

5. (1) Copyright subsists in an existing work after commencement if copyright subsisted in it immediately before commencement.
- (2) Copyright subsists in an existing work after commencement if—
- (a) it would qualify for copyright protection under section 177 or 188 of this Ordinance—
 - (i) had it been made after commencement;
 - (ii) had it been published after commencement; or
 - (iii) in the case of a broadcast or cable programme, had it been made or sent after commencement; and
 - (b) copyright under the 1956 Act in the work would not have expired had copyright subsisted in it under that Act.
- (3) Copyright in an existing work qualifying for copyright protection under subparagraph (2) expires at the time when copyright in the work would expire under the following provisions had copyright subsisted in it immediately before commencement.

Contrary rights

6. Where any person has before commencement incurred any significant expenditure or liability in connection with the

reproduction or performance of a work or other subject-matter in a manner that at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when it would have been lawful but for the commencement, nothing in this Ordinance diminishes or prejudices any right or interest arising from or in connection with such action that is subsisting and valuable immediately before commencement unless the person who by virtue of paragraph 5(2) becomes entitled to restrain the reproduction or performances agrees to pay such compensation as the parties agree, or failing such agreement, as the Copyright Tribunal may determine.

Subsistence of copyright: films, broadcasts and cable programmes

7. (1) No copyright subsists in a film, as such, made before 12 December 1972.
- (2) Where a film made before that date was an original dramatic work within the meaning of the 1911 Act, the new copyright provisions have effect in relation to the film as if it was an original dramatic work within the meaning of Part II.
- (3) The new copyright provisions have effect in relation to photographs forming part of a film made before 12 December 1972 as they have effect in relation to photographs not forming part of a film.
- (4) In relation to a film in which copyright does not or did not subsist as such but which is or was protected—
 - (a) as an original dramatic works; or
 - (b) by virtue of the protection of the photographs forming part of the film,

references in the new copyright provisions, and in this Schedule, to copyright in a film are to any copyright in the

film as an original dramatic work or, as the case may be, in photographs forming part of the film.

[cf. 1988 c. 48 Sch. 1 para. 7 U.K.]

8. No copyright subsists in—

- (a) a broadcast made before 12 December 1972; or
- (b) a cable programme included in a cable programme service before 11 March 1994,

and any such broadcast or cable programme is to be disregarded for the purposes of section 20(3) of this Ordinance (duration of copyright in repeats).

[cf. 1988 c. 48 Sch. 1 para. 9 U.K.]

Authorship of work

9. The question who was the author of an existing work is to be determined in accordance with the new copyright provisions for the purposes of the rights conferred by Division IV of Part II (moral rights), and for all other purposes is to be determined in accordance with the law in force at the time the work was made.

[cf. 1988 c. 48 Sch. 1 para. 10 U.K.]

First ownership of copyright

10. (1) The question who was the first owner of copyright in an existing work is to be determined in accordance with the law in force at the time the work was made.
- (2) Where before commencement a person commissioned the making of a work in circumstances falling within—

COPYRIGHT ORDINANCE

SCHEDULE 2

S2-14

Section 11

Cap. 528

- (a) section 4(3) of the 1956 Act or paragraph (a) of the proviso to section 5(1) of the 1911 Act (engravings, photographs and portraits); or
- (b) the proviso to section 12(4) of the 1956 Act (sound recordings),

those provisions apply to determine first ownership of copyright in any work made in pursuance of the commission after commencement.

[cf. 1988 c. 48 Sch. 1 para. 11 U.K.]

Employee works

11. Section 14(2) of this Ordinance does not apply to an existing work.

Commissioned works

12. Section 15 of this Ordinance does not apply to an existing work.

Duration of copyright in existing works

13. (1) The following provisions have effect with respect to the duration of copyright in existing works.

The question which provision applies to a work is to be determined by reference to the facts immediately before commencement; and expressions used in this paragraph which were defined for the purposes of the 1956 Act have the same meaning as in that Act.

- (2) Copyright in the following descriptions of work continues to subsist until the date on which it would have expired under the 1956 Act—
 - (a) literary, dramatic or musical works in relation to which the period of 50 years mentioned in the proviso to section 2(3) of the 1956 Act (duration of copyright in works made available to the public after the death of the author) has begun to run;
 - (b) engravings in relation to which the period of 50 years mentioned in paragraph (a) of the proviso to section 3(4) of the 1956 Act (duration of copyright in works published after the death of the author) has begun to run;
 - (c) published photographs and photographs taken before 12 December 1972;
 - (d) published sound recordings and sound recordings made before 12 December 1972;
 - (e) published films.
- (3) Copyright in anonymous or pseudonymous literary, dramatic, musical or artistic works (other than photographs) or films continues to subsist—
 - (a) if the work is published, until the date on which it would have expired in accordance with the 1956 Act; and
 - (b) if the work is unpublished, until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force or, if during that period the work is first made available to the public within the meaning of section 17(5) or 19(6) of this Ordinance (duration of copyright in works of unknown authorship), the date on which copyright expires in accordance with that provision,

unless, in any case, the identity of the author becomes known before that date, in which case section 17(2) or 19(2) of this Ordinance applies (general rule: life of the author plus 50 years).

- (4) Copyright in the following descriptions of work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force—
 - (a) literary, dramatic and musical works of which the author has died and in relation to which none of the acts mentioned in paragraphs (a) to (e) of the proviso to section 2(3) of the 1956 Act has been done;
 - (b) unpublished engravings of which the author has died;
 - (c) unpublished photographs taken on or after 12 December 1972;
 - (d) unpublished films of which the person by whom the arrangements necessary for the making of the film were undertaken has died.
- (5) Copyright in an unpublished sound recordings made on or after 12 December 1972 continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force unless the recording is published before the end of that period in which case copyright in it continues until the end of the period of 50 years from the end of the calendar year in which the recording is published.
- (6) Copyright in any other description of existing work continues to subsist until the date on which copyright in that description of work expires in accordance with sections 17 to 21 of this Ordinance.

- (7) The above provisions do not apply to works subject to Government or Legislative Council copyright (see paragraphs 32 to 34 below).

[cf. 1988 c. 48 Sch. 1 para. 12 U.K.]

Acts infringing copyright

14. (1) The provisions of Divisions II and III of Part II as to the acts constituting an infringement of copyright apply only in relation to acts done after commencement; the provisions of the 1956 Act and the Copyright Ordinance continue to apply in relation to acts done before commencement.
- (2) Section 25 of this Ordinance does not apply in relation to a copy of a sound recording or computer program acquired by any person before 10 May 1996 for the purpose of renting it to the public.
- (3) Where any person has before 1 January 1995 incurred any significant expenditure or liability in connection with the rental of any copy of a work or subject-matter in a manner that at the time was lawful, or for the purpose of or with a view to such a rental at a time when it would have been lawful but for the commencement of section 10 of the WTO Ordinance, nothing in that Ordinance shall diminish or prejudice any right or interest arising from or in connection with such action that is subsisting and valuable immediately before the commencement of that section if that person pays to the person who by virtue of the commencement of that section becomes entitled to restrain the rental such equitable remuneration as the parties agree, or failing such agreement, as the Copyright Tribunal may determine.
- (4) For the purposes of section 35 of this Ordinance (meaning of “infringing copy”) the question whether the making of an

article constituted an infringement of copyright, or would have done if the article had been made in Hong Kong, is to be determined—

- (a) in relation to an article made on or after 10 May 1996 and before commencement, by reference to the 1956 Act as amended by the WTO Ordinance;
 - (b) in relation to an article made on or after 12 December 1972 and before 10 May 1996, by reference to the 1956 Act immediately before it was amended by the WTO Ordinance; and
 - (c) in relation to an article made before 12 December 1972, by reference to the 1911 Act.
- (5) For the purposes of section 35 of the Ordinance (meaning of “infringing copy”), if an article has been imported before commencement without infringing copyright under the law existing at the time of importation, the terms of any exclusive licence agreement relating to that article are to be disregarded and, for the avoidance of doubt, any possession or dealing in the article which takes place after commencement shall not infringe copyright within the terms of sections 31 and 118 to 133 of the Ordinance.
- (6) For the purposes of the application of sections 40(2) and 71(3) of this Ordinance (subsequent exploitation of things whose making was, by virtue of an earlier provision of the section, not an infringement of copyright) to things made before commencement, it is to be assumed that the new copyright provisions were in force at all material times.
- (7) Section 63 of this Ordinance (articles for producing material in a particular typeface) applies where articles have been marketed as mentioned in subsection (1) of that section before commencement with the substitution for the period mentioned in subsection (2) of that section of the period of 25 years

from the end of the calendar year in which the new copyright provisions come into force.

- (8) Section 64 of this Ordinance (transfer of copies, adaptations, &c. of work in electronic form) does not apply in relation to a copy purchased before commencement.
- (9) In section 74 of this Ordinance (reconstruction of buildings) the reference to the owner of the copyright in the drawings or plans is, in relation to buildings constructed before commencement, to the person who at the time of the construction was the owner of the copyright in the drawings or plans under the 1956 Act or the 1911 Act.

[cf. 1988 c. 48 Sch. 1 para. 14 U.K.]

- 15. (1) Sections 66 and 75 of this Ordinance (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author) has effect in relation to existing works subject to the following provisions.
- (2) Subsection (1)(b)(i) of section 66 (assumption as to expiry of copyright) does not apply in relation to photographs.
- (3) Subsection (1)(b)(ii) of the sections (assumption as to death of author) applies only—
 - (a) where paragraph 11(3)(b) applies (unpublished anonymous or pseudonymous works), after the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force; or
 - (b) where paragraph 11(6) applies (cases in which the duration of copyright is the same under the new copyright provisions as under the previous law).

[cf. 1988 c. 48 Sch. 1 para. 15 U.K.]

COPYRIGHT ORDINANCE

SCHEDULE 2

S2-26

Section 16

Cap. 528

16. The following provisions of section 7 of the 1956 Act continue to apply in relation to existing works—

- (a) subsection (6) (copying of unpublished works from manuscript or copy in library, museum or other institution);
- (b) subsection (7) (publication of work containing material to which subsection (6) applies), except paragraph (a) (duty to give notice of intended publication);
- (c) subsection (8) (subsequent broadcasting, performance, etc. of material published in accordance with subsection (7)),

and subsection (9)(d) (illustrations) continues to apply for the purposes of those provisions.

[cf. 1988 c. 48 Sch. 1 para. 16 U.K.]

17. Where in the case of a dramatic or musical work made before 1 July 1912, the right conferred by the 1911 Act did not include the sole right to perform the work in public, the acts restricted by the copyright are to be treated as not including—

- (a) performing the work in public;
- (b) broadcasting the work or including it in a cable programme service; or
- (c) doing any of the above in relation to an adaptation of the work,

and where the right conferred by the 1911 Act consisted only of the sole right to perform the work in public, the acts restricted by the copyright are to be treated as consisting only of those acts.

[cf. 1988 c. 48 Sch. 1 para. 17 U.K.]

18. Where a work made before 1 July 1912 consists of an essay, article or portion forming part of and first published in a review, magazine or their periodical or work of a like nature, the copyright is subject to any right of publishing the essay, article, or portion in a separate form to which the author was entitled at the commencement of the 1911 Act.

[cf. 1988 c. 48 Sch. 1 para. 18 U.K.]

Enforcement of copyright in registrable design

19. (1) Where section 10 of the 1956 Act (effect of industrial application of design corresponding to artistic work) applied in relation to an artistic work at any time before 1 August 1989, section 87(3) of this Ordinance applies and the period of 15 years mentioned there is to be calculated from the end of the calendar year in which the articles were first marketed.
- (2) Where section 10 of the 1956 Act (effect of industrial application of design corresponding to artistic work) applied in relation to an artistic work at any time on or after 1 August 1989 and before commencement, section 87(3) of this Ordinance applies with the substitution for the period of 15 years mentioned there of the period of 25 years and the period of 25 years is to be calculated from the end of the calendar year in which the articles were first marketed.
- (3) Except as provided in subparagraphs (1) and (2), section 87 of this Ordinance applies only where articles are marketed as mentioned in section 87(1)(b) of this Ordinance after commencement.

[cf. 1988 c. 48 Sch. 1 para. 20 U.K.]

Abolition of statutory recording licence

20. Section 8 of the 1956 Act (statutory licence to copy records sold by retail) and the Copyright Royalty System (Records) Regulations (App. I, p. AL1) continue to apply where notice under subsection (1)(b) of section 8 was given before the repeal of that section by this Ordinance, but only in respect of the making of records—

- (a) within one year of the repeal coming into force; and
- (b) up to the number stated in the notice as intended to be sold.

[cf. 1988 c. 48 Sch. 1 para. 21 U.K.]

Moral rights

21. (1) No act done before commencement is actionable by virtue of any provision of Division IV of Part II (moral rights).
- (2) Section 43 of the 1956 Act (false attribution of authorship) continues to apply in relation to acts done before commencement.

[cf. 1988 c. 48 Sch. 1 para. 22 U.K.]

22. (1) The following provisions have effect with respect to the rights conferred by—
- (a) section 89 of this Ordinance (right to be identified as author or director); and
 - (b) section 92 of this Ordinance (right to object to derogatory treatment of work).
- (2) The rights do not apply—
- (a) in relation to a literary, dramatic, musical and artistic work of which the author died before commencement; or

COPYRIGHT ORDINANCE

SCHEDULE 2

S2-32

Section 23

Cap. 528

- (b) in relation to a film made before commencement.
- (3) The rights in relation to an existing literary, dramatic, musical or artistic work do not apply—
 - (a) where copyright first vested in the author, to anything which by virtue of an assignment of copyright made or licence granted before commencement may be done without infringing copyright;
 - (b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.
- (4) The rights do not apply to anything done in relation to a record made in pursuance of section 8 of the 1956 Act (statutory recording licence).

[cf. 1988 c. 48 Sch. 1 para. 23 U.K.]

Certification of rental to the public of copies of computer programs or sound recordings

23. The repeal by this Ordinance of sections 41A (special provisions as to rental of computer programs and sound recordings) and 41B (application to settle royalty or other sum payable for rental of computer programs or sound recordings) of the Copyright Ordinance does not affect the operation of those sections in relation to any certification made by the Secretary for Trade and Industry under section 41A(4) of the Copyright Ordinance before commencement.

Assignments and licences

24. (1) Any document made or event occurring before commencement which had any operation—

COPYRIGHT ORDINANCE

SCHEDULE 2

S2-34

Section 25

Cap. 528

- (a) affecting the ownership of the copyright in an existing work; or
 - (b) creating, transferring or terminating an interest, right or licence in respect of the copyright in an existing work, has the corresponding operation in relation to copyright in the work under this Ordinance.
- (2) Expressions used in such a document are to be construed in accordance with their effect immediately before commencement.

[cf. 1988 c. 48 Sch. 1 para. 25 U.K.]

25. (1) Section 102(1) of this Ordinance (assignment of future copyright: statutory vesting of legal interest on copyright coming into existence) does not apply in relation to an agreement made before 12 December 1972.
- (2) The repeal by this Ordinance of section 37(2) of the 1956 Act (assignment of future copyright: devolution of right where assignee dies before copyright comes into existence) does not affect the operation of that provision in relation to an agreement made before commencement.

[cf. 1988 c. 48 Sch. 1 para. 26 U.K.]

26. (1) Where the author of a literary, dramatic, musical or artistic work was the first owner of the copyright in it, no assignment of the copyright and no grant of any interest in it, made by him (otherwise than by will) on or after 1 July 1912 and before 12 December 1972, shall operate to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of 25 years from the death of the author.

- (2) The reversionary interest in the copyright expectant on the termination of that period may after commencement be assigned by the author during his life but in the absence of any assignment, on his death, devolves on his legal personal representatives as part of his estate.
- (3) Nothing in this paragraph affects—
 - (a) an assignment of the reversionary interest by a person to whom it has been assigned;
 - (b) an assignment of the reversionary interest after the death of the author by his personal representatives or any person becoming entitled to it; or
 - (c) any assignment of the copyright after the reversionary interest has fallen in.
- (4) Nothing in this paragraph applies to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.
- (5) In subparagraph (4) “collective work” (匯集作品) means—
 - (a) any encyclopaedia, dictionary, yearbook, or similar work;
 - (b) a newspaper, review, magazine, or similar periodical; and
 - (c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

[cf. 1988 c. 48 Sch. 1 para. 27 U.K.]

27. (1) This paragraph applies where copyright subsists in a literary, dramatic, musical or artistic work made before 1 July 1912 in relation to which the author, before the commencement of the 1911 Act, made such an assignment or grant as was mentioned in paragraph (a) of the proviso to section 24(1) of

COPYRIGHT ORDINANCE

SCHEDULE 2

S2-38

Section 28

Cap. 528

that Act (assignment or grant of copyright or performing right for full term of the right under the previous law).

- (2) If before commencement any event has occurred or notice has been given which by virtue of paragraph 38 of the Seventh Schedule to the 1956 Act had any operation in relation to copyright in the work under that Act, the event or notice has the corresponding operation in relation to copyright under this Ordinance.
- (3) Any right which immediately before commencement would by virtue of paragraph 38(3) of that Schedule have been exercisable in relation to the work, or copyright in it, is exercisable in relation to the work or copyright in it under this Ordinance.
- (4) If in accordance with paragraph 38(4) of that Schedule copyright would, on a date on or after 12 December 1972, have reverted to the author or his personal representatives and that date falls after the commencement of the new copyright provisions—
 - (a) the copyright in the work reverts to the author or his personal representatives, as the case may be; and
 - (b) any interest of any other person in the copyright which subsists on that date by virtue of any document made before 1 July 1912 thereupon determines.

[cf. 1988 c. 48 Sch. 1 para. 28 U.K.]

28. Section 103(2) of this Ordinance (rights of exclusive licensee against successors in title of person granting licence) does not apply in relation to an exclusive licence granted before commencement.

[cf. 1988 c. 48 Sch. 1 para. 29 U.K.]

Bequests

29. (1) Section 104 of this Ordinance (copyright to pass under will with original document or other material thing embodying unpublished work)—
- (a) does not apply where the testator died before 12 December 1972; and
 - (b) where the testator died on or after that date and before commencement, applies only in relation to an original document embodying a work.
- (2) In the case of an author who died before 12 December 1972, the ownership after his death of a manuscript of his, where such ownership has been acquired under a testamentary disposition made by him and the manuscript is of a work which has not been published or performed in public, is prima facie proof of the copyright being with the owner of the manuscript.

[cf. 1988 c. 48 Sch. 1 para. 30 U.K.]

Remedies for infringement

30. (1) Sections 107 and 108 of this Ordinance (remedies for infringement) apply only in relation to an infringement of copyright committed after commencement; section 17 of the 1956 Act continues to apply in relation to infringements committed before commencement.
- (2) Section 109 of this Ordinance (delivery up of infringing copies) applies to infringing copies and other articles made before or after commencement; section 18 of the 1956 Act, and section 7 of the 1911 Act, (conversion damages, etc.), do not apply after commencement except for the purposes of proceedings begun before commencement.

COPYRIGHT ORDINANCE

SCHEDULE 2

S2-42

Section 31

Cap. 528

- (3) Sections 112 and 113 of this Ordinance (rights and remedies of exclusive licensee) apply where sections 107 to 109 of this Ordinance apply; section 19 of the 1956 Act continues to apply where section 17 or 18 of that Act applies.
- (4) Sections 115 to 117 of this Ordinance (presumptions) apply only in proceedings brought by virtue of this Ordinance; section 20 of the 1956 Act continues to apply in proceedings brought by virtue of that Act.

[cf. 1988 c. 48 Sch. 1 para. 31 U.K.]

- 31. Sections 112 and 113 of this Ordinance (rights and remedies of exclusive licensee) do not apply to a licence granted before 12 December 1972.

[cf. 1988 c. 48 Sch. 1 para. 32 U.K.]

- 32. The provisions of section 118 of this Ordinance (criminal liability for making or dealing with infringing articles, etc.) apply only in relation to acts done after commencement; section 21 of the 1956 Act (penalties and summary proceedings in respect of dealings which infringe copyright) and sections 5 and 5A of the Copyright Ordinance (offences in connection with infringing copies and making infringing copies outside Hong Kong, etc.) continue to apply in relation to acts done before commencement.

[cf. 1988 c. 48 Sch. 1 para. 33 U.K.]

Ships, aircraft and hovercraft

COPYRIGHT ORDINANCE

SCHEDULE 2

S2-44

Section 34

Cap. 528

33. Section 179 of this Ordinance (ships, aircraft and hovercraft registered in Hong Kong) does not apply in relation to anything done before commencement.

[cf. 1988 c. 48 Sch. 1 para. 39 U.K.]

Government copyright

34. (1) Section 182 of this Ordinance (general provisions as to Government copyright) applies to an existing work if—
- (a) it was made, before commencement, by or under the direction or control of—
 - (i) Her Majesty in right of the Government of Hong Kong; or
 - (ii) a department of that Government; or
 - (b) it was first published, before commencement, by or under such direction or control, in Hong Kong,
- and the work is not one to which section 183, 184 or 185 of this Ordinance applies (copyright in Ordinances, Bills and Legislative Council copyright: see paragraphs 36 and 37 below).
- (2) Section 182(1)(b) of this Ordinance (first ownership of copyright) has effect subject to any agreement entered into before commencement under section 39(6) of the 1956 Act.

[cf. 1988 c. 48 Sch. 1 para. 40 U.K.]

35. (1) The following provisions have effect with respect to the duration of copyright in existing works to which section 182 of this Ordinance (Government copyright) applies.

The question which provision applies to a work is to be determined by reference to the facts immediately before commencement; and expressions used in this paragraph which

were defined for the purposes of the 1956 Act have the same meaning as in that Act.

- (2) Copyright in the following descriptions of work continues to subsist until the date on which it would have expired in accordance with the 1956 Act—
 - (a) published literary, dramatic or musical works;
 - (b) artistic works other than engravings or photographs;
 - (c) published engravings;
 - (d) published photographs and photographs taken before 12 December 1972;
 - (e) published sound recordings and sound recordings made before 12 December 1972;
 - (f) published films.
- (3) Copyright in unpublished literary, dramatic or musical works or films continues to subsist until—
 - (a) the date on which copyright expires in accordance with section 182(3) of this Ordinance; or
 - (b) the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force,whichever is the later.
- (4) Copyright in the following descriptions of work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force—
 - (a) unpublished engravings;
 - (b) unpublished photographs taken on or after 12 December 1972.

COPYRIGHT ORDINANCE

SCHEDULE 2

S2-48

Section 36

Cap. 528

- (5) Copyright in a sound recording not falling within subparagraph (2) above continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force, unless the recording is published before the end of that period, in which case copyright expires 50 years from the end of the calendar year in which it is published.

[cf. 1988 c. 48 Sch. 1 para. 41 U.K.]

36. Section 183 of this Ordinance (copyright in Ordinance) applies to existing Ordinances.

[cf. 1988 c. 48 Sch. 1 para. 42 U.K.]

Legislative Council copyright

37. (1) Section 184 of this Ordinance (general provisions as to Legislative Council copyright) applies to existing unpublished literary, dramatic, musical or artistic works, but does not otherwise apply to existing works.
- (2) Section 185 of this Ordinance (copyright in Bills) does not apply to a Bill which was presented to the Legislative Council and published before commencement.

[cf. 1988 c. 48 Sch. 1 para. 43 U.K.]

Copyright vesting in certain international organizations

38. (1) Any work in which immediately before commencement copyright subsisted by virtue of section 33 of the 1956 Act is deemed to satisfy the requirements of section 188(1) of this Ordinance.

COPYRIGHT ORDINANCE

SCHEDULE 2

S2-50

Section 39

Cap. 528

- (2) Copyright in any such work which is unpublished continues to subsist until the date on which it would have expired in accordance with the 1956 Act, or the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force, whichever is the earlier.

[cf. 1988 c. 48 Sch. 1 para. 44 U.K.]

Meaning of “publication”

39. Section 196(3) of this Ordinance (construction of building treated as equivalent to publication) applies only where the construction of the building began after commencement.

[cf. 1988 c. 48 Sch. 1 para. 45 U.K.]

Meaning of “unauthorized”

40. For the purposes of the application of the definition in section 198(1) of this Ordinance (minor definitions) of the expression “unauthorized” in relation to things done before commencement— *(Amended 64 of 2000 s. 18)*

- (a) paragraph (a) applies in relation to things done before 12 December 1972 as if the reference to the licence of the copyright owner were a reference to his consent or acquiescence;
- (b) paragraph (b) applies with the substitution for the words from “or, in a case” to the end of the words “or any person lawfully claiming under him”; and
- (c) paragraph (c) is disregarded.

[cf. 1988 c. 48 Sch. 1 para. 46 U.K.]

Saving of subsidiary legislation

41. Until rules are made by the Chief Justice under section 174 of this Ordinance, the Copyright Tribunal Rules (App. I, p. BF1)+ in force immediately before commencement, so far as they are not inconsistent with this Ordinance, continue in force and have effect for all purposes as if made under this Ordinance, subject to such necessary adaptations and modifications as may be necessary for their having effect under this Ordinance.
42. Until rules of court under the High Court Ordinance (Cap. 4) are made for the purposes of sections 144 and 271 of this Ordinance, the Copyright (Border Measures) Rules (*L.N. 482 of 1996*), so far as they are not inconsistent with this Ordinance, continue in force and have effect as if made for the purposes of those sections subject to such necessary adaptations and modifications as may be necessary for those rules to have effect under the appropriate Part of this Ordinance. (*Amended 25 of 1998 s. 2*)
43. Until regulations are made by the Secretary for Commerce and Economic Development under section 46 of this Ordinance, the Copyright (Libraries) Regulations (App. I, p. AJ1) as amended and in force immediately before commencement, so far as they are not inconsistent with this Ordinance, continue in force and have effect for all purposes as if made under this Ordinance, subject to such necessary adaptations and modifications as may be necessary for their having effect under this Ordinance. (*Amended L.N. 173 of 2000; L.N. 106 of 2002; L.N. 130 of 2007*)

COPYRIGHT ORDINANCE

SCHEDULE 2

S2-54

Cap. 528

+ Please also see L.N. 5 of 1997.

SCHEDULE 3

[ss. 233 & 237]

RIGHTS IN PERFORMANCE: TRANSITIONAL PROVISIONS AND SAVINGS

Introductory

1. (1) In this Schedule—
 - “the Copyright Ordinance” (《版權條例》) means the Copyright Ordinance (Cap. 39) in force immediately before the commencement of Part III of this Ordinance;
 - “the new performance rights provisions” (新的表演權利條文) means the provisions of this Ordinance relating to rights in performances, that is, Part III (including this Schedule and Schedule 1), Schedules 4 and 5 and so far as they make amendments or repeals consequential on the provisions of Part III.
 - (2) References in this Schedule to “commencement”, without more, are to the date on which the new performance rights provisions come into force.
 - (3) References in this Schedule to “existing performances” (現存的表演) are to performances given before commencement; and for this purpose a performance which extended over a period is to be taken to have been given when the performance was completed.
2. In relation to the Copyright Ordinance, “performance” (表演) means—
 - (a) a dramatic performance;

(b) a musical performance; or

(c) a reading or recitation of a literary work,

that is, or so far as it is, an acoustic presentation of an unfixed or live performance given by one or more individual persons.

General principles: continuity of the law

3. The new performance rights provisions apply in relation to performances given before commencement as they apply in relation to performances given after commencement, subject to any express provision to the contrary.
4.
 - (1) The provisions of this paragraph have effect for securing the continuity of the law so far as the new performance rights provisions re-enact (with or without modification) earlier provisions.
 - (2) A reference in an enactment, instrument or other document to performer's rights, or to a performance in which rights subsists, which apart from this Ordinance would be construed as referring to performers' rights under the Copyright Ordinance is to be construed, so far as may be required for continuing its effect, as being, or as the case may require, including, a reference to performers' rights under this Ordinance or to performances in which rights subsist under this Ordinance.
 - (3) Anything done (including subsidiary legislation made), or having effect as done, under or for the purposes of a provision repealed by this Ordinance has effect as if done under or for the purposes of the corresponding provision of the new performance rights provisions.

COPYRIGHT ORDINANCE

SCHEDULE 3

S3-6

Section 5

Cap. 528

- (4) References (expressed or implied) in this Ordinance or any other enactment, instrument or document to any of the new performance rights provisions are, so far as the context permits, to be construed as including, in relation to times, circumstances and purposes before commencement, a reference to corresponding earlier provisions.
- (5) A reference (expressed or implied) in an enactment, instrument or other document to a provision repealed by this Ordinance is to be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of this Ordinance.
- (6) The provisions of this paragraph have effect subject to any specific transitional provision or saving and to any express amendment made by this Ordinance.

Subsistence of rights in performances

- 5. (1) The rights conferred by Part III subsist in an existing performance after commencement if—
 - (a) the performance was a qualifying performance within the meaning of the Copyright Ordinance or would be a qualifying performance had it been given after commencement; and
 - (b) either—
 - (i) the performance was given not earlier than 50 years before the first day of the calendar year in which the new performance rights provisions commence; or
 - (ii) if the fixation of the performance was released within 50 years from the end of the calendar year in which the performance was given, the release took place not earlier than 50 years before the

COPYRIGHT ORDINANCE

SCHEDULE 3

S3-8

Section 6

Cap. 528

first day of the calendar year in which the new performance rights provisions commence.

- (2) The rights conferred by Part III in an existing performance continue to subsist until the date on which those rights in that performance expire in accordance with section 214 of this Ordinance.

Contrary rights

6. Where any person has before commencement incurred any significant expenditure or liability in connection with the fixation of a performance or reproduction of a fixation in a manner that at the time was lawful, or for the purpose of or with a view to the fixation of a performance or reproduction of a fixation at a time when it would have been lawful but for the commencement, nothing in this Ordinance diminishes or prejudices any right or interest arising from or in connection with such action that is subsisting and valuable immediately before the commencement unless the person who by virtue of the commencement becomes entitled to restrain the fixation or reproduction of the performances agrees to pay such compensation as the parties agree, or failing such agreement, as the Copyright Tribunal may determine.

Acts infringing rights in performances

7. (1) The provisions of Part III as to the acts constituting an infringement of the rights conferred by that Part apply only in relation to acts done after commencement; the provisions of the Copyright Ordinance continue to apply in relation to acts done on or after 20 December 1996 and before commencement.

- (2) For the purposes of section 229 of this Ordinance (meaning of “infringing fixation”) the question whether the fixation constituted an infringement of performers’ rights, or would have done if the performance had been given in Hong Kong, is to be determined, in relation to a performance given on or after 20 December 1996 and before commencement, by reference to the Copyright Ordinance.

Remedies for infringement

8. Section 228 of this Ordinance (delivery up of infringing fixations) applies to infringing fixations made before and after commencement; section 32 of the Copyright Ordinance does not apply after commencement except for the purposes of proceedings begun before commencement.

Ships, aircraft and hovercraft

9. Section 235 of this Ordinance (ships, aircraft and hovercraft registered in Hong Kong) does not apply in relation to anything done before commencement.
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Schedule 4

(Omitted as spent)

SCHEDULE 5

[s. 281 & Schs. 2 & 3]

REPEALS

Enactment	Extent of repeal
1. Copyright Ordinance (Cap. 39)	The whole Ordinance
2. Copyright (Notice of Publication) Regulations (App. I, p. AK1)	The whole Regulations
3. Copyright (Hong Kong) Orders 1972 to 1990 (App. III, p. DD1)	All the Orders
4. Copyright (International Organizations) Order, 1957 (S.I. 1957 No. 1524 U.K.)	In so far as the Order forms part of the law of Hong Kong
5. Copyright (Broadcasting Organizations) Order, 1961 (S.I. 1961 No. 2460 U.K.)	In so far as the Order forms part of the law of Hong Kong
6. Copyright (Computer Software) (Extension to Territories) Order 1987 (S.I. 1987 No. 2200 U.K.)	In so far as the Order forms part of the law of Hong Kong
7. Copyright (Taiwan) Order 1990 (<i>L.N. 205 of 1990</i>)	The whole Order
8. Copyright (Application to Other Countries, Territories or Areas) Regulation (Cap. 39 sub. leg. A)	The whole Regulation
9. Copyright (Designation of Qualifying Countries, Territories or Areas) Regulation (Cap. 39 sub. leg. B)	The whole Regulation

SCHEDULE 6

[s. 282]

TRANSITIONAL PROVISIONS AND SAVINGS

Transitional provisions and savings in
relation to amendments effected by
the Copyright (Amendment)
Ordinance 2003
(27 of 2003)

1. Interpretation

- (1) In this Schedule, unless the context otherwise requires—
“amendment Ordinance of 2003” (《2003年修訂條例》)
means the Copyright (Amendment) Ordinance 2003 (27
of 2003);
“Suspension Ordinance” (《暫停條例》) means the
Copyright (Suspension of Amendments) Ordinance 2001
(Cap. 568).
- (2) In this Schedule, a reference to this Ordinance as it
applied immediately before the commencement* of
the amendment Ordinance of 2003 is a reference to
this Ordinance as read together with the Suspension
Ordinance, as those Ordinances applied immediately
before that commencement.

2. Application of section 35A of this Ordinance to previously

imported copies

- (1) This section applies to a copy of a work that is an infringing copy for the purposes of section 35(3) of this Ordinance as it applied immediately before the commencement of the amendment Ordinance of 2003, and is such an infringing copy by virtue only of an importation or proposed importation into Hong Kong that occurred before that commencement.
- (2) For the purpose of any act done after the commencement of the amendment Ordinance of 2003 in relation to a copy of a work to which this section applies (including any act alleged to constitute an infringement of copyright or an offence under this Ordinance), section 35A of this Ordinance shall have effect as if it had been enacted before the occurrence of the importation or proposed importation referred to in subsection (1) and, accordingly, the copy is not to be regarded as an infringing copy unless, having regard to section 35A of this Ordinance, it would also be an infringing copy for the purposes of section 35(3) of this Ordinance if the importation or proposed importation into Hong Kong had occurred immediately after that commencement.
- (3) For the avoidance of doubt, nothing in this section or in the amendment Ordinance of 2003 affects any right of action in relation to an infringement of copyright that occurred before the commencement of the amendment Ordinance of 2003.

3. Exemption from criminal liability previously incurred in respect of “parallel-imported” copies of

**works to which section 35A
of this Ordinance applies**

- (1) This section applies to a copy of a work that is an infringing copy for the purposes of section 35(3) of this Ordinance as it applied immediately before the commencement of the amendment Ordinance of 2003, and is such an infringing copy by virtue only of an importation or proposed importation into Hong Kong that occurred before that commencement.
- (2) As from the commencement of the amendment Ordinance of 2003, a person shall not be liable to conviction for an offence under section 118(1) of this Ordinance, as that section applied immediately before that commencement, in respect of an act done before that commencement in relation to a copy of a work to which this section applies unless, having regard to section 35A of this Ordinance, the copy would also be an infringing copy for the purposes of section 35(3) of this Ordinance if the importation or proposed importation into Hong Kong had occurred immediately after that commencement.

**4. Exemption from criminal liability
previously incurred in respect of
a back-up copy of, or necessary
copying or adapting of, a copy
of a work to which
section 35A of this
Ordinance applies**

- (1) This section applies to a copy of a work to which section 35A of this Ordinance applies, where the copy—
 - (a) was made before the commencement of the amendment Ordinance of 2003; and
 - (b) is an infringing copy by virtue only of the fact that it was made by a person who did not have a contractual right to use the work for the purposes of sections 60 and 61 of this Ordinance.
- (2) As from the commencement of the amendment Ordinance of 2003, no person shall be liable to conviction for an offence under section 118(1) of this Ordinance, as that section applied immediately before that commencement, in respect of a copy of a work to which this section applies unless, for the purposes of proceedings for an offence under section 118(1) of this Ordinance, and having regard to section 118A of this Ordinance, the same copy made immediately after that commencement would be a copy made by a person who did not have a contractual right to use the work for the purposes of sections 60 and 61 of this Ordinance.

(Schedule 6 added 27 of 2003 s. 9)

Editorial Note:

* Commencement date: 28 November 2003.

SCHEDULE 7

[section 283]

TRANSITIONAL PROVISIONS AND SAVINGS IN RELATION TO AMENDMENTS EFFECTED BY THE COPYRIGHT (AMENDMENT) ORDINANCE 2007 (15 OF 2007)

- (1. Part 3 of this Schedule (but only to the extent that Part 3 relates to the transitional provisions and savings in relation to the amendments effected by sections 6 (insofar as it relates to the new section 25(1)(c)&(d) of this Ordinance) and 51 of the Copyright (Amendment) Ordinance 2007 (15 of 2007)) and Part 4 of this Schedule came into operation on 25 April 2008—see paragraph (c) of L.N. 47 of 2008 and paragraph (n) of L.N. 48 of 2008.

Paragraph (c) of L.N. 47 of 2008 is reproduced as follows:)

“(c)section 75 (insofar as it relates to Part 3 of the new Schedule 7 but only to the extent that Part 3 of the new Schedule 7 relates to the transitional provisions and savings in relation to the amendments effected by section 6 (insofar as it relates to the new section 25(1)(c))).”

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Paragraph (n) of L.N. 48 of 2008 is reproduced as follows:

“(n)section 75 insofar as it relates to—

- (i) Part 3 of the new Schedule 7 but only to the extent that Part 3 of the new Schedule 7 relates to the transitional provisions and savings in relation to the amendments effected by—

COPYRIGHT ORDINANCE

SCHEDULE 7—PART 1

S7-4

Section 1

Cap. 528

- (A) section 6 (insofar as it relates to the new section 25(1)(d));
and
 - (B) section 51; and
 - (ii) Part 4 of the new Schedule 7.”.
2. Remaining provisions of Part 3 of this Schedule have not yet come into operation.

PART 1

INTRODUCTORY

1. Interpretation

- (1) In this Schedule—
 - “2007 Amendment Ordinance” (《2007年修訂條例》) means the Copyright (Amendment) Ordinance 2007 (15 of 2007);
 - “Suspension Ordinance” (《暫停條例》) means the Copyright (Suspension of Amendments) Ordinance 2001 (Cap. 568).
- (2) Expressions used in this Schedule which are defined for the purposes of Part II (copyright) and Part IIIA (performers’ moral rights) of this Ordinance have the same meaning as in those Parts.

PART 2

ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS AND PERFORMANCES

2. **Savings for certain existing agreements**

Nothing in section 13, 14, 15, 16, 17, 21, 61, 62, 63 or 65 of the 2007 Amendment Ordinance affects a licence or agreement made before the commencement date* of that section.

PART 3

RENTAL RIGHT OF COPYRIGHT OWNERS AND PERFORMERS

Division 1—Transitional provisions and savings—in relation to amendments effected by section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(c), (e) and (f) of this Ordinance)

3. **General provisions**

- (1) Subject to sections 4 and 5 of this Schedule, section 6 of the 2007 Amendment Ordinance (insofar as it

COPYRIGHT ORDINANCE

SCHEDULE 7—PART 3—Division 1—Transitional provisions and savings S7-8

Section 4

Cap. 528

relates to section 25(1)(c), (e) and (f) of this Ordinance) applies to copyright works made before, on or after the commencement date# of that section.

- (2) No act done before the commencement date of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(c), (e) and (f) of this Ordinance) shall be regarded as an infringement of any new right arising by virtue of that section.

4. **New rental right: effect of pre-commencement authorization of copying**

Where—

- (a) the owner or prospective owner of copyright in any work has, before the commencement date# of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(c), (e) and (f) of this Ordinance), authorized a person to make a copy of the work; and
- (b) a new right arises by virtue of that section in relation to that copy,
the new right shall vest on the commencement date of that section in the person so authorized, subject to any agreement to the contrary.

5. **Savings for existing stocks**

- (1) Any new right arising by virtue of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(c) of this Ordinance) does not apply to a copy of a film acquired by a person before the commencement

date# of that section for the purpose of renting it to the public.

- (2) Any new right arising by virtue of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(e) and (f) of this Ordinance) does not apply to a copy of a comic book acquired by a person before the commencement date of that section for the purpose of renting it to the public.

**Division 2—Transitional provisions and savings—in relation
to amendments effected by section 6
of the 2007 Amendment Ordinance (insofar as
it relates to section 25(1)(d) of
this Ordinance)**

6. General provisions

- (1) Subject to sections 7 and 8 of this Schedule, section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(d) of this Ordinance) applies to copyright works made before, on or after the commencement date# of that section.
- (2) No act done before the commencement date of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(d) of this Ordinance) shall be regarded as an infringement of any new right arising by virtue of that section.

7. New rental right: effect of pre-commencement

COPYRIGHT ORDINANCE

SCHEDULE 7—PART 3—Division 3—Transitional provisions and savings in
relation S7-12

Section 9 Cap. 528

authorization of copying

Where—

- (a) the owner or prospective owner of copyright in any work has, before the commencement date# of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(d) of this Ordinance), authorized a person to make a copy of the work; and
- (b) a new right arises by virtue of that section in relation to that copy,
the new right shall vest on the commencement date of that section in the person so authorized, subject to any agreement to the contrary.

8. Savings for existing stocks

Any new right arising by virtue of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(d) of this Ordinance) does not apply to a copy of a sound recording acquired by a person before the commencement date# of that section for the purpose of renting it to the public.

Division 3—Transitional provisions and savings in relation—to amendments effected by section 51 of the 2007 Amendment Ordinance

9. General provisions

COPYRIGHT ORDINANCE

SCHEDULE 7—PART 3—Division 3—Transitional provisions and savings in relation S7-14

Section 10 Cap. 528

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- (1) Subject to sections 10 and 11 of this Schedule, section 51 of the 2007 Amendment Ordinance applies to qualifying performances that take place before, on or after the commencement date** of that section.
 - (2) No act done before the commencement date of section 51 of the 2007 Amendment Ordinance shall be regarded as an infringement of any new right arising by virtue of that section.

10. **New rental right: effect of pre-commencement authorization of copying**

Where—

- (a) the owner or prospective owner of a performer's rights in a qualifying performance has, before the commencement date** of section 51 of the 2007 Amendment Ordinance, authorized a person to make a copy of a recording of the performance; and
- (b) a new right arises by virtue of that section in relation to that copy,
the new right shall vest on the commencement date of that section in the person so authorized, subject to any agreement to the contrary.

11. **Savings for existing stocks**

Any new right arising by virtue of section 51 of the 2007 Amendment Ordinance does not apply to a copy of a sound recording of a qualifying performance acquired by a person before

the commencement date** of that section for the purpose of renting it to the public.

PART 4

MORAL RIGHTS OF PERFORMERS

Transitional provisions and savings in relation to amendments effected by section 66 of the 2007 Amendment Ordinance

12. General provisions

No act done before the commencement date** of section 66 of the 2007 Amendment Ordinance shall be regarded as an infringement of any new rights of performers arising by virtue of that section.

13. Savings for certain existing agreements

- (1) Except as otherwise expressly provided, nothing in section 66 of the 2007 Amendment Ordinance affects an agreement made before the commencement date** of that section.
- (2) No act done in pursuance of an agreement referred to in subsection (1) on or after the commencement date of section 66 of the 2007 Amendment Ordinance shall be regarded as an infringement of any new rights of performers arising by virtue of that section.

**14. New moral rights of performers of
live aural performances**

- (1) Any new rights of performers arising by virtue of section 66 of the 2007 Amendment Ordinance in respect of a live aural performance only subsist in a live aural performance that takes place on or after the commencement date** of that section.
- (2) Any new rights of performers arising by virtue of section 66 of the 2007 Amendment Ordinance in respect of a performance fixed in a sound recording only subsist if the performance concerned takes place on or after the commencement date of that section.

PART 5

**INFRINGEMENT OF COPYRIGHT IN WORKS AND
RIGHTS
IN PERFORMANCES**

**Division 1—Transitional provisions and savings—in relation
to amendments effected by section
9(2) of the 2007 Amendment Ordinance**

15. Exemption from criminal liability incurred

**in respect of copies of works imported
before commencement of section
9(2) of the 2007 Amendment
Ordinance**

- (1) As from the commencement date* of section 9(2) of the 2007 Amendment Ordinance, a person shall not be liable to conviction for an offence under section 118 of this Ordinance in respect of an act done before, on or after that commencement date in relation to a copy of a work to which this subsection applies.
- (2) Subsection (1) applies to a copy of a work imported into Hong Kong before the commencement date of section 9(2) of the 2007 Amendment Ordinance—
 - (a) which is an infringing copy by virtue only of section 35(3) of this Ordinance as in force immediately before that commencement date;
 - (b) which was lawfully made in the country, territory or area where it was made; and
 - (c) which, if imported into Hong Kong on or after that commencement date, would, by virtue of section 35(4) of this Ordinance as amended by section 9(2) of the 2007 Amendment Ordinance, not be an infringing copy for the purposes of sections 118 to 133 (criminal provisions) of this Ordinance.

**Division 2—Transitional provisions and savings—in relation
to amendments effected by section 10
of the 2007 Amendment Ordinance**

**16. Application of section 35B of this
Ordinance to previously imported
copies**

- (1) For the purpose of any act done on or after the commencement date* of section 10 of the 2007 Amendment Ordinance in relation to a copy of a work to which this subsection applies (including any act alleged to constitute an infringement of copyright or an offence under this Ordinance)—
 - (a) section 35B of this Ordinance shall have effect as if it had been enacted before the copy is imported into Hong Kong or acquired; and
 - (b) the copy is, by virtue of paragraph (a), not an infringing copy for the purposes of section 35(3) of this Ordinance unless, having regard to section 35B of this Ordinance, it would also be an infringing copy for the purposes of section 35(3) of this Ordinance if it were imported into Hong Kong or acquired on or after that commencement date.
- (2) Subsection (1) applies to a copy of a work imported into Hong Kong before the commencement date of section 10 of the 2007 Amendment Ordinance—
 - (a) which is an infringing copy by virtue only of section 35(3) of this Ordinance as in force immediately before that commencement date; and
 - (b) which was lawfully made in the country, territory or area where it was made.
- (3) For the avoidance of doubt, nothing in this section or in the 2007 Amendment Ordinance relieves any person from liability to civil action in relation to an infringement of copyright which occurred before

the commencement date of section 10 of the 2007 Amendment Ordinance.

**17. Exemption from criminal liability
previously incurred in respect of
"parallel-imported" copies of
works to which section 35B
of this Ordinance applies**

- (1) As from the commencement date* of section 10 of the 2007 Amendment Ordinance, a person shall not be liable to conviction for an offence under section 118(1) of this Ordinance as in force immediately before that commencement date and read together with the Suspension Ordinance, in respect of an act done before that commencement date in relation to a copy of a work to which this subsection applies unless, having regard to section 35B of this Ordinance, the copy would also be an infringing copy for the purposes of section 35(3) of this Ordinance if it were imported into Hong Kong or acquired on or after that commencement date.
- (2) Subsection (1) applies to a copy of a work imported into Hong Kong before the commencement date of section 10 of the 2007 Amendment Ordinance—
 - (a) which is an infringing copy by virtue only of section 35(3) of this Ordinance as in force immediately before that commencement date; and
 - (b) which was lawfully made in the country, territory or area where it was made.

Division 3—Transitional provisions and savings in relation—to amendments effected by section 31 of the 2007 Amendment Ordinance

18. Application of section 118(2H) of this Ordinance

For the avoidance of doubt, section 118(2H) of this Ordinance does not apply in relation to any act referred to in section 118(2A) of this Ordinance and done by a body corporate or a partnership before the commencement date* of section 31(4) of the 2007 Amendment Ordinance.

19. Retrospective application of the exemption and defence provided by section 118(2E), (2F), (2G), (3A) and (3B) of this Ordinance

- (1) Section 118(2E), (2F), (2G), (3A) and (3B) of this Ordinance applies in proceedings to which this subsection applies, in the same manner as it applies in proceedings for an offence under section 118(2A) of this Ordinance.
- (2) Subsection (1) applies to proceedings for an offence under section 118(1)(d) of this Ordinance as in force immediately before the commencement date* of section 31(4) of the 2007 Amendment Ordinance and read together with the Suspension Ordinance, in a case where the infringing copy to which the charge relates is an

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SCHEDULE 7—PART 5—Division 4—Transitional provisions and savings in relation S7-28

Section 20 Cap. 528

infringing copy of the kind described in section 2(2), (3), (4) or (5) of the Suspension Ordinance.

- (3) Subsection (1) does not apply to proceedings for an offence committed before 1 April 2001.

Division 4—Transitional provisions and savings in relation—to amendments effected by section 57 of the 2007 Amendment Ordinance

20. Application of section 229A of this Ordinance to previously imported fixations

- (1) For the purpose of any act done on or after the commencement date* of section 57 of the 2007 Amendment Ordinance in relation to a fixation of a performance to which this subsection applies (including any act alleged to constitute an infringement of any of the rights conferred by Part III of this Ordinance)—
- (a) section 229A of this Ordinance shall have effect as if it had been enacted before the fixation is imported into Hong Kong or acquired; and
 - (b) the fixation is, by virtue of paragraph (a), not an infringing fixation for the purposes of section 229(4) of this Ordinance unless, having regard to section 229A of this Ordinance, it would also be an infringing fixation for the purposes of section 229(4) of this Ordinance if it were imported into Hong Kong or acquired on or after that commencement date.

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SCHEDULE 7—PART 5—Division 4—Transitional provisions and savings in relation S7-30

Section 20 Cap. 528

- (2) Subsection (1) applies to a fixation of a performance imported into Hong Kong before the commencement date of section 57 of the 2007 Amendment Ordinance—
- (a) which is an infringing fixation by virtue only of section 229(4) of this Ordinance as in force immediately before that commencement date; and
 - (b) which was lawfully made in the country, territory or area where it was made.
- (3) For the avoidance of doubt, nothing in this section or in the 2007 Amendment Ordinance relieves any person from liability to civil action in relation to an infringement of any of the rights conferred by Part III of this Ordinance which occurred before the commencement date of section 57 of the 2007 Amendment Ordinance.

(Schedule 7 added 15 of 2007 s. 75)

Editorial Note:

* Commencement date: 6 July 2007.

Commencement date: 25 April 2008 (insofar as it relates to section 25(1)(c) and (d) of this Ordinance).

** Commencement date: 25 April 2008.