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HONG KONG SPECIAL ADMINISTRATIVE REGION**ORDINANCE NO. 15 OF 2007**

L.S.

Donald TSANG
Chief Executive
5 July 2007

An Ordinance to amend the Copyright Ordinance to make provisions or further provisions for—

- (a) the acts which may be done in relation to works or performances notwithstanding the copyright in the works or the rights in the performances;
 - (b) the rental right of copyright owners and performers;
 - (c) the moral rights of performers;
 - (d) the infringement of copyright in works or rights in performances;
 - (e) the technological measures which are used for the protection of copyright in works or rights in performances; and
 - (f) miscellaneous and transitional matters,
- to repeal the Copyright (Suspension of Amendments) Ordinance 2001, and to make provisions for related matters.

[6 July 2007]

Enacted by the Legislative Council.

PART 1**PRELIMINARY****1. Short title**

This Ordinance may be cited as the Copyright (Amendment) Ordinance 2007.

2. Commencement

(1) Subject to subsection (2), this Ordinance shall come into operation on the day on which it is published in the Gazette.

(2) The following sections shall come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette—

- (a) section 6(1) (insofar as it relates to the new section 25(1)(c), (d), (e) and (f)), (2) and (4);
- (b) section 31(5);
- (c) section 33;
- (d) section 36(7);
- (e) section 36(8), (9), (10) and (12) (insofar as it relates to the new section 121(2D));
- (f) section 37;
- (g) section 38;
- (h) section 39;
- (i) section 47(2) (insofar as it relates to paragraphs (c), (d), (e) and (f) of the new definition of “rental right” in section 198(1));
- (j) section 49;
- (k) section 51;
- (l) section 53;
- (m) section 54;
- (n) section 58;
- (o) section 60;
- (p) section 66;
- (q) section 67;
- (r) section 68;
- (s) section 69;
- (t) section 70; and
- (u) section 75 (insofar as it relates to Parts 3 and 4 of the new Schedule 7).

PART 2

AMENDMENTS TO COPYRIGHT ORDINANCE

3. Long title amended

The long title to the Copyright Ordinance (Cap. 528) is amended by repealing everything after “An Ordinance to” and substituting “make provisions in respect of copyright and related rights and for connected purposes.”

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

Section 17(5)(b)(i) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

5. The acts restricted by copyright in a work

Section 22(1)(c) is repealed and the following substituted—
“(c) to rent copies of the work to the public (see section 25);”.

6. Infringement by rental of work to the public

(1) Section 25(1) is repealed and the following substituted—

“(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.”.

(2) Section 25(3) is amended by repealing “The” and substituting “Subject to subsection (3A), the”.

(3) Section 25(3)(b) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(4) Section 25 is amended by adding—

“(3A) The rental of copies of a work referred to in subsection (1)(e) or (f) includes the making available of copies of the work for on-the-spot reference use subject to direct or indirect payment.”.

7. Secondary infringement: possessing or dealing with infringing copy

(1) Section 31(1)(a) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(2) Section 31(1)(c) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(3) Section 31(1)(c) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(4) Section 31(1)(d) is amended by repealing “otherwise than for the purpose of, in the course of, or in connection with, any trade or business” and substituting “otherwise than for the purpose of or in the course of any trade or business”.

8. Secondary infringement: providing means for making infringing copies

Section 32(1)(c) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

9. Meaning of “infringing copy”

(1) Section 35(3) is amended by repealing “Except as provided in section 35A,” and substituting “Except as otherwise provided in section 35A or 35B,”.

(2) Section 35(4)(b) is amended by repealing “18 months” and substituting “15 months”.

(3) Section 35 is amended by adding—

“(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.

(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).”

(4) Section 35(7) is repealed and the following substituted—

“(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).”.

10. Section added

The following is added immediately after section 35A—

**“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.”.

11. Defences for the purposes of sections 30 and 31

Section 36(1) is amended by adding “and which was lawfully made in the country, territory or area where it was made” after “section 35(3)”.

12. Research and private study

(1) Section 38(1) is amended by repealing “of any description”.

(2) Section 38(3) is repealed and the following substituted—

“(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.”.

13. Sections added

The following are added immediately after section 40—

“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.

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.

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.

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.

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.

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.”.

14. Section added

The following is added immediately before section 41 under the cross-heading of “**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.”.

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

(1) Section 43(1) is amended by repealing “an audience consisting of teachers and pupils at an educational establishment and other persons” and substituting “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”.

(2) Section 43(2) is amended by repealing “for the purposes of instruction” and substituting “for the purposes of giving or receiving instruction”.

(3) Section 43(3) is repealed.

16. Reprographic copying made by educational establishments of passages from published works

(1) Section 45 is amended, in the heading, by adding “**or pupils**” after “**educational establishments**”.

(2) Section 45(1) is amended by repealing “for the purposes of instruction” and substituting “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.”.

17. Sections added

The following are added immediately before section 54 under the cross-heading of “**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.

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.”.

18. Legislative Council and judicial proceedings

- (1) Section 54 is amended by repealing the heading and substituting “**Judicial proceedings**”.
- (2) Section 54(1) is amended by repealing “the proceedings of the Legislative Council or”.
- (3) Section 54(2) is amended, in the Chinese text, by repealing “立法會程序或”.

19. Use of typeface in ordinary course of printing

Section 62(3) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

20. Advertisement of sale of artistic work

- (1) Section 72(2) is amended, in the English text, by repealing “if that dealing infringes copyright for all subsequent purposes” and substituting “and, if that dealing infringes copyright, for all subsequent purposes”.
- (2) Section 72(2) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

21. Section added

The following is added—

“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.”.

22. Right to be identified as author or director

(1) Section 89(1) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(2) Section 89(4)(a) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(3) Section 89(7)(c) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(4) Section 89(8) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

23. Requirement that right be asserted

(1) Section 90 is amended, in the heading, in the Chinese text, by repealing “體現” and substituting “宣示”.

(2) Section 90(1) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(3) Section 90(2) is amended, in the Chinese text, by repealing “體現” where it twice appears and substituting “宣示”.

(4) Section 90(2)(a) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(5) Section 90(3) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(6) Section 90(3) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(7) Section 90(3)(b) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(8) Section 90(3)(b) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(9) Section 90(4) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(10) Section 90(4)(a) is amended, in the Chinese text, by repealing “體現” where it twice appears and substituting “宣示”.

(11) Section 90(4)(b) is amended, in the Chinese text, by repealing “體現” where it twice appears and substituting “宣示”.

(12) Section 90(4)(c) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(13) Section 90(4)(d) is amended, in the Chinese text, by repealing “體現” where it twice appears and substituting “宣示”.

(14) Section 90(5) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

24. Exceptions to right

(1) Section 91(4) is amended by adding—
“(ca) section 54B (Legislative Council);”.

(2) Section 91(4)(d) is amended by repealing “Legislative Council and”.

25. Right to object to derogatory treatment of work

Section 92(4)(a) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

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

(1) Section 95(1)(a) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(2) Section 95(1)(c) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(3) Section 95(1)(c) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(4) Section 95(1)(d) is amended by repealing “otherwise than for the purpose of, in the course of, or in connection with, any trade or business” and substituting “otherwise than for the purpose of or in the course of any trade or business”.

27. False attribution of work

(1) Section 96(2)(b) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(2) Section 96(5) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(3) Section 96(6) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(4) Section 96(7) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

28. Application of provisions to joint works

(1) Section 99(1) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(2) Section 99(2) is amended, in the Chinese text, by repealing “達成” and substituting “體現”.

29. Transmission of moral rights on death

(1) Section 106(3)(a) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(2) Section 106(3)(b) is amended, in the Chinese text, by repealing “達成” and substituting “體現”.

30. Order for delivery up

Section 109(1)(a) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

31. Criminal liability for making or dealing with infringing articles, etc.

(1) Section 118 is amended, in the heading, by repealing “**Criminal liability for**” and substituting “**Offences in relation to**”.

(2) Section 118(1) is repealed and the following substituted—

“(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.”.

(3) Section 118 is amended by adding—

“(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.

(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.”.

(4) Section 118 is amended by adding—

“(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.

(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.

(2C) Subsection (2A) does not apply to an infringing copy of a computer program in a printed form.

(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.

(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.

(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.

(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.”.
- (5) Section 118 is amended by adding—
 - “(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.
 - (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.
 - (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 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.”.

(6) Section 118(3) is amended by adding “or (2A)” after “subsection (1)”.

(7) Section 118 is amended by adding—

“(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.

(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.”.

(8) Section 118(4) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(9) Section 118(5) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(10) Section 118(6) is amended by repealing “not being excluded under section 35(4)” and substituting “not being excluded under section 35(4) and which was lawfully made in the country, territory or area where it was made”.

(11) Section 118(8) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(12) Section 118(8A) is repealed.

(13) Section 118 is amended by adding—

“(10) In this section, “dealing in” (經銷) means selling, letting for hire, or distributing for profit or reward.”.

32. Penalties for offences under section 118

Section 119(1) is amended by adding “or (2A)” after “section 118(1)”.

33. Section added

The following is added—

“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—

- (a) a book;
- (b) a magazine;
- (c) a periodical; or
- (d) a newspaper.

- (3) Subsection (1) does not apply in circumstances where—
- (a) the making or distribution of the infringing copies of one or more than one copyright work referred to in subsection (1) does not exceed the extent specified in the regulations made under subsection (19); or
 - (b) the infringing copies of one or more than one copyright work referred to in subsection (1) are made or distributed in the manner specified in the regulations made under subsection (21).
- (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) For the purposes of subsection (3)(a), the Secretary for Commerce and Economic Development may, in relation to one or more than one copyright work referred to in subsection (1), make regulations to prescribe that subsection (1) does not apply in circumstances where the making or distribution of the infringing copies of the copyright work or works does not exceed the extent specified in the regulations.

(20) The Secretary for Commerce and Economic Development may, in the regulations made under subsection (19), specify the extent referred to in that subsection by reference to—

- (a) the number of infringing copies made or distributed;
- (b) the value of those infringing copies; and
- (c) any other factors that he may consider relevant,

and provide for a method or methods for determining the number of those infringing copies, and a method or methods for determining the value of those infringing copies, having regard to the retail value of the related books, magazines, periodicals or newspaper, and any other factors that he may consider relevant.

(21) For the purposes of subsection (3)(b), the Secretary for Commerce and Economic Development may, in relation to one or more than one copyright work referred to in subsection (1), make regulations to prescribe that subsection (1) does not apply in circumstances where the infringing copies of the copyright work or works are made or distributed in the manner specified in the regulations, after having regard to—

- (a) the availability of any licensing scheme that covers the making or distribution of copies of the copyright work or works in the specified manner; and
- (b) any other factors that he may consider relevant.”.

34. Making infringing copies outside Hong Kong, etc.

Section 120(2) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

35. Time limit for prosecutions

Section 120A is amended by repealing everything after “commission of the offence” and substituting a full stop.

36. Affidavit evidence

(1) Section 121(1) is amended by repealing “An affidavit which purports to have been made by or on behalf of the owner of a copyright work” and substituting “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”.

(2) Section 121(1)(b) is repealed and the following substituted—

- “(b) the name of the author of the work;
(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;
(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;”.

(3) Section 121(1)(c) is amended by repealing “owner of the work” and substituting “copyright owner”.

(4) Section 121(2) is amended by repealing “Without prejudice to subsection (1), an affidavit which purports to have been made by or on behalf of the owner of a copyright work” and substituting “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”.

(5) Section 121(2)(a)(iii) is amended by repealing “owner of the work” and substituting “copyright owner”.

(6) Section 121 is amended by adding—

“(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.

(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.

(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.”.

(7) Section 121 is amended by adding—

“(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.”.

(8) Section 121(3) is amended by repealing “subsection (1) or (2)” and substituting “subsection (1), (2), (2A), (2B), (2C) or (2D)”.

(9) Section 121(4) is amended by repealing “subsection (1) or (2)” and substituting “subsection (1), (2), (2A), (2B), (2C) or (2D)”.

(10) Section 121(7) is amended by repealing “subsection (1) or (2)” and substituting “subsection (1), (2), (2A), (2B), (2C) or (2D)”.

(11) Section 121(8)(b) is repealed and the following substituted—

“(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.”.

(12) Section 121(13)(a) is amended by repealing “subsection (1) or (2)” and substituting “subsection (1), (2), (2A), (2B), (2C) or (2D)”.

37. Seized articles, etc. liable to forfeiture

- (1) Section 131(1) is amended by adding “, 119B” after “119A”.
- (2) Section 131(7) is amended by adding “, 119B” after “119A”.

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

Section 132 is amended by adding “, 119B” after “119A”.

39. Determination of application for forfeiture

- (1) Section 133(5) is amended by adding “, 119B” after “119A”.
- (2) Section 133(6) is amended by adding “, 119B” after “119A”.

40. Licensing schemes to which sections 155 to 160 apply

Section 154(b) is amended by repealing “a computer program or sound recording” and substituting “a work referred to in section 25(1)(a), (b), (c), (d), (e) or (f)”.

41. Licences to which sections 162 to 166 apply

Section 161(b) is amended by repealing “a computer program or sound recording” and substituting “a work referred to in section 25(1)(a), (b), (c), (d), (e) or (f)”.

42. Constitution for purposes of proceedings

(1) Section 172 is amended by adding—

“(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.”.

(2) Section 172(5) is amended by repealing “subsection (4)(b)” and substituting “subsection (1A) or (4)(b)”.

43. Groundless threat of proceedings in relation to parallel import

(1) Section 187 is amended, in the heading, by repealing “**parallel import**” and substituting “**“parallel-imported” copies of works**”.

(2) Section 187(1) is amended by adding “and which was lawfully made in the country, territory or area where it was made” after “section 35(3)”.

44. Folklore, etc.: anonymous unpublished works

Section 189 is amended, in the heading, in the Chinese text, by repealing “民間傳說” and substituting “民間文學藝術”.

45. Meaning of “publication” and “commercial publication”

Section 196(4)(b)(i) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

46. Requirement of signature: application in relation to body corporate

(1) Section 197(1) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(2) Section 197(1) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(3) Section 197(2) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

47. Minor definitions

(1) Section 198(1) is amended by repealing the definition of “business” and substituting—

““business” (業務) includes—

- (a) a trade or profession; and
- (b) business conducted otherwise than for profit;”.

(2) Section 198(1) is amended by repealing the definition of “rental right” and substituting—

““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;”.

(3) Section 198(1) is amended by adding—

““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;”.

(4) Section 198(2) is amended by repealing “, 118(8A)”.

(5) Section 198(3) is repealed and the following substituted—

“(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.”.

(6) Section 198 is amended by adding—

“(4) The Secretary for Commerce and Economic Development may, by notice published in the Gazette, amend Schedule 1A.”.

48. Index of defined expressions

Section 199 is amended, in the Table, by adding—
“specified course of study section 198(1)”.

49. Rights conferred on performers and persons having fixation rights

(1) Section 200(1)(a) is amended by repealing “207” and substituting “207A”.

(2) Section 200(2) is amended, in the definition of “performance”, by adding—

“(ca) a performance of an artistic work;
(cb) an expression of folklore; or”.

50. Infringement of performer’s rights by importing, exporting, possessing or dealing with infringing fixation

Section 207(1)(b) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

51. Section added

The following is added immediately after section 207—

“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”.

52. Infringement of fixation rights by importing, exporting, possessing or dealing with infringing fixation

Section 211(1)(b) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

53. Section added

The following is added immediately after section 213—

“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.”.

54. Performers’ economic rights

Section 215(1) is repealed and the following substituted—

“(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).”.

55. Order for delivery up

Section 228(1) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

56. Meaning of “infringing fixation”

(1) Section 229(4) is amended by repealing “A fixation” and substituting “Except as provided in section 229A, a fixation”.

(2) Section 229(7) is repealed and the following substituted—

“(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).”
- (3) Section 229(8) is repealed and the following substituted—
- “(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.”.

57. Section added

The following is added immediately after section 229—

“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.”.

58. Jurisdiction of Copyright Tribunal

Section 233(1) is amended by adding—

“(aa) section 213A (application to give consent on behalf of owners of performers’ rental right);”.

59. Expressions having same meaning as in copyright provisions

(1) Section 238(1) is amended by adding—

“artistic work;”.

(2) Section 238(1) is amended, in the Chinese text, by repealing—

“獲授權人員；及
關長。”

and substituting—

“獲授權人員；
關長；及”.

60. Index of defined expressions

(1) Section 239 is amended, in the Table, by adding—

“artistic work section 238(1) (and section 5)”.

(2) Section 239 is amended, in the Table, by adding—

“rental right section 207A(4)”.

61. Section added

The following is added—

**“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.”.

62. Playing or showing sound recording, film, broadcast or cable programme at educational establishment

(1) Section 244(1) is amended by repealing “an audience consisting of teachers and pupils at the establishment and other persons” and substituting “an audience consisting wholly or mainly of teachers and pupils at the establishment, parents or guardians of pupils at the establishment, and other persons”.

(2) Section 244(2) is repealed.

63. Sections added

The following are added—

“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.