

Relevant provisions of the Copyright Ordinance (Cap.528)
(as from 27 June 1997 to 31 March 2001)

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.]

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) where the work is a computer program or sound recording, to rent copies of the work to the public (see section 25);
- (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.]

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Marked-up copy of relevant provisions of the
Copyright Ordinance(Cap.528) as amended by the
Intellectual Property (Miscellaneous Amendments) Ordinance 2000

Relevant provisions of the Copyright Ordinance (Cap.528)
(as from 27 June 1997 to 31 March 2001)

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.]

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Relevant provisions of the Copyright Ordinance (Cap.528)
(as from 27 June 1997 to 31 March 2001)

31. Secondary infringement: possessing or dealing with infringing copy

The copyright in a work is infringed by a person who, without the licence of the copyright owner—

- (a) possesses for the purpose of trade or business;
- (b) sells or lets for hire, or offers or exposes for sale or hire;
- (c) for the purpose of trade or business, exhibits in public or distributes; or
- (d) distributes otherwise than for the purpose of trade or business to such an extent as to affect prejudicially the owner of the copyright,

a copy of a 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. 23 U.K.]

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Intellectual Property (Miscellaneous Amendments) Ordinance 2000

31. Secondary infringement: possessing or dealing with infringing copy

|| U) The copyright in a work is infringed by a person who, without the licence of the copyright owner—

- || (a) possesses for the purpose of trade or business;
- || (b) sells or lets for hire, or offers or exposes for sale or hire;
- || (c) ~~for the purpose of trade or business, exhibits in public or distributes; or~~
- || (d) distributes otherwise than for the purpose of trade or business to such an extent as to affect prejudicially the owner of the copyright,

a copy of a 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. 23 U.K.]

|| * >

(a) possesses for the purpose of, in the course of, or in connection with, any trade or business;

(c) exhibits in public or distributes for the purpose of, in the course of, or in connection with, any trade or business; or

↑ (otherwise than for the purpose of, in the course of, or in connection with, any trade or business)

* (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.

Relevant provisions of the Copyright Ordinance (Cap.528)
(as from 27 June 1997 to 31 March 2001)

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

- (1) A person commits an offence if he, without the licence of the copyright owner—
- (a) makes for sale or hire;
 - (b) imports into Hong Kong otherwise than for his private and domestic use;
 - (c) exports from Hong Kong otherwise than for his private and domestic use;
 - (d) possesses for the purpose of trade or business with a view to committing any act infringing the copyright;
 - (e) for the purpose of trade or business—
 - (i) sells or lets for hire;
 - (ii) offers or exposes for sale or hire;
 - (iii) exhibits in public; or
 - (iv) distributes; or
 - (f) distributes otherwise than for the purpose of trade or business to such an extent as to affect prejudicially the owner of the copyright, an infringing copy of a copyright work.

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Copyright Ordinance (Cap.528) as amended by the
Intellectual Property (Miscellaneous Amendments) Ordinance 2000

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

- (1) A person commits an offence if he, without the licence of the copyright owner—
- (a) makes for sale or hire;
 - (b) imports into Hong Kong otherwise than for his private and domestic use;
 - (c) exports from Hong Kong otherwise than for his private and domestic use;
 - || (d) possesses [↑]for the purpose of trade or business with a view to committing any act infringing the copyright;
 - || (e) [↑]for the purpose of trade or business—
 - (i) sells or lets for hire;
 - (ii) offers or exposes for sale or hire;
 - (iii) exhibits in public; or
 - (iv) distributes; or
 - || (f) distributes [↑]otherwise than for the purpose of trade or business to such an extent as to affect prejudicially the owner of the copyright, an infringing copy of a copyright work.

[↑] for the purpose of, in
the course of, or in connection with, any trade or business

[↑] (otherwise
than for the purpose of, in the course of, or in connection
with, any trade or business)

Relevant provisions of the Copyright Ordinance (Cap.528)
(as from 27 June 1997 to 31 March 2001)

(2) Subsections (1)(b) and (c) and (4)(b) and (c) do not apply to an article in transit.

(3) It is a defence for the person charged with an offence under subsection (1), 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.

(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 trade or business.

(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 trade or business.

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(2) Subsections (1)(b) and (c) and (4)(b) and (c) do not apply to an article in transit.

(3) It is a defence for the person charged with an offence under subsection (1), 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.

(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 trade or business.~~

(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 trade or business.~~

↑ for the purpose of, in
the course of, or in connection with, any trade or business

↑ (otherwise
than for the purpose of, in the course of, or in connection
with, any trade or business)

Relevant provisions of the Copyright Ordinance (Cap.528)
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(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), if he proves that—

- (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;

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(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), if he proves that—

- (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;

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- (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 trade or business.

(9) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section.
[cf. 1988 c. 48 s. 107 U.K.]

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- (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 trade or business.~~

(9) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section.
[cf. 1988 c. 48 s. 107 U.K.]

↑ for the purpose of, in the
course of, or in connection with, any trade or business";

△ (8A) It is immaterial for the purpose of subsections (1)(d) and (e), (4) and (8) whether or not the trade or business consists of dealing in infringing copies of copyright works.

Relevant provisions of the Copyright Ordinance (Cap.528)
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**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 trade or business.

(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.

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(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 trade or business.~~

(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.

↑ for the purpose of, in the course of,
or in connection with, any trade or business

△ (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.

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(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.

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(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.

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(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.