

Copyright (Amendment) Bill 2003

Committee Stage amendments to be moved by the
Secretary for Commerce, Industry and Technology
(as at 24.2.2004)

A BILL

To

Amend the Copyright Ordinance and to repeal the Copyright (Suspension of Amendments) Ordinance 2001 and for related purposes.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Copyright (Amendment) Ordinance 2003.

~~(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology by notice published in the Gazette.~~

△ (2) This Ordinance shall come into operation on [##]
[month] 2004.

~~2. Secondary infringement: importing or exporting infringing copy~~

(1) Section 30 of the Copyright Ordinance (Cap. 528) is amended by renumbering it as section 30(1).

(2) Section 30 is amended by adding—

“(2) The copyright in a work is not infringed for the purposes of subsection (1) if—

(a) the infringing copy is an infringing copy by virtue only of section 35(3), and was lawfully made in the country, territory or area where it was made; and

(b) the person importing the infringing copy does so other than for the purpose of—

(i) selling or letting for hire; or

(ii) distributing for profit or financial reward, or to such an extent as would affect prejudicially the owner of the copyright,

the infringing copy.”

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~~3 Secondary infringement: possessing or dealing with
infringing copy~~

Section 31 is amended by adding—

~~(3) The copyright in a work is not infringed for the purposes of
subsection (1)(a) if—~~

- ~~(a) the infringing copy is an infringing copy by virtue only of
section 35(3), and was lawfully made in the country,
territory or area where it was made; and~~
- ~~(b) the person possessing the infringing copy does so other than
for the purpose of—
 - ~~(i) selling or letting for hire; or~~
 - ~~(ii) distributing for profit or financial reward, or to such an
extent as would affect prejudicially the owner of the
copyright.~~~~

~~the infringing copy.~~

~~(4) The copyright in a work is not infringed for the purposes of
subsection (1)(c) by reason of the exhibiting in public of an infringing
copy of the work if—~~

- ~~(a) the infringing copy is an infringing copy by virtue only of
section 35(3), and was lawfully made in the country,
territory or area where it was made; and~~
- ~~(b) the person exhibiting in public the infringing copy does so
other than for the purpose of selling or letting for hire the
infringing copy or any other infringing copy of a copyright
work.~~

~~(5) The copyright in a work is not infringed for the purposes of
subsection (1)(c) by reason of the distributing of an infringing copy of the
work if—~~

- ~~(a) the infringing copy is an infringing copy by virtue only of
section 35(3), and was lawfully made in the country,
territory or area where it was made; and~~
- ~~(b) the person distributing the infringing copy does so other
than for profit or financial reward, or to such an extent as
to affect prejudicially the owner of the copyright.”.~~

3A. Penalties for offences under section 118

Section 119(1) is amended, in the Chinese text, by
repealing everything after "定罪," and substituting "可處監
禁4年，並可就每份侵犯版權複製品處第5級罰款。"

~~4. Sections substituted~~

~~Section 118 is repealed and the following substituted—~~

~~“118. Offences in relation to infringing copies generally~~

~~(1) A person commits an offence if, without the licence of the copyright owner—~~

- ~~(a) he makes for sale or hire, or makes for profit or financial reward, an infringing copy of a copyright work;~~
- ~~(b) he imports an infringing copy of a copyright work into Hong Kong otherwise than for his private and domestic use;~~
- ~~(c) he exports an infringing copy of a copyright work from Hong Kong otherwise than for his private and domestic use;~~
- ~~(d) he—
 - ~~(i) sells or lets for hire;~~
 - ~~(ii) offers or exposes for sale or hire;~~
 - ~~(iii) transports or stores for profit or financial reward;~~
 - ~~(iv) distributes for profit or financial reward; or~~
 - ~~(v) for the purpose of selling or letting for hire any infringing copy of a copyright work, exhibits in public, an infringing copy of a copyright work;~~~~
- ~~(e) he possesses an infringing copy of a copyright work with a view to—
 - ~~(i) selling or letting for hire;~~
 - ~~(ii) transporting or storing for profit or financial reward; or~~
 - ~~(iii) distributing for profit or financial reward, the infringing copy;~~~~
- ~~(f) he distributes (otherwise than for profit or financial reward) an infringing copy of a copyright work to such an extent as to affect prejudicially the owner of the copyright.~~

~~(2) A person does not commit an offence under subsection (1)(b) if—~~

- ~~(a) the infringing copy is an infringing copy by virtue only of section 35(3), and was lawfully made in the country, territory or area where it was made; and~~
- ~~(b) he imports the infringing copy other than for the purpose of—
 - ~~(i) selling or letting for hire; or~~
 - ~~(ii) distributing for profit or financial reward, or to such an extent as would affect prejudicially the owner of the copyright,~~~~
~~the infringing copy.~~

~~(3) Subsection (1)(b), (c), (d)(iii) and (e)(ii) does not apply to an article in transit.~~

~~(4) For the purposes of any proceedings for an offence under subsection (1)(d)(iii), where a person transports or stores an infringing copy of a copyright work in circumstances that give rise to a reasonable suspicion that the person is transporting or storing the infringing copy for profit or financial reward, the person is presumed in the absence of evidence to the contrary to be transporting or storing the infringing copy for profit or financial reward.~~

~~(5) For the purposes of any proceedings for an offence under subsection (1)(e)(ii), where a person possesses an infringing copy of a copyright work with a view to transporting or storing the infringing copy in circumstances that give rise to a reasonable suspicion that the person is possessing the infringing copy with a view to transporting or storing the infringing copy for profit or financial reward, the person is presumed in the absence of evidence to the contrary to be possessing the infringing copy with a view to transporting or storing the infringing copy for profit or financial reward.~~

118A. Offences in relation to infringing copies of particular categories of works

(1) A person commits an offence if, without the licence of the copyright owner—

- (a) for the purpose of or in the course of any trade or business, he possesses an infringing copy of a copyright work that is a computer program, feature film, musical sound recording, musical visual recording or television drama; and
- (b) he so possesses the infringing copy with a view to the copyright work being used in doing any act for the purpose of or in the course of the trade or business.

(2) Subsection (1) does not apply in relation to an infringing copy that is an infringing copy by virtue only of section 35(3) and was lawfully made in the country, territory or area where it was made.

(3) In proceedings for an offence under subsection (1), it is a defence for the person charged to prove that his possession of the infringing copy occurred in the course of his employment and that the infringing copy was provided to him by or on behalf of his employer for use in the course of his employment.

- ~~(4) Subsection (3) does not apply in the case of an employee who—~~
- ~~(a) where the employer is a body corporate, is a director, manager, secretary or other similar officer of the body corporate or is a person purporting to act in any such capacity or, where the affairs of a body corporate are managed by its members, is a member with functions of management as if he were a director of the body corporate;~~
 - ~~(b) where the employer is a partnership, is concerned in the management of the partnership;~~
 - ~~(c) where the employer is a sole proprietorship, is concerned in the management of the proprietorship; or~~
 - ~~(d) in any other case, is concerned in the management of the employer's business.~~
- ~~(5) This section does not apply to a copy of a copyright work that is a computer program if—~~
- ~~(a) the copy is in a printed form; or~~
 - ~~(b) the computer program incorporates the whole or any part of another work, not being a computer program itself, and is technically required for the viewing or listening to of the other work by a member of the public to whom a copy of that work is made available.~~

118B. Defences to criminal liability under sections 118 and 118A

(1) In proceedings for an offence under section 118(1) or 118A(1), it is a defence for the person charged 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.

(2) For the purposes of subsection (1), where the charge relates to an offence 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), a person charged has proved that he had no reason to believe that the copy in question was an infringing copy of the copyright work 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; and

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~~(c) there were no other circumstances which would have led him reasonably to suspect that the copy was an infringing copy.~~

~~(3) In determining for the purposes of subsection (2) whether a person charged has proved any of the matters specified in paragraphs (a), (b) and (c) of that subsection, and without limiting the effect of that subsection, the court may have regard to the following matters, namely—~~

- ~~(a) whether the person charged had made enquiries with a relevant trade body in respect of that category of work;~~
~~(b) whether the person charged had given any notice drawing to the attention of the copyright owner or exclusive licensee his interest in importing and selling the copy of the work;~~
~~(c) whether the person charged had complied with any code of practice that may have existed in respect of the supply of that category of work;~~
~~(d) the reasonableness and timeliness of the response, if any, to enquiries made by the person charged;~~
~~(e) whether the person charged had been provided with the name, address and contact details of the copyright owner or exclusive licensee (as the case may be);~~
~~(f) whether the person charged had been provided with the date of the first day of publication of the work;~~
~~(g) whether the person charged had been provided with proof of any relevant exclusive licence.~~

~~☆ 118C. Offence in relation to possession of infringing copies by a copying service~~

~~(1) In this section—
“business that includes the providing of a copying service” (包括提供複製服務的業務) means business, conducted for profit, that includes the offering of reprographic copying services to the public.~~

~~(2) A person commits an offence if, for the purpose of or in the course of a business that includes the providing of a copying service, he possesses 2 or more substantially identical reprographic copies of a copyright work as published in a book, magazine or periodical, being copies that are infringing copies of the copyright work.~~

~~(3) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that he did not know and had no reason to believe that the copies in question were infringing copies of the copyright work.~~

4. Section added

The following is added –

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

(1) In this section –

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

"reward" () means reward other than reward of a nominal value.

(2) A person commits an offence if, for the purpose of or in the course of a copying service business, he possesses a reprographic copy of a copyright work as published in a book, magazine or periodical, being a copy that is an infringing copy of the copyright work.

(3) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that the infringing copy of a copyright work in question was not made for the purpose of and was not made in the course of the copying service business.

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~~(4) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that—~~

~~(a) he possessed the infringing copies by virtue only of the fact that he possessed reprographic copies of another work (“principal work”), in which reprographic copies the copyright work to which the charge relates forms part of the principal work; and~~

~~(b) works as published in a book, magazine or periodical constitute not more than 20% of the contents of each of the reprographic copies of the principal work.~~

~~(5) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that copies of the book, magazine or periodical in question (not being infringing copies) are available free of charge to members of the public who wish to acquire their own copy.~~

118D. Offences in relation to articles for use in making infringing copies

~~(1) A person commits an offence if he—~~

~~(a) makes;~~

~~(b) imports into Hong Kong;~~

~~(c) exports from Hong Kong;~~

~~(d) sells or lets for hire;~~

~~(e) offers or exposes for sale or hire; or~~

~~(f) possesses,~~

~~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 profit or financial reward.~~

~~(2) 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 profit or financial reward.~~

~~(3) Subsection (1)(b) and (c) does not apply to an article in transit.~~

~~(4) In proceedings for an offence under subsection (1), it is a defence for the person charged 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 infringing copies of the copyright work, or to make the infringing copies for sale or hire or for profit or financial reward.”~~

(4) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that the infringing copy of a copyright work in question was not made for profit and was not made for reward.

(5) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that he did not know and had no reason to believe that the copy of a copyright work in question was an infringing copy of the copyright work.

(6) A person who commits an offence under subsection (2) is liable on conviction on indictment to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years.

(7) Sections 115, 116 and 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under subsection (2).”

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Secretary for Commerce, Industry and Technology
(as at 24.2.2004)~~5. Penalties for offences under sections 118, 118A,
118C and 118D~~~~(1) Section 119(1) is amended by adding “, 118A(1) or 118C(2)” after
“118(1)”.~~~~(2) Section 119(2) is amended by repealing “118(4) or (8)” and
substituting “118D(1) or (2)”.~~~~6. Making infringing copies outside Hong Kong, etc.~~~~(1) Section 120(2) is amended by repealing everything after “in Hong
Kong” and substituting “for making an infringing copy of the copyright work
for sale or hire or for profit or financial reward.”.~~~~(2) Section 120(2A) is repealed.~~~~(3) Section 120(5) is amended by repealing “section 118” and
substituting “section 118, 118A, 118C or 118D”.~~~~(4) Section 120(8) is repealed.~~~~7. Section added~~~~The following is added immediately after section 120A—~~~~“120B. Presumptions in relation to offence provisions~~~~Sections 115, 116 and 117 (presumptions as to various matters
connected with copyright) do not apply to proceedings for an offence
under sections 118, 118A, 118C, 118D and 120.”.~~▽ 7A. Seized articles, etc. liable to
forfeiture

Section 131 is amended—

(a) in subsection (1), by adding “,
119A” after “118”;(b) in subsection (7), by adding “,
119A” after “118”.

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131. Seized articles, etc. liable to forfeiture

(1) Any article, vessel, aircraft, vehicle or thing seized or detained by an
authorized officer under section 122 is liable to forfeiture in accordance with
the following provisions whether or not any person has been charged of an
offence under section 118 or 120.

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(7) Except where a person is charged with an offence under section 118
or 120 in connection with the seized or detained article, vessel, aircraft, vehicle
or thing, if on the date of the expiration of the appropriate period of time
specified in subsection (5) for the giving of a notice of claim no such notice has
been given in writing to the Commissioner, the article, vessel, aircraft, vehicle
or thing is forfeited forthwith to the Government. (*Amended 22 of 1999 s. 3*)↑
119A

- 7B. Disposal of articles, etc. where a person is charged
- Section 132 is amended by adding ", 119A" after "118".

CAP. 528 *Copyright***132. Disposal of articles, etc. where a person is charged**

Without prejudice to section 131, where a person is charged with an offence under section 118[↑] or 120 the court may, if it is satisfied that any article, vessel, aircraft, vehicle or thing seized or detained by an authorized officer under section 122 in connection with the offence—

- (a) is an infringing copy of a copyright work;
- (b) is an article specifically designed or adapted for making copies of a particular copyright work which article has been used, or is intended to be used, for making infringing copies of any such work; or
- (c) has been used in connection with any offence under this Ordinance,

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

- (i) forfeited to the Government; (*Amended 22 of 1999 s. 3*)
- (ii) delivered up to the person who appears to the court to be the owner of the copyright concerned; or
- (iii) disposed of in such other way as the court may think fit, whether or not the person charged is convicted of the offence with which he was charged.

↑, 119A

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~~8. Section added~~

~~The following is added—~~

~~“196A. Meaning of “for the purpose of or in the course of trade or business”~~

~~In this Part, a reference to a person doing an act for the purpose of or in the course of a trade or a business is a reference to—~~

- ~~(a) a person who is engaged in a trade or a business of any description or nature whatsoever, who does the act for the purpose of or in the course of the trade or business in which he is engaged; or~~

7C. Determination of application for forfeiture

Section 133 is amended —

- (a) in subsection (5), by adding “, 119A” after “118”;
- (b) in subsection (6), by adding “, 119A” after “118”.

CAP. 528 Copyright

133. Determination of application for forfeiture

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(5) Where the claimant is the defendant in criminal proceedings under section 118 or 120 in connection with the seized or detained article, vessel, aircraft, vehicle or thing and there is no other claimant, on an application made in that behalf by the Commissioner, the court may hear the forfeiture application immediately following the criminal proceedings and for the purposes of a hearing under this subsection, any requirement in respect of the issue or service of a summons or any notice of the hearing under or by virtue of subsection (3) or (4), as the case may be, does not apply.

(6) Where there is more than one claimant and one of them is the defendant in criminal proceedings under section 118 or 120 in connection with the seized or detained article, vessel, aircraft, vehicle or thing, on an application made in that behalf by the Commissioner, the court may hear the forfeiture application immediately following the criminal proceedings.

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↑
119A

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~~(b) an employee of a person who is engaged in a trade or a business of any description or nature whatsoever, who does the act for the purpose of or in the course of that employment.”~~

~~9. Minor definitions~~

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

~~““business” (業務) includes business conducted otherwise than for profit;”.~~

~~(2) Section 198(1) is amended by adding—~~

~~““feature film” (電影片) means a film of the kind commonly known as a movie;~~

~~“musical sound recording” (音樂聲音紀錄) means a sound recording the whole or a predominant part of which consists of a musical work and any related literary work;~~

~~“musical visual recording” (音樂視像紀錄) means a film with an accompanying sound-track, the whole or a predominant part of which sound-track consists of a musical work and any related literary work;~~

~~“television drama” (電視劇或電視電影) means a film of the kind commonly known as a television drama;”.~~

~~(3) Section 198(2) is repealed.~~

~~(4) Section 198 is amended by adding—~~

~~“(3) A copy of a work that is 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 is not a copy that is lawfully made for the purposes of this Part.”.~~

~~10. Section added~~

~~The following is added—~~

~~“282. Transitional provisions and savings~~

~~Schedule 6 contains transitional provisions and savings in relation to certain amendments made to the Ordinance.”~~

~~11. Schedule 6 added~~

~~The following is added~~

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"SCHEDULE 6

[s. 282]

TRANSITIONAL PROVISIONS AND SAVINGS

Transitional provisions and savings in relation to amendments effected by the
Copyright (Amendment) Ordinance 2003 (of 2003)

1. Interpretation

(1) In this Schedule, unless the context otherwise requires—
"amendment Ordinance of 2003" (《2003年修訂條例》) means the Copyright (Amendment)
Ordinance 2003 (of 2003);

"Suspension Ordinance" (《暫停條例》) means the Copyright (Suspension of Amendments)
Ordinance 2001 (Cap. 568).

(2) In this Schedule, a reference to this Ordinance as it applied immediately before the
commencement of the amendment Ordinance of 2003 is a reference to this Ordinance as read
together with the Suspension Ordinance, as those Ordinances applied immediately before
that commencement.

(3) A copy of a work that is 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 is not a copy
that is lawfully made for the purposes of this Schedule.

2. Exemption from certain criminal liability
previously incurred

(1) As from the commencement of the amendment Ordinance of 2003, no person shall,
by virtue of the importing of an infringing copy into Hong Kong before that
commencement, be liable to conviction for an offence under section 118(1)(b) of this
Ordinance as that section applied immediately before that commencement unless the
importing of the same infringing copy into Hong Kong immediately after the
commencement would, having regard to section 118(2) of this Ordinance, constitute an
offence under section 118(1)(b) of this Ordinance.

(2) As from the commencement of the amendment Ordinance of 2003, no person shall,
by virtue of any act done before the commencement of the amendment Ordinance of 2003 in
respect of a copy of a work that—

(a) was an infringing copy by virtue only of section 35(3) of this Ordinance; and

(b) was lawfully made in the country, territory or area where it was made,
be liable to conviction for an offence under section 118(1)(d), (e)(iii) or (e)(iv) of this
Ordinance as that section applied immediately before that commencement, unless the doing
of the same act in relation to the same infringing copy on or after that commencement would
constitute an offence under section 118(1)(d), (e) or (f) of this Ordinance.

(3) For the avoidance of doubt, nothing in this section affects any conviction for an
offence that was entered before the commencement of the amendment Ordinance of 2003.

3. Retrospective application of the defence as
provided under section 118A(3) and (4)
of this Ordinance

(1) This section applies to proceedings for an offence under section 118(1)(d) of this
Ordinance as that section applied immediately before the commencement of the amendment
Ordinance of 2003, in a case where the infringing copy to which the charge relates is an
infringing copy of the kind described in section 2(2), (3), (4) or (5) of the Suspension
Ordinance.

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~~(2) Except as provided in subsection (3), section 118A(3) and (4) of this Ordinance applies in proceedings specified in subsection (1) (being proceedings for an offence committed before the commencement of the amendment Ordinance of 2003) as it applies in proceedings for an offence under section 118A(1) of this Ordinance (being proceedings for an offence committed after that commencement).~~

~~(3) Subsection (2) does not apply in proceedings--~~

~~(a) for an offence committed before 1 April 2001; or~~

~~(b) in which the prosecution relies on allegations that, if proved in relation to the period after the commencement of the amendment Ordinance of 2003, would constitute an offence under section 118(1)(e) of this Ordinance.~~

~~(4) For the avoidance of doubt, it is irrelevant for the purposes of subsection (2) whether the proceedings specified in subsection (1) were begun before or after the commencement of the amendment Ordinance of 2003."~~

~~12. Miscellaneous and consequential amendments~~

~~(1) The provisions of the Copyright Ordinance (Cap. 528) specified in Schedule 1 are amended as set out in that Schedule.~~

~~(2) The enactments specified in Schedule 2 are amended as set out in that Schedule.~~

~~13. Repeal~~

~~The Copyright (Suspension of Amendments) Ordinance 2001 (Cap. 568) is repealed.~~

SCHEDULE 1 [s. 12(1)]

MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO THE COPYRIGHT ORDINANCE (CAP. 528)

1. Repeal of "in connection with"

(1) Sections 31(1)(a) and (c), 32(1)(c), 95(1)(a) and (c), 96(5) and (6), 109(1)(a), 207(1)(b), 211(1)(b) and 228(1) are 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)(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".

(3) 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".

(4) Section 273(2)(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. Repeals consequent on the addition of section 196A

~~Sections 31(2), 32(3), 95(1A), 96(6A) and 109(1A) are repealed.~~

* Consequential Amendments

Prevention of Copyright Piracy Ordinance

14. Seized optical discs, etc., liable to forfeiture

Section 34(3)(a) of the Prevention of Copyright Piracy Ordinance (Cap. 544) is amended by adding ", 119A" after "118".

CAP. 544 *Prevention of Copyright Piracy*

34. Seized optical discs, etc., liable to forfeiture

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(3) For the purpose of applying sections 131 and 133 of the Copyright Ordinance (Cap. 528), any reference in those sections to

(a) an offence under section 118 {or 120 of that Ordinance shall be construed as a reference to an offence under this Ordinance;

(b) an article, vessel, aircraft, vehicle or thing seized or detained by an authorized officer under section 122 of that Ordinance shall be construed as a reference to any optical disc, machinery, equipment, video recording equipment or other thing seized, removed, detained or sealed by an authorized officer under this Ordinance; or

(c) section 132 of that Ordinance shall be construed as a reference to section 35 of this Ordinance.

(Replaced 64 of 2000 s. 34)

↑, 119A

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Secretary for Commerce, Industry and Technology
(as at 24.2.2004)~~3. Meaning of "infringing copy"~~~~Section 35(9) is repealed.~~

4. Use of typeface in ordinary course of printing

Section 62(2) is amended by repealing "118(4)" and substituting "118D(1)".

5. Seized articles, etc. liable to forfeiture

Section 131 is amended—

- (a) in subsection (1), by repealing "section 118 or 120" and substituting "section 118, 118A, 118C, 118D or 120";
- (b) in subsection (7), by repealing "section 118 or 120" and substituting "section 118, 118A, 118C, 118D or 120".

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

Section 132 is amended by repealing "section 118 or 120" and substituting "section 118, 118A, 118C, 118D or 120".

7. Determination of application for forfeiture

Section 133 is amended—

- (a) in subsection (5), by repealing "section 118 or 120" and substituting "section 118, 118A, 118C, 118D or 120";
- (b) in subsection (6), by repealing "section 118 or 120" and substituting "section 118, 118A, 118C, 118D or 120".

8. Index of defined expressions

Section 199 is amended, in the Table—

- (a) by repealing the entry relating to "dealing in";
- (b) by adding—

"feature film	section 198(1)
lawfully made	section 198(3)
musical sound recording	section 198(1)
musical visual recording	section 198(1)
television drama	section 198(1)".

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

Section 207(1A) is repealed.

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

Section 211(1A) is repealed.

Copyright (Amendment) Bill 2003

Committee Stage amendments to be moved by the
Secretary for Commerce, Industry and Technology
(as at 24.2.2004)~~11. Order for delivery up~~~~Section 228(1A) is repealed.~~~~12. Expressions having same meaning as in
copyright provisions~~~~Section 238(1A) is repealed and the following substituted—~~~~“(1A) In this Part, a reference to a person doing an act for the purpose of or in the course of a trade or a business shall be construed in the manner provided for in section 196A.”~~~~13. Index of defined expressions~~~~Section 239 is amended, in the Table, by repealing the entry relating to “dealing in”.~~~~14. Devices designed to circumvent copy-protection~~~~Section 273 is amended—~~~~(a) by repealing subsection (6);~~~~(b) by repealing subsection (7) and substituting—~~~~“(7) In this section, a reference to a person doing an act for the purpose of or in the course of a trade or a business shall be construed in the manner provided for in section 196A.”~~

SCHEDULE 2

[s. 12(2)]

CONSEQUENTIAL AMENDMENTS TO
OTHER ORDINANCES

Organized and Serious Crimes Ordinance

1. Offences relevant to definitions of “Organized
Crime” and “Specified Offence”

Paragraph 18 of Schedule 1 to the Organized and Serious Crimes Ordinance (Cap. 455) is repealed and the following substituted—

“18. Copyright Ordinance
(Cap. 528)

section 118(1)

section 118D(1) and (2)

section 120(1), (2), (3) and (4)

(provided that for the purpose of this Ordinance, “infringing copy” referred to in sections 118(1), 118D(1) and 120(1) and (3) of the Copyright Ordinance does not include a copy of a work which is an infringing copy by virtue only of section 35(3) of that Ordinance)

offences relating to making or dealing with
infringing copies of copyright works
offences relating to articles for use in making
infringing copies of copyright works
offences relating to making infringing copies of
copyright works outside Hong Kong”.

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Committee Stage amendments to be moved by the
Secretary for Commerce, Industry and Technology
(as at 24.2.2004)

Copyright (Amendment) Bill 2003

~~Prevention of Copyright Piracy Ordinance~~

2. Seized optical discs, etc., liable to forfeiture

~~Section 34(3)(a) of the Prevention of Copyright Piracy Ordinance (Cap. 544) is amended by repealing "section 118 or 120" and substituting "section 118, 118A, 118C, 118D or 120".~~