

A BILL
To

Amend the Copyright Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Copyright (Amendment) Ordinance 2001.

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

2. Meaning of “infringing copy”

(1) Section 35(3) of the Copyright Ordinance (Cap. 528) is amended by repealing “A” and substituting “Except as provided in section 35A, a”.

~~(2) Section 35(9) is amended by repealing “subsections (4) and (5)” and substituting “this section and section 35A”~~

(2) Section 35(9) is repealed.

3. Section added

The following is added immediately after section 35 –

**“35A. Computer program as “infringing copy”
under section 35**

(1) For the purposes of section 35(3) –

- (a) a copy of a work that is a computer program is not an infringing copy if it was lawfully made in the country, territory or area where it was made; and
- (b) a copy of an associated work is not an infringing copy if it was lawfully made in the country, territory or area where it was made.

(2) For the purposes of this section, where –

- (a) an article that has embodied in it a copy of a work that is a computer program is or is proposed to be imported into Hong Kong; and
- (b) at the time it is so imported or proposed to be imported, there is also embodied in the article a copy of any other work (other than a copy specified in ~~subsection (3)~~ subsections (3) to (7)),

that other work is to be regarded as associated with the computer program; and ~~in this section~~ in this Part the copy of the other work embodied in the article is referred to as a “copy of an associated work”.

~~(3) A copy of a work that is embodied in an article is not to be regarded as a copy of an associated work for the purposes of subsection (2) if –~~

- (a) ~~the copy is a copy of a feature film or part of a feature film, and its duration when viewed (as embodied in the article) is more than 20 minutes; or~~
- (b) ~~the copy is a copy of a musical sound recording or a musical visual recording, and the economic value of the article is predominantly attributable to the economic value of the copy, or to the combined economic value of all such copies, as embodied in the article.~~

~~(4) In subsection (3) —~~

~~“feature film” (影視片) means a film commonly known as a movie or a television drama;~~

~~“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 the whole or a predominant part of which consists of a musical work and any related literary work.”~~

(3) A copy of a feature film that is embodied in an article is not a copy of an associated work for the purposes of subsection (2) if —

(a) the copy is a copy of a feature film in its entirety or substantially in its entirety; or

(b) where the copy is a copy of part of a feature film —

(i) all those parts of the feature film copies of which are embodied in the article together constitute the feature film in its entirety or substantially in its entirety; or

(ii) the viewing time of all those parts of the feature film copies of which are embodied in the article is more than 15 minutes in aggregate.

(4) A copy of a television drama that is embodied in an article is not a copy of an associated work for the purposes of subsection (2) if —

(a) the copy is a copy of a television drama in its entirety or substantially in its entirety; or

(b) where the copy is a copy of part of a television drama —

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

(ii) the viewing time of all those parts of the television drama copies of which are embodied in the article is more than 10 minutes in aggregate, and in paragraphs (a) and (b)(i), reference to a television drama, in the case of a television drama comprising one or more episodes, is a reference to an episode of the television drama.

(5) A copy of a musical sound recording that is embodied in an article is not a copy of an associated work for the purposes of subsection (2) if the economic value of the article is predominantly attributable to the economic value of the copy (as embodied in the article) or, where copies of more than 1 musical sound recording are embodied in the article, to the combined economic value of all such copies (as embodied in the article).

(6) A copy of a musical visual recording that is embodied in an article is not a copy of an associated work for the purposes of subsection (2) if the economic value of the article is predominantly attributable to the economic value of the copy (as embodied in the article) or, where copies of more than 1 musical visual recording are embodied in the article, to the combined economic value of all such copies (as embodied in the article).

[(7) Exemption for e-books.]”.

4. Section added

The following is added immediately after section 118 –

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

(1) For the purpose of any proceedings for an offence under section 118(1); ~~sections 60 and 61 have effect subject to the following modifications, namely –~~

- ~~(a) where a person has a contractual right to use a computer program but that contractual right is subject to terms that have the effect of restricting or prohibiting the use of the program in Hong Kong then, despite that restriction or prohibition, the person is to be taken as having a contractual right to use the program in Hong Kong for the purposes of section 60(2); and~~
- (a) a person is a lawful user of a computer program for the purposes of sections 60 and 61 if he has a contractual right to use the

program in any place in or outside Hong Kong, and section 60(2) shall have effect accordingly; and

- (b) sections 60 and 61 apply in relation to a copy of an associated work as they apply in relation to a copy of a computer program and, accordingly, any act that may under those sections be done in relation to a copy of a computer program without infringing the copyright in the program may be done in relation to a copy of an associated work without infringing the copyright in the work.

~~(2) In this section, “copy of an associated work” (有聯繫作品複製品) has the same meaning as in section 35A.”~~

4A. Minor definitions

(1) Section 198(1) is amended by adding –

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

“musical sound recording” () 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” () 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” () means a film of the kind commonly known as a television drama.”

(2) 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.”

4B. Index of defined expressions

Section 199 is amended in the Table by adding –

<u>“copy of an associated work</u>	<u>section 35A(2)</u>
<u>feature film</u>	<u>section 198(1)</u>
<u>lawfully made</u>	<u>section 198(3)</u>
<u>musical sound recording</u>	<u>section 198(1)</u>
<u>musical visual recording</u>	<u>section 198(1)</u>

5. Sections added

~~The following are added immediately after section 199—~~

~~“Transitional provisions and application—
Copyright (Amendment) Ordinance 2001 (—of 2001)~~

~~199A. Offences under section 118(1) committed before
—the commencement of the amendment
—Ordinance of 2001~~

~~(1) In this section—~~

~~“amendment Ordinance of 2001” (《2001年修訂條例》) means the Copyright
(Amendment) Ordinance 2001 (—of 2001);~~

~~“copy of an associated work” (有聯繫作品複製品) has the meaning given in section
35A to the same term appearing in that section;~~

~~“relevant copy work” (有關作品複製品) means—~~

- ~~(a) a copy of a work that is a computer program; or~~
- ~~(b) a copy of an associated work.~~

~~(2) As from the commencement of the amendment Ordinance of 2001, no
proceedings for an offence under section 118(1) committed before that
commencement shall be instituted or continued where the infringing copy is a
relevant copy work and where—~~

- ~~(a) the relevant copy work is an infringing copy by virtue of section
35(3) as that section applied at the time the relevant copy work
was or was proposed to be imported into Hong Kong; and~~
- ~~(b) had the relevant copy work been or been proposed to be
imported into Hong Kong immediately after the commencement
of the amendment Ordinance of 2001, it would not have been an
infringing copy under section 35(3) as that section then applied.~~

~~(3) As from the commencement of the amendment Ordinance of 2001, no
proceedings for an offence under section 118(1) committed before that
commencement shall be instituted or continued—~~

~~(a) where—~~

- ~~(i) the infringing copy is an infringing copy by virtue of
having been made as a back-up copy of a relevant copy
work; and~~
- ~~(ii) had that back-up copy been made immediately after the
commencement of the amendment Ordinance of 2001
then, for the purposes of any proceedings for an offence
under section 118(1), the making of the copy would not
have infringed the copyright in the copyright work,~~

having regard in particular to section 60(1) (as modified by section 118A); or

(b) where—

(i) the infringing copy is an infringing copy by virtue of having been copied or adapted from a relevant copy work; and

(ii) had that copying or adapting been done immediately after the commencement of the amendment Ordinance of 2001 then, for the purposes of any proceedings for an offence under section 118(1), the copying or adapting would not have infringed the copyright in the copyright work, having regard in particular to section 61(1) (as modified by section 118A).

(4) For the avoidance of doubt, nothing in this section affects any proceedings in which before the commencement of the amendment Ordinance of 2001 a person was convicted of an offence under section 118(1), nor any conviction entered in such proceedings.

199B. Application of section 35A to existing imported copies

(1) In this section—

“amendment Ordinance of 2001” (《2001年修訂條例》) means the Copyright (Amendment) Ordinance 2001 (— of 2001);

“copy of an associated work” (有聯繫作品複製品) has the meaning given in section 35A to the same term appearing in that section;

“relevant copy work” (有關作品複製品) means—

(a) a copy of a work that is a computer program; or

(b) a copy of an associated work.

(2) Section 35A has effect in relation to a relevant copy work that was imported into Hong Kong before the commencement of the amendment Ordinance of 2001 as it has effect in relation to a relevant copy work that is imported into Hong Kong after that commencement.

(3) Accordingly, for the purpose of any act done after the commencement of the amendment Ordinance of 2001 (including any act alleged to constitute an infringement of copyright or an offence under section 118(1)), a relevant copy work that—

(a) was imported into Hong Kong before the commencement of the amendment Ordinance of 2001 and was, immediately before that commencement, an infringing copy under section 35(3) as it then applied; and

(b) had it been imported into Hong Kong immediately after the commencement of the amendment Ordinance of 2001, would not have been an infringing copy under section 35(3) as it then applied;

is not to be regarded as an infringing copy under section 35(3).

(4) For the avoidance of doubt, it is declared that nothing in this section or in the amendment Ordinance of 2001 affects any right of action in relation to an

infringement of copyright that occurred before the commencement of the amendment Ordinance of 2001.”.

5. 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.”.

6. Schedule 6 added

The following is added –

“SCHEDULE 6 [s. 282]

TRANSITIONAL PROVISIONS AND SAVINGS

Transitional provisions and savings in relation to amendments effected by the Copyright (Amendment) Ordinance 2001 (of 2001)

1. Interpretation

(1) In this Schedule, unless the context otherwise requires –
“amendment Ordinance of 2001” (《2001年修訂條例》) means the Copyright (Amendment) Ordinance 2001 (of 2001);

“relevant copy work” () means –

- (a) a copy of a work that is a computer program; or
- (b) a copy that is a copy of an associated work for the purposes of section 35A(2) of this Ordinance;

“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 2001 is a reference to this Ordinance as read together with the Suspension Ordinance, as those Ordinances applied immediately before that commencement.

2. Application of section 35A to previously imported copies

(1) Section 35A has effect in relation to a relevant copy work that was imported into Hong Kong before the commencement of the amendment Ordinance of 2001 as it has effect in relation to a relevant copy work that is imported into Hong Kong after that commencement.

(2) Accordingly, for the purposes of any act done after the commencement of the amendment Ordinance of 2001 (including any act alleged to constitute an infringement of copyright or an offence under this Ordinance), a relevant copy work that –

- (a) was imported into Hong Kong before that commencement; and
- (b) is by virtue of such importation an infringing copy for the purposes of section 35(3) of this Ordinance as it applied immediately before that commencement,

is not to be regarded as an infringing copy unless the relevant copy work would also be an infringing copy for the purposes of section 35(3) of this Ordinance if it had been imported into Hong Kong immediately after that commencement.

(3) For the avoidance of doubt, nothing in this section or in the amendment Ordinance of 2001 affects any right of action in relation to an infringement of copyright that occurred before the commencement of the amendment Ordinance of 2001.

3. Exemption from criminal liability previously incurred in respect of “parallel-imported” copy of computer program or associated work

(1) This section applies to an infringing copy of a copyright work that is a relevant copy work, where the relevant copy work –

- (a) was imported or proposed to be imported into Hong Kong before the commencement of the amendment Ordinance of 2001; and

(b) is by virtue of such importation an infringing copy for the purposes of section 35(3) of this Ordinance as it applied immediately before that commencement,

and in this section “infringing copy to which this section applies” shall be construed accordingly.

(2) As from the commencement of the amendment Ordinance of 2001, no person shall be liable to conviction for an offence under section 118(1) of this Ordinance, as that section applied immediately before that commencement, in respect of an infringing copy to which this section applies unless the relevant copy work would also be an infringing copy for the purposes of section 35(3) of this Ordinance if it had been imported or proposed to be imported into Hong Kong immediately after that commencement, having regard in particular to section 35A 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 2001.

4. Exemption from criminal liability previously incurred
in respect of a back-up copy of, or necessary
copying or adapting of, a computer program
or associated work

(1) This section applies to an infringing copy of a copyright work that is a relevant copy work, where the relevant copy work –

(a) was made before the commencement of the amendment Ordinance of 2001; and

(b) is an infringing copy by virtue of the fact that it was made by a person who did not have a contractual right to use the computer program or other work for the purposes of sections 60 and 61 of this Ordinance,

and in this section “infringing copy to which this section applies” shall be construed accordingly.

(2) As from the commencement of the amendment Ordinance of 2001, no person shall be liable to conviction for an offence under section 118(1) of this Ordinance, as that section applied immediately before that commencement, in respect of an infringing copy to which this section applies unless, for the purposes of proceedings for an offence under section 118(1) of this Ordinance, the same copy made immediately after that commencement would also be a copy made by a person who did not have a contractual right to use the computer program or other work for the purposes of sections 60 and 61 of this Ordinance, having regard in particular to section 118A 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 2001.””.