

DRAFT

COPYRIGHT (AMENDMENT) BILL 2003

COMMITTEE STAGE AMENDMENTS

(Moved by: Secretary for Commerce, Industry and Technology)

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COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce,
Industry and Technology

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AMENDMENTS

1. *Amendment to clause 1(2)*

By deleting “Secretary for Commerce and Industry” and substituting “Secretary for Commerce, Industry and Technology”.

2. *Amendment to clause 2*

By deleting clause 2(2) and substituting –

“(2) Section 35(9) is repealed.”.

3. *Amendment to clause 3*

By deleting proposed section 35A and substituting –

"35A. Copy of a computer program, or of a work embodied in the same article as a computer program, not an “infringing copy” for the purpose of section 35(3)

(1) This section applies to a copy of a work that –

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

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

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

(3) A copy of a work that is a movie or a television drama, that is embodied in an article in which is also embodied a copy of a computer program, (including any such copy forming part of an e-book for illustrative purposes), is not a copy of a work to which this section applies if –

- (a) the copy is a copy of the whole or substantially the whole of a movie or a television drama; or
- (b) where the copy is a copy of a part of a movie or a television drama –
 - (i) all those parts of the movie or television drama

copies of which are embodied in the article together constitute the whole or substantially the whole of the movie or television drama; or

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

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

(4) A copy of a work other than a computer program, that is embodied in an article in which is also embodied a copy of a computer program, is not a copy of a work to which this section applies if –

- (a) the copy of the work –
 - (i) forms part of a copy of an e-book;
 - (ii) is a copy of a movie (other than a copy to which subsection (3) applies);
 - (iii) is a copy of a television drama (other than a copy to which subsection (3) applies);
 - (iv) is or forms part of a copy of a musical sound recording; or
 - (v) forms part of a copy of a musical visual recording;and
- (b) the article is an article that, in being acquired by a person for his own use, is likely to be acquired for the purpose of

acquiring the copies of works to which paragraph (a) applies more so than for the purpose of acquiring the copies of other works that are embodied in the article, and in considering for the purposes of paragraph (b) the extent to which an article is likely to be acquired for the purpose of acquiring copies of works other than works to which paragraph (a) applies, no regard shall be had to those functions of any copy of a computer program that provide a means of viewing or listening to a copy of a work to which paragraph (a) applies (and, where the copy of the work is in encrypted form, of any decrypting that is necessary to enable such viewing or listening), or for searching for any specific part of such copy of a work.

(5) In this section, "e-book" means a combination of copies of works comprising –

- (a) one or more copies of each of –
 - (i) a computer program; and
 - (ii) a literary work (other than a computer program), a dramatic work, a musical work or an artistic work ("main work"),
so arranged as to provide for the copy of the main work to be presented in the form of an electronic version of a book, magazine or periodical; and
- (b) where a main work is accompanied for illustrative purposes by any copy or copies of films or sound recordings, that copy or those copies."

4. Amendment to clause 4

By deleting proposed section 118A and substituting –

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

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

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

5. *New clauses (clauses 4A and 4B)*

By adding –

“4A. Minor definitions

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

““movie” () 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 the whole or any part of a musical work or a musical work and arelated 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 the whole or any part of a musical work or a musical work and arelated 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 –

“lawfully made	section 198(3)
movie	section 198(1)
musical sound recording	section 198(1)

musical visual recording	section 198(1)
television drama	section 198(1)".".

6. Amendments to clause 5 (clauses 5 and 6)

By deleting the clause and substituting –

“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 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.

2. Application of section 35A of this Ordinance to previously imported copies

(1) This section applies to a copy of a work that is an infringing copy for the purposes of section 35(3) of this Ordinance as it applied immediately before the commencement of the amendment Ordinance of 2003, and is such an infringing copy by virtue only of an importation or proposed importation into Hong Kong that occurred before that commencement.

(2) For the purpose of any act done after the commencement of the amendment Ordinance of 2003 in relation to a copy of a work to which this section applies (including any act alleged to constitute an infringement of copyright or an offence under this Ordinance), section 35A of this Ordinance shall have effect as if it had been enacted before the occurrence of the importation or proposed importation referred to in subsection (1) and, accordingly, the copy is not to be regarded as an infringing copy unless, having regard to section 35A of this Ordinance, it would also be an infringing copy for the purposes of section 35(3) of this Ordinance if the importation or proposed importation into Hong Kong had occurred immediately after that commencement.

(3) For the avoidance of doubt, nothing in this section or in the amendment Ordinance of 2003 affects any right of action in relation to an infringement of copyright that occurred before the commencement of the amendment Ordinance of 2003.

3. Exemption from criminal liability previously incurred in respect of “parallel-imported” copies of works to which section 35A of this Ordinance applies

(1) This section applies to a copy of a work that is an infringing copy for the purposes of section 35(3) of this Ordinance as it applied immediately before the commencement of the amendment Ordinance of 2003, and is such an infringing copy by virtue only of an importation or proposed importation into Hong Kong that occurred before that commencement.

(2) As from the commencement of the amendment Ordinance of 2003, a person shall not be liable to conviction for an offence under section 118(1) of this Ordinance, as that section applied immediately before that commencement, in respect of an act done before that commencement in relation to a copy of a work to which this section applies unless, having regard to section 35A of this Ordinance, the copy would also be an infringing copy of the work for the purposes of section 35(3) of this Ordinance if the importation or proposed importation into Hong Kong had occurred immediately after that commencement.

(3) For the avoidance of doubt, subsection (2) applies in relation to an offence under section 118(1) of this Ordinance in respect of which proceedings had been begun before the commencement of the amendment Ordinance of 2003, as it applies in relation to an offence

under section 118(1) of this Ordinance in respect of which no proceedings had been begun before that commencement.

4. Exemption from criminal liability previously incurred in respect of a back-up copy of, or necessary copying or adapting of, a copy of a work to which section 35A of this Ordinance applies

(1) This section applies to a copy of a work to which section 35A of this Ordinance applies, where the copy –

- (a) was made before the commencement of the amendment Ordinance of 2003; and
- (b) is an infringing copy by virtue only of the fact that it was made by a person who did not have a contractual right to use the work for the purposes of sections 60 and 61 of this Ordinance.

(2) As from the commencement of the amendment Ordinance of 2003, no person shall be liable to conviction for an offence under section 118(1) of this Ordinance, as that section applied immediately before that commencement, in respect of a copy of a work to which this section applies unless, for the purposes of proceedings for an offence under section 118(1) of this Ordinance, and having regard to section 118A of this Ordinance, the same copy made immediately after that commencement would be a copy made by a person who did not have a contractual right to use the computer program or other work for the purposes of sections 60 and 61 of this Ordinance.

(3) For the avoidance of doubt, subsection (2) applies in relation to an offence under section 118(1) of this Ordinance in respect of which proceedings had been begun before the commencement of the amendment Ordinance of 2003, as it applies in relation to an offence

under section 118(1) of this Ordinance in respect of which no proceedings had been begun before that commencement.”.”.