

Committee Stage amendments to be moved by the
Secretary for Commerce, Industry and Technology
(as at 4.12.2002)

↑ Secretary for Commerce, Industry and Technology

Copyright Ordinance (Cap.528)

35. Meaning of "infringing copy"

- (1) In this Part "infringing copy" (侵犯版權複製品), in relation to a copyright work, is to be construed in accordance with this section.
- (2) A copy of a work is an infringing copy if its making constituted an infringement of the copyright in the work in question.
- (3) A copy of a work other than a copy of an accessory work is also an infringing copy if—
- it has been or is proposed to be imported into Hong Kong; and
 - its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.
- (4) For the purposes of sections 118 to 133 (criminal provisions) "infringing copy" (侵犯版權複製品) does not include a copy of a work—
- that was lawfully made in the country, territory or area where it was made;
 - that has been or is proposed to be imported into Hong Kong at any time after the expiration of 18 months beginning on the first day of publication of the work in Hong Kong or elsewhere; and
 - its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work,
- or a copy of an accessory work—
- that was lawfully made in the country, territory or area where it was made;
 - that has been or is proposed to be imported into Hong Kong; and
 - its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.
- (5) For the purposes of Division VII (proceedings relating to importation of infringing articles), "infringing copy" (侵犯版權複製品) does not include a copy of a work or a copy of an accessory work—
- that was lawfully made in the country, territory or area where it was made;
 - that has been or is proposed to be imported into Hong Kong; and
 - its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.

Copyright (Amendment) Bill 2001

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~~ by notice published in the Gazette.

35. Meaning of "infringing copy"

- (1) In this Part "infringing copy" (侵犯版權複製品), in relation to a copyright work, is to be construed in accordance with this section.
- (2) A copy of a work is an infringing copy if its making constituted an infringement of the copyright in the work in question.
- (3) A copy of a work other than a copy of an accessory work is also an infringing copy if—
- it has been or is proposed to be imported into Hong Kong; and
 - its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.
- (4) For the purposes of sections 118 to 133 (criminal provisions) "infringing copy" (侵犯版權複製品) does not include a copy of a work—
- that was lawfully made in the country, territory or area where it was made;
 - that has been or is proposed to be imported into Hong Kong at any time after the expiration of 18 months beginning on the first day of publication of the work in Hong Kong or elsewhere; and
 - its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work,
- or a copy of an accessory work—
- that was lawfully made in the country, territory or area where it was made;
 - that has been or is proposed to be imported into Hong Kong; and
 - its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.
- (5) For the purposes of Division VII (proceedings relating to importation of infringing articles), "infringing copy" (侵犯版權複製品) does not include a copy of a work or a copy of an accessory work—
- that was lawfully made in the country, territory or area where it was made;
 - that has been or is proposed to be imported into Hong Kong; and
 - its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.

↑ Except as provided in section 35A, a

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(6) Where in any proceedings the question arises whether a copy of a work is an infringing copy and it is shown—

(a) that it is a copy of the work; and

(b) that copyright subsists in the work or has subsisted at any time, it shall be presumed until the contrary is proved that the copy was made at a time when copyright subsisted in the work.

(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—

section 41(5) (copies made for purposes of instruction or examination);
section 44(3) (recordings made by educational establishments for educational purposes);

section 45(3) (reprographic copying by educational establishments for purposes of instruction);

section 46(4)(b) (copies made by librarian or archivist in reliance on false declaration);

section 64(2) (further copies, adaptations, etc. of work in electronic form retained on transfer of principal copy);

section 72(2) (copies made for purpose of advertising artistic work for sale); or

section 77(4) (copies made for purpose of broadcast or cable programme).

(8) For the purpose of subsections (3), (4) and (5), "accessory work" (附屬作品) means a work incorporated in or consisting of—

(a) a label affixed to, or displayed on, an article;

(b) the packaging or container in which an article is packaged or contained;

(c) a label affixed to, or displayed on, the packaging or container in which an article is packaged or contained;

(d) a written instruction, warranty or other information incidental to an article and provided with the article on its sale; or

(e) an instructional sound recording or film incidental to an article and provided with the article on its sale,

and the economic value of the article (inclusive of the label, packaging, container, instruction, warranty, other information, sound recording or film, as the case may be) is not predominantly attributable to the economic value of the work.

(9) For the purpose of subsections (4) and (5), "lawfully made" (合法地製作) does not include the making of a copy of a work 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.

[cf. 1988 c. 48 s. 27 U.K.]

Copyright (Amendment) Bill 2001

(6) Where in any proceedings the question arises whether a copy of a work is an infringing copy and it is shown—

(a) that it is a copy of the work; and

(b) that copyright subsists in the work or has subsisted at any time, it shall be presumed until the contrary is proved that the copy was made at a time when copyright subsisted in the work.

(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—

section 41(5) (copies made for purposes of instruction or examination);
section 44(3) (recordings made by educational establishments for educational purposes);

section 45(3) (reprographic copying by educational establishments for purposes of instruction);

section 46(4)(b) (copies made by librarian or archivist in reliance on false declaration);

section 64(2) (further copies, adaptations, etc. of work in electronic form retained on transfer of principal copy);

section 72(2) (copies made for purpose of advertising artistic work for sale); or

section 77(4) (copies made for purpose of broadcast or cable programme).

(8) For the purpose of subsections (3), (4) and (5), "accessory work" (附屬作品) means a work incorporated in or consisting of—

(a) a label affixed to, or displayed on, an article;

(b) the packaging or container in which an article is packaged or contained;

(c) a label affixed to, or displayed on, the packaging or container in which an article is packaged or contained;

(d) a written instruction, warranty or other information incidental to an article and provided with the article on its sale; or

(e) an instructional sound recording or film incidental to an article and provided with the article on its sale,

and the economic value of the article (inclusive of the label, packaging, container, instruction, warranty, other information, sound recording or film, as the case may be) is not predominantly attributable to the economic value of the work.

(9) For the purpose of subsections (4) and (5), "lawfully made" (合法地製作) does not include the making of a copy of a work 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.

[cf. 1988 c. 48 s. 27 U.K.]

↑ this section and section 35A



△ 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)),

that other work is to be regarded as associated with the computer program; and in this section 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 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.



△ 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)),

that other work is to be regarded as associated with the computer program; and in this section 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 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.

↑ subsections (3), (3A) and (3B)

☆ (3) A copy of a work that is embodied in an article is not a copy of an associated work for the purposes of subsection (2) if the work is a film of the kind commonly known as a movie and if the copy —

- (a) is a copy of the movie in its entirety or substantially in its entirety; or
- (b) is a copy of a part of the movie (not being a part to which paragraph (a) applies), and —

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(i) that part together with all other parts of the movie embodied in the article constitute the movie in its entirety or substantially in its entirety; or

(ii) the duration of that part together with all other parts of the movie embodied in the article when viewed (as embodied in the article) constitute more than 15 minutes in aggregate.

(3A) A copy of a work that is embodied in an article is not a copy of an associated work for the purposes of subsection (2) if the work is a film of the kind commonly known as a television drama and if the copy -

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

(b) is a copy of a part of the television drama (not being a part to which paragraph (a) applies), and -

(i) that part together with all other parts of the television drama embodied in the article constitute the television drama in its entirety or substantially in its entirety; or

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(ii) the duration of that part together with all other parts of the television drama embodied in the article when viewed (as embodied in the article) constitute more than 10 minutes in aggregate,

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

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

(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.

↑ the sound-track accompanying

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60. Lawful user may make back-up
copy of computer program

- (1) A lawful user of a copy of a computer program may make a back-up copy of the program without infringing the copyright in the program if it is necessary for him to have the back-up copy for the purposes of his lawful use.
- (2) For the purposes of this section and section 61 a person is a lawful user of a computer program if he has a contractual right to use the program.
- (3) This section has effect subject to any agreement to the contrary.
[cf. 1988 c. 48 s. 50A U.K.]

61. Lawful user may copy or adapt computer program

- (1) A lawful user of a copy of a computer program may copy or adapt the program without infringing the copyright in the program if the copying or adapting is necessary for his lawful use.
- (2) A lawful user of a copy of a computer program may, in particular, if it is necessary for the lawful use of the program, copy the program or adapt it for the purpose of correcting errors in it.
- (3) This section does not apply to any copying or adapting permitted under section 60.
[cf. 1988 c. 48 s. 50C U.K.]

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; ** or*
- (d) possesses for the purpose of, ~~in the course of, or in connection with,~~ any trade or business with a view to committing any act infringing the copyright; *(Amended 64 of 2000 s. 7)*
- (e) for the purpose of, ~~in the course of, or in connection with,~~ any trade or business— *(Amended 64 of 2000 s. 7)*
- (i) sells or lets for hire;
- (ii) offers or exposes for sale or hire;
- (iii) exhibits in public; or
- (iv) distributes; or ** or*
- (f) distributes (otherwise than for the purpose of, ~~in the course of, or in connection with,~~ any trade or business) to such an extent as to affect prejudicially the owner of the copyright, *(Amended 64 of 2000 s. 7)*
- an infringing copy of a copyright work.

* Note : By virtue of section 2(7)(a) of the Copyright (Suspension of Amendments) Ordinance 2001, the reference to "for the purpose of, in the course of, or in connection with, any trade or business" in section 118(1)(d), (e) and (f) shall be read as "for the purpose of, or in the course of, any trade or business".

Copyright (Amendment) Bill 2001

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
- (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.

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~~
- (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.

- ☆ (a) in section 60(2), for the passage "contractual right to use the program" shall be substituted the passage "contractual right to use the program in Hong Kong (including in a limited part of Hong Kong) or in a place outside Hong Kong"; and



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.

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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.

△ “copy of an associated work” (有聯繫作品複製品) has the same meaning as in section 35A;

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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.

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.

△ “copy of an associated work” (有聯繫作
品複製品) has the same meaning
as in section 35A;