

Equal Opportunities Commission's Response
To The Consultation Document
On The Review of Certain Provisions of Copyright Ordinance

1. This paper sets out the comments of the Equal Opportunities Commission (EOC) on the review of certain provisions of the Copyright Ordinance in relation to the enhancement of equitable access for people with disabilities (PWDs).
2. It is noted that the consultation document has committed a specific section on permitted acts for people with visual impairment. The EOC welcomes this effort to address the needs of PWDs and sees it as an important initiative to mainstream disability issues into Government's legislative and policy-making process.

Guiding Principles

3. The EOC believes that the consideration of the impact of copyright protection on PWDs should be guided by two principles:
 - (i) Access to information is essential to ensure equal opportunities for PWDs in the areas of employment, education, cultural life and recreational activities, etc. Equitable access should be based on a principle that it must be provided within reasonable time and at fair cost. Legislation and policies should enable full participation by removing the barriers in these areas.
 - (ii) The EOC supports the principle that effective protection of copyright will help boost the development of Hong Kong's economy and benefit society as a whole, and providing equal opportunities for PWDs does not contradict this principle.

Access to Copyright Works

4. Under the Copyright Ordinance, copying of a work means reproducing the work in any material form (s.23 (2)). Accordingly, the conversion of a printed or an e-copy of a work into a Braille

version would be unlawful within the meaning of the law. However, it should be noted that many works are still made in standard formats that are normally not accessible to PWDs. For example, literary works are produced predominately in standard print that cannot be read by people with visual impairment.

5. If conversion to any other formats (including formats that are required to facilitate PWDs' access) remains unlawful, unpredictable and unfair royalty charges would have adversely affect PWDs and non-government organizations (NGOs) which survive mainly on funding and donations. Although zero royalty rate is possible after negotiation, it is still necessary for these organizations and PWDs individually to secure copyright owners' or their agents' consent.
6. The EOC recognizes that it is possible for anyone, including PWDs and any organizations, to obtain permission to reproduce copyright works either directly from copyright owners or through a licensing body. However, delays are inevitable due to the time required to identify copyright owners and to negotiate mutually agreed terms. Frequently, a work involves many copyright owners and licencees and ascertaining all the parties is not just a complex exercise but is sometimes impossible.
7. The EOC believes, as a matter of principle, that the creation of **alternative formats** of copyright works intended for use by PWDs should not be considered an infringement of copyright. To address the potential barriers outlined in para. 4, 5 and 6, **the EOC recommends that PWDs and NGOs should be allowed to make copies in accessible format to meet their particular needs without having to seek permission from copyright owners or their licencees.**

Permitted Acts under the Copyright Ordinance

8. S.83 (1) of the Copyright Ordinance makes it lawful for designated non-profit making organizations to make copies of television broadcasts or cable programmes for people with certain types of disabilities. This exemption, however, does not cover works of

other formats such as printed publications, movies and electronic copies. Accordingly, the EOC supports the recommendation that a new permitted act should be provided for transcribing copyright works into specialized formats that are accessible for PWDs (paragraph 3.4(a) of the consultation document).

9. Additionally, the needs of PWDs are diverse depending on the types and degrees of disability, and the kind of access devices available to them. For example, people with hearing impairment need audio work transcribed into written text; people with intellectual disability require adapted or simplified literary works for comprehension; people with limited fingers movement require publications reprinted in easy-to-flip papers or materials; some people with visual impairment require non-coloured copies and others would benefit from the availability of an e-version of a printed work which they could read on computers with the aid of a zooming or talking device; etc. **Therefore, the EOC recommends that permitted acts should cover all accessible formats and adaptations required by all PWDs in addition to those with visual impairment.**
10. The Copyright Ordinance has made provisions for permitted acts in the area of education which benefit PWDs as well. However, PWDs should be empowered to participate in different spheres of life. **The EOC recommends that the permitted acts in relation to PWDs should extend beyond education and cover other fields and activities (such as recreational and cultural activities) as well.**
11. It is suggested in the consultation document that permitted acts for people with visual impairment are to be subject to a condition that the work concerned is not “commercially available in Hong Kong within a reasonable time or at a reasonable price”. The EOC is concerned that it would impede PWDs’ equal access to information. This condition is ambiguous, onerous and creates uncertainties for PWDs. Inevitably the condition will result in delays and excessive cost. In the information world, speed and reliability are everything. Apart from difficulties in ascertaining the identities of all copyright owners and licencees, ascertaining what constitutes “commercial availability” as prescribed is similarly difficult.

12. **The EOC recommends that there should be a simple structure to ensure that works are easily made available to PWDs and are provided within reasonable time and at fair cost. In addition to our recommendations made above (paras 7, 9 and 10), we are also of the view that all adaptations required to provide PWDs with access to works should not attract extra cost or royalty. Where a charge is justifiable, we propose that a standard statutory licence fee be imposed to facilitate access, and to avoid delay and the imposition of onerous terms. The setting of the statutory rate should take into account the economic situation of PWDs and their general difficulties in accessing any services.**

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Equal Opportunities Commission
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