

LEGISLATIVE COUNCIL BRIEF

Copyright Ordinance
(Chapter 528)

COPYRIGHT (AMENDMENT) BILL 2003

INTRODUCTION

At the meeting of the Executive Council on 28 January 2003, the Council ADVISED and the Chief Executive ORDERED that the Copyright (Amendment) Bill 2003 ("the Bill"), at Annex A, should be introduced into the Legislative Council ("LegCo") to make permanent (subject to a number of modifications) the suspension arrangements under the Copyright (Suspension of Amendments) Ordinance 2001 ("Suspension Ordinance") which will expire on 31 July 2003, and to make other related amendments to the Copyright Ordinance.

BACKGROUND AND ARGUMENT

Use of pirated copies of copyright works in business

2. To combat rampant piracy in computer software and audio-visual products, we amended the Copyright Ordinance with effect from 1 April 2001 to introduce criminal liability for the use of pirated copies of copyright works in business.

3. Prior to 1 April 2001, section 118(1)(d) of the Copyright Ordinance provided that a person would commit an offence if he, without the licence of the copyright owner, possessed an infringing copy of a copyright work **for the purpose of trade or business** and with a view to committing any infringing act.

4. The legal advice then was that it was uncertain whether the criminal provision mentioned above would cover the situation in which the trade or business in question did not consist of dealing in the infringing copy itself. For example, a factory engaged in making garments but using pirated computer software for personnel management might not be criminally liable.

5. To rectify this problem, we amended the Copyright Ordinance by replacing the expression 'for the purpose of trade or business', where it appeared in the Copyright Ordinance, with 'for the purpose of, in the course of, or in connection with, any trade or business'. In addition, we added to the Copyright Ordinance a provision clarifying that it was immaterial whether or not the trade or business consisted of dealing in infringing copies of copyright works.

6. While the original aim of these amendments was to deter corporate piracy in computer software and audio-visual works, the new law applied also to photocopying of printed works as well as downloading of information from the Internet. The public generally felt that the scope of the new criminal law was too wide. In June 2001, with the enactment of the Suspension Ordinance, we suspended the amendments except as they applied to four categories of copyright works, namely, computer programs, movies, television dramas and musical recordings ("the Four Categories of Works"). We also suspended application to the new criminal law of the phrase 'in connection with' in the expression 'for the purpose of, in the course of, or in connection with, any trade or business' where this appeared in the Copyright Ordinance, so that activities incidental to or marginally related to business would be outside the scope of the criminal liability for using pirated copies of copyright works in business. We undertook to formulate a long-term solution after wide public consultation.

7. In November 2001, we issued a document entitled 'Review of Certain Provisions of the Copyright Ordinance' for a two-month public consultation. Having regard to the outcome of the public consultation and the views of the LegCo Panel on Commerce and Industry, the Government decided in March 2002 to make the suspension arrangements permanent as well as to make some other improvements to the Copyright Ordinance. We issued a LegCo Brief in the same month describing in detail the decision. We also informed LegCo that we would implement the various recommendations in stages, and that we would concentrate first on issues related to end-user criminal liability.

8. In July 2002, we sought the views of the LegCo Panel on Commerce and Industry on the broad approach in amending the Copyright Ordinance (together with certain preliminary draft provisions of a bill) to, among other things, make permanent the suspension arrangements. The Panel urged us to expedite the drafting of the bill and listen to the views of the public and the industry to facilitate its introduction in this legislative session.

End-user liability in relation to parallel imports

9. One of the recommendations mentioned in paragraph 7 above concerns the removal of end-user liability in relation to parallel imports. Our original plan was to deal with parallel importation issues in the next stage, but on further deliberation we consider it more appropriate to deal with them in the Bill. This is because they are also related to end-user liability and it would be desirable to remove earlier rather than later potential worries on the part of end users of parallel-imported products.

Proposals

10. The Bill seeks to implement a number of recommendations described in the LegCo Brief mentioned in paragraph 7 above. These recommendations are as follows:

- (a) the arrangements under the Suspension Ordinance whereby criminal liability for the use of pirated copies of copyright works in business is confined to only the Four Categories of Works should be made permanent;
- (b) the phrase 'in connection with' should be removed from the expression 'for the purpose of, in the course of, or in connection with, any trade or business' where it appears in the Copyright Ordinance;
- (c) a new defence against criminal liability should be provided for employees possessing infringing copies of works belonging to the Four Categories of Works supplied by their employers, and that this defence should take retrospective effect from 1 April 2001;
- (d) to combat illicit reproduction of books by copy-shops for

commercial purposes more effectively, the relevant criminal provisions in the Copyright Ordinance and the enforcement procedure should be reviewed; and

- (e) the existing restrictions on parallel importation of copyright works other than computer software should be maintained, except that the criminal and civil liability for importation and possession of such goods by end users should be removed.

The proposed legislative amendments are set out below.

Proposed legislative amendments

Making the suspension arrangements permanent

11. We propose to implement the recommendation in paragraph 10(a) above broadly by –

- (a) amending the offences in sections 118(1)(d) and (e) of the Copyright Ordinance to limit them to certain specified acts of dealing with infringing copies of copyright works that are by nature mainly commercial acts. These acts include selling, letting for hire, distributing for profit or financial reward, transporting or storing for profit or financial reward, or possession with a view to doing the afore-mentioned acts; and exhibition in public for the purpose of selling or letting for hire; and
- (b) adding to the Copyright Ordinance a new provision to deal specifically with criminal liability for the use of pirated copies of copyright works in business. Under this provision, a person will commit an offence if he possesses in the course of any business an infringing copy belonging to the Four Categories of Works, with a view to its being used in that business.

The combined effect of the two proposed amendments is that criminal liability for using a pirated copy will be incurred only in relation to copyright works belonging to the Four Categories of Works, and the criminal act concerned will be confined to possession of an infringing copy in the course of any business with a view to its being used in that business. See paragraph 28(III)(i) below.

12. In addition to the above, we propose to make similar or consequential changes to sections 118(1)(f), 118(4), 118(5), 118(8), 118(8A) and 120 of the Copyright Ordinance.

13. While not applicable to computer programs generally, the suspension arrangements do apply to certain types¹ of infringing copies of computer programs. These arrangements will also be made permanent when amending the Copyright Ordinance. See paragraph 28(III)(j) and (m) below.

Improvements to section 118(1)(d) and (e)

14. In re-defining the offences in section 118(1)(d) and (e) (see paragraph 11(a) above), we have consciously omitted making reference to the expression 'for the purpose of, in the course of, or in connection with, any trade or business' in the provisions. We consider it clearer and more transparent to set out explicitly the various offending acts. See paragraph 28(III)(c) and (d) below.

15. With regard to the offending act of transporting or storing for profit or financial reward infringing copies of copyright works (see paragraph 11(a) above), we propose to add a presumption to the effect that, where a person is transporting or storing an infringing copy in circumstances that give rise to a reasonable suspicion that he is transporting or storing the infringing copy for profit or financial reward, the person is presumed to be so acting for profit or financial reward, unless there is evidence to the contrary. This limited presumption is necessary to facilitate effective enforcement and prosecution, as in practice it will be extremely difficult in many cases to prove beyond reasonable doubt the element of 'for profit or financial reward' in the offence. A similar presumption will be provided for the offending act of possessing an infringing copy with a view to transporting or storing it for profit or financial reward. See paragraph 28(III)(h) below.

Deletion of the phrase 'in connection with'

16. To implement the recommendation set out in paragraph 10(b) above, we propose to delete the phrase 'in connection with' from the expression 'for the purpose of, in the course of, or in connection with, any trade or business', where this expression appears throughout the Copyright

¹ These include, for example, infringing copies in printed form, and infringing copies by virtue of their parallel importation into Hong Kong.

Ordinance. See paragraph 28(X) below (in relation to provisions other than the offence provisions).

New defence for employees

17. We propose to add a new defence for an employee charged with an offence described in paragraph 11(b) above where the possession of the infringing copy in question occurred in the course of his employment and the infringing copy was provided to him by or on behalf of his employer. The defence will be available with retrospective effect from 1 April 2001 in certain proceedings no matter whether the proceedings were begun before or after the commencement of the amending legislation. See paragraphs 28(III)(k) and (IX) below.

18. However, this defence will not be available to employees of a business establishment who have functions of management of the establishment. Such employees include, for example, any director or secretary of a body corporate. See paragraph 28(III)(l) below.

Tightening criminal sanctions against illicit copy-shops

19. We propose to amend section 118(1)(a) of the Copyright Ordinance so that making infringing copies of a copyright work for profit or financial reward will be an offence, in addition to making infringing copies for sale or hire. This will facilitate enforcement in 'making-to-order' situations (for example, a photocopying service) by eliminating the argument that the defendant merely provided a service to customers. See paragraph 28(III)(a) below.

20. We propose to create a new offence targeting copy-shops by providing that a person engaged in a commercial copying service will commit an offence if he possesses two or more substantially identical infringing copies of a copyright work as published in a book, magazine or periodical. The proposed maximum penalty for this offence is to be the same as for other offences of dealing in infringing copies of copyright works under the Copyright Ordinance, namely imprisonment of four years and a fine of \$50,000 per infringing copy. See paragraphs 28(III)(q) and (IV) below.

21. To ensure that the new offence will not operate unfairly, we propose providing the following defences -

- (a) that the defendant did not know and had no reason to believe that the copies in question are infringing copies;
- (b) that the relevant book, magazine or periodical is available free of charge to members of the public in Hong Kong who wish to acquire their own copy; or
- (c) that-
 - (i) the defendant possesses the infringing copies only by virtue of the fact that he possesses copies of another work (“principal work”) in which copies the copyright work to which the offence relates forms part of the principal work; and
 - (ii) extracts from books, magazines or periodicals constitute not more than 20% of the contents of each of the copies of the principal work concerned.

The defence at (c) above is to address the concern of some copy-shop operators that student customers may ask copy-shops to make photocopies of their school project report which contains extracts from a book, magazine or periodical. Making photocopies of such a school project report may result in making infringing copies of the extracts concerned. The “20%” threshold in paragraph 21(c)(ii) above is proposed to render it difficult for the defendant to exploit the defence by making the infringing copy part of a fictitious principal work which is substantially the same as the infringing copy. See paragraph 28(III)(r) below.

Removal of end-user liability in relation to parallel imports

22. “Parallel-importing”, in the context of a copy of a copyright work, refers to the importing of a copy of a work without the explicit authorisation of the copyright owner and that was lawfully made outside Hong Kong. If the making in Hong Kong of a copy so imported (“parallel-imported copy”) would constitute an infringement of copyright or a breach of an exclusive licence agreement relating to the work, the copy will by virtue of section 35(3) of the Copyright Ordinance be an infringing copy (“parallel-imported infringing copy”). To implement the recommendation in paragraph 10(e) above, we propose to remove civil and criminal liability in relation to

parallel importing of copies of copyright works and possession of such parallel-imported copies, unless the importing or possession is for the purpose of any of the following acts : selling, letting for hire, or distributing for profit or financial reward or to such an extent as would prejudicially affect the copyright owner. Existing restrictions on parallel importation are maintained for such mainly commercial dealings. See paragraphs 28(I), (II), and (III)(f) and (j) below.

23. The effect of this proposal is that a person will not incur any civil or criminal liability for parallel importing copies of copyright works, or for possessing such copies, for use in the person's business. On the other hand, parallel importing copies of copyright works for sale, or selling parallel-imported copies will, among other commercial dealings, continue to be subject to existing restrictions².

24. Besides importing and possession, the existing restrictions apply to some other dealings with parallel-imported copies. These include certain acts of exhibiting in public or distributing parallel-imported copies. Our proposal will also remove civil and criminal liability for exhibiting in public parallel-imported copies other than for the sale or hire of those copies, and for distributing such copies other than for profit or financial reward or to such an extent as to affect prejudicially the copyright owner. For example, exhibiting in public a parallel-imported book for the promotion of culture, or distributing a limited number of parallel-imported copies for classroom use, would not attract any civil or criminal liability. This is consistent with our objective to remove civil and criminal liability for the use of parallel-imported copies of works in a business context.

25. We further propose that the removal of criminal liability in relation to parallel-imported infringing copies should apply retroactively as regards any offence committed before commencement of the amending legislation, unless a conviction has already been entered. See paragraph 28(IX) below.

Other amendments

Definition of 'business'

² Subject to enactment of the Copyright (Amendment) Bill 2001, which is being examined by LegCo, no restriction will apply to parallel imported computer software.

26. We propose to amend the definition of the term 'business' in section 198 of the Copyright Ordinance, to put it beyond doubt that the term includes business conducted other than for profit. This is consistent with our policy that non-profit-making businesses such as charitable organizations or government should generally be treated on a par with profit-making businesses for the purposes of the Copyright Ordinance. For example, criminal liability for the use of pirated copies of copyright works should apply to both profit-making and non-profit-making businesses. See paragraph 28(VIII) below.

Consequential amendments

27. Schedule 1 of the Organized and Serious Crimes Ordinance (Cap 455) ("OSCO") was amended in January 2000 to include certain intellectual property offences. The objective was to provide additional powers of investigation for enforcement agents and confiscation of proceeds where criminal syndicates were involved. Most of the offences under section 118 of the Copyright Ordinance were included in Schedule 1 of OSCO in that exercise. With the proposed amendments to section 118, we need to make consequential amendments to Schedule 1 of OSCO. However, since the 'end-user' criminal offence under the new section 118A(1) is unlikely to require the additional powers of investigation and confiscation provided under OSCO, we do not propose to add reference to that section to Schedule 1 of OSCO. See paragraph 28(XI) below.

THE BILL

28. The main provisions of the Copyright (Amendment) Bill 2003 are set out below -

- (I) **Clause 2** adds a **new section 30(2)** to remove civil liability in relation to parallel importing of copies of copyright works for certain purposes. The new section 30(2) provides that importing a parallel-imported infringing copy will not infringe copyright if the person importing it does so other than for sale or hire, or for distributing it for profit or financial reward or to such an extent as would affect prejudicially the copyright owner. See paragraphs 22 and 23 above. For the purpose of this and other provisions related to parallel importation in the Copyright Ordinance, the expression "lawfully made" does not include the making of a copy of a work in a country or place where there is no law protecting copyright in

the work or where the copyright in the work has expired. See paragraph 28(VIII) below.

- (II) **Clause 3** adds **new sections 31(3), (4) and (5)** to remove civil liability in relation to the possession, exhibition in public and distribution of parallel-imported copies of copyright works for certain purposes. The new Section 31(3) provides that possessing a parallel-imported infringing copy of a copyright work will not infringe copyright if the person possessing it does so other than for sale or hire, or for distributing it for profit or financial reward or to such an extent as would affect prejudicially the copyright owner. The new section 31(4) provides that exhibiting in public a parallel-imported infringing copy is not an infringement if the exhibition is other than for sale or hire of that copy or any other infringing copy of a copyright work. The new section 31(5) provides that distributing a parallel-imported infringing copy other than for profit or reward or to such an extent as to affect prejudicially the copyright owner will not be an infringement. See paragraph 24 above.

- (III) **Clause 4** replaces the existing section 118.

- (a) The **new section 118(1)(a)** replicates the existing section 118(1)(a) with the addition of the offence of 'making for profit or financial reward' infringing copies of any copyright works. See paragraph 19 above.
- (b) The **new section 118(1)(b) and (c)** replicates the existing sections 118(1)(b) and (c) for importing or exporting infringing copies of any copyright works otherwise than for private and domestic use.
- (c) The **new section 118(1)(d)** replicates the existing section 118(1)(e) with modifications. The expression 'for the purpose of, in the course of, or in connection with, any trade or business' has been removed and specific acts mainly involving dealing with infringing copies in a commercial context are spelt out. These are : selling, letting for hire, offering or exposing for sale or hire, transporting or storing for profit or financial reward, distributing for profit or financial reward, and exhibiting in public for the purpose of selling or letting for hire any infringing copy of a copyright work. See paragraph 14 above.

- (d) The **new section 118(1)(e)** replicates the existing section 118(1)(d) with modifications. The expression 'for the purpose of, in the course of, or in connection with, any trade or business' has been removed and specific acts mainly involving dealing with infringing copies in a commercial context are spelt out, namely, selling, letting for hire, transporting or storing for profit or financial reward, and distributing for profit or financial reward. See paragraph 14 above.
- (e) The **new section 118(1)(f)** replicates the existing section 118(1)(f) with modifications to reflect the wording of the new section 118(1)(d)(iv).
- (f) The **new section 118(2)** exempts from criminal liability under the new section 118(1)(b) a person who imports a parallel-imported infringing copy of a copyright work other than for sale or hire, or for distributing it for profit or financial reward or to such an extent as would prejudicially affect the copyright owner. See paragraphs 22 and 23 above.
- (g) The **new section 118(3)** replicates the existing section 118(2) with modifications to provide that the new section 118(1)(b), (c), (d)(iii) and (e)(ii) do not apply to an article in transit.
- (h) The **new sections 118(4) and (5)** provide presumptions for the element of 'for profit or financial reward' in proceedings for offences under the new section 118(1)(d)(iii) and 118(1)(e)(ii). Under the new section 118(4), a person who is transporting or storing an infringing copy of a copyright work in circumstances that give rise to reasonable suspicion that he is transporting or storing the infringing copy for profit or financial reward is, in the absence of evidence to the contrary, presumed to be so acting for profit or financial reward. The new section 118(5) provides a similar presumption for a person who possesses an infringing copy with a view to transporting or storing it for profit or financial reward. See paragraph 15 above.
- (i) The **new section 118A(1)** creates an offence for a person who possesses in the course of any trade or business an infringing copy of a copyright work falling within the Four Categories of

Works, with a view to the copyright work being used in the course of that trade or business. See paragraph 11(b) above.

- (j) The **new section 118A(2)** provides that the new section 118A(1) does not apply in relation to an infringing copy that is a parallel-imported copy. Since the offence under new section 118A(1) is the only offence in the Copyright Ordinance relating to the actual use of an infringing copy, the effect of this provision is that a person in possession of a parallel-imported copy of a work falling within the Four Categories of Works for use in the person's business will not commit any offence. (Under the present law, the possession in the course of a business for use in that business of an infringing copy of a work falling outside the Four Categories of Works is not a criminal offence.) See paragraphs 22 and 23 above.
- (k) The **new section 118A(3)** provides a defence for a person charged under the new section 118A(1) if his possession of the infringing copy in question occurred in the course of his employment and if the infringing copy was provided to him by or on behalf of his employer. See paragraph 17 above.
- (l) The **new section 118A(4)** stipulates that the defence at the new section 118A(3) will not be available to an employee of a body corporate, a partnership, a sole proprietorship or a business organisation in any other case, if he is concerned in the management of that establishment. See paragraph 18 above. An example of 'any other case' is a charitable organization registered under the Societies Ordinance.
- (m) The **new section 118A(5)** in essence replicates section 2(6) of the Suspension Ordinance. See paragraph 13 above.
- (n) The **new section 118B(1)** replicates the existing section 118(3).
- (o) The **new sections 118B(2) and (3)** in essence replicate the existing sections 118(6) and (7) and list out matters which if proved by a defendant will constitute proof of the defence in the new section 118B(1) in relation to a parallel imported copy of a copyright work, and the factors that the court may

have regard to in determining whether the matters have been proved.

- (p) The **new section 118C(1)** provides a definition for the expression 'business that includes the providing of a copying service' as used in the offence for copying service businesses under the new section 118C(2).
 - (q) The **new section 118C(2)** makes it an offence for a person engaged in a business that includes the providing of a copying service to possess two or more substantially identical reprographic copies (being infringing copies) of a copyright work as published in a book, magazine or periodical. See paragraph 20 above.
 - (r) The **new sections 118C(3), (4) and (5)** provide defences for a person charged under the new section 118C(2) if he could prove any of the following (see paragraph 21 above) -
 - that he did not know and had no reason to believe that the copies in question were infringing copies;
 - that
 - (i) he possessed the infringing copies only by virtue of the fact that he possessed reprographic copies of another work ("principal work"), in which reprographic copies the copyright work to which the offence relates forms part of the principal work; and
 - (ii) works as published in books, magazines or periodicals constitute not more than 20% of the contents of each of the reprographic copies of the principal work.
- ; or
- that copies of the book, magazine or periodical in question are available free of charge to members of the public who wish to acquire their own copy.

- (s) The **new section 118D(1)** replicates the existing section 118(4) with modifications. The key modifications are to remove the expression ‘for use for the purpose of, in the course of, or in connection with, any trade or business’ and to align with the wording of the new section 118(1)(a).
 - (t) The **new section 118D(2)** replicates the existing section 118(8) with modifications. The modifications are in line with those for the new section 118D(1).
 - (u) The **new section 118D(3)** replicates the existing section 118(2).
 - (v) The **new section 118D(4)** replicates the existing section 118(5) with modifications. It provides that it is a defence for a person charged under the new section 118D(1) to prove that he did not know and had no reason to believe that the article in question was used or was intended to be used to make infringing copies of the copyright work, or to make the infringing copies concerned for any of the purposes mentioned in the new section 118D(1).
- (IV) **Clause 5(1)** provides, among other things, for the maximum penalty for the offences under the new section 118C(2) at the same level as offences under the existing section 118(1), i.e. \$50,000 per infringing copy and imprisonment for 4 years. See paragraph 20 above.
- (V) **Clause 6(1)** amends section 120(2) along the same line as the modifications to the existing sections 118(4) and 118(8) for the same reason. See paragraphs 28(III)(s) and (t) above.
- (VI) **Clause 7** replicates the existing sections 118(9) and 120(8).
- (VII) **Clause 8** adds a **new section 196A** to replace the existing section 118(8A), and similar provisions that appear elsewhere in Part II of the Copyright Ordinance, by clarifying that any 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 person who is engaged in a trade or a business of any kind and who does the act for the purpose of or in the course of that trade or business; or to of an employee of a person engaged in a trade or a business of any kind, who does the act for the purpose of or in the course of his employment.

- (VIII) **Clause 9(1)** amends the definition of 'business' in section 198(1) to include business conducted otherwise than for profit. See paragraph 26 above. **Clause 9(2)** provides definitions under the existing section 198(1) for "feature film", "musical sound recording", "musical visual recording" and "television drama". **Clause 9(4)** adds a **new section 198(3)** to provide that 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 Part II of the Copyright Ordinance.
- (IX) **Clauses 10 and 11** insert a **new Schedule 6** to provide for transitional matters. **Section 2** provides in effect for the removal of criminal liability incurred before the commencement of the amending legislation in respect of the importing, possession, exhibition in public, and distribution of parallel-imported copies of copyright works unless such acts will constitute an offence after the commencement of the amending legislation. See paragraph 25 above. **Section 3** stipulates that the defence for employees under new section 118A(3) will have retrospective effect from 1 April 2001 in relation to certain offences under the existing provisions of the Copyright Ordinance. See paragraph 17 above.
- (X) **Clause 12(1)** and **Schedule 1** provide for miscellaneous and consequential amendments to the Copyright Ordinance. In particular, section 1 of Schedule 1 deletes the phrase 'in connection with' in the civil provisions of the Copyright Ordinance. See paragraph 16 above.
- (XI) **Clause 12(2)** and **Schedule 2** provide for consequential amendments to other legislation. For those relating to the Organized and Serious Crimes Ordinance, the consequential amendments do not include the offence under the new section 118A(1). See paragraph 27 above.
- (XII) **Clause 13** repeals the Suspension Ordinance.

LEGISLATIVE TIMETABLE

30. The legislative timetable will be –

Publication in the Gazette	7 February 2003
First Reading and commencement of Second Reading debate	12 February 2003
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

 ^c 31. The proposal has economic implications as set out at Annex C. The proposal is in conformity with the Basic Law, including provisions concerning human rights. It has no productivity, environmental, financial or civil service implications, or binding effect and has no significant sustainability implications.

PUBLIC CONSULTATION

32. The proposals were drawn up after extensive public consultation and consultations with the LegCo Panel on Commerce and Industry.

PUBLICITY

33. We will issue a press release on 29 January 2003. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

34. Enquiries on this brief should be referred to Mr Donald Chen, Principal Assistant Secretary for Commerce, Industry and Technology (Commerce and Industry), on telephone number 2918 7480.

Commerce, Industry and Technology Bureau
29 January 2003

COPYRIGHT (AMENDMENT) BILL 2003

CONTENTS

Clause		Page
1.	Short title and commencement	1
2.	Secondary infringement: importing or exporting infringing copy	1
3.	Secondary infringement: possessing or dealing with infringing copy	1
4.	Sections substituted	
	118. Offences in relation to infringing copies generally	3
	118A. Offences in relation to infringing copies of particular categories of works	4
	118B. Defences to criminal liability under sections 118 and 118A	5
	118C. Offence in relation to possession of infringing copies by a copying service	7
	118D. Offences in relation to articles for use in making infringing copies	8
5.	Penalties for offences under sections 118, 118A, 118C and 118D	8
6.	Making infringing copies outside Hong Kong, etc.	8
7.	Section added	
	120B. Presumptions in relation to offence provisions	9

8.	Section added	
	196A. Meaning of "for the purpose of or in the course of trade or business"	9
9.	Minor definitions	9
10.	Section added	
	282. Transitional provisions and savings	10
11.	Schedule 6 added	
	Schedule 6 Transitional provisions and savings	10
12.	Miscellaneous and consequential amendments	12
13.	Repeal	13
Schedule 1	Miscellaneous and consequential amendments to the Copyright Ordinance (Cap. 528)	13
Schedule 2	Consequential amendments to other Ordinances	15

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. 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."

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."

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
- (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) 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."

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."

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
- (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 –

"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.

(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.

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.

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)	offences relating to making or dealing with infringing copies of copyright works
section 118D(1) and (2)	offences relating to articles for use in making infringing copies of copyright works
section 120(1), (2), (3) and (4)	offences relating to making infringing copies of copyright works outside Hong Kong".

(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)

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".

Explanatory Memorandum

The main purpose of this Bill is to amend the Copyright Ordinance (Cap. 528) ("the principal Ordinance") to allow for the repeal of the Copyright (Suspension of Amendments) Ordinance 2001 (Cap. 568) ("the Suspension Ordinance"). The Suspension Ordinance, which was enacted in June 2001, provides for the suspension of the operation of certain amendments to the principal Ordinance that were effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000).

2. A further purpose of this Bill is to remove certain criminal and civil liability under the principal Ordinance in relation to so-called "parallel-imported" infringing copies. These are copies that were lawfully made in the country or place where they were made but are nonetheless infringing copies by virtue of section 35(3) of the principal Ordinance.

3. Clause 2 adds a new subsection to section 30 of the principal Ordinance ("Secondary infringement: importing or exporting infringing copy") to remove from the scope of infringing acts under that section the importation of parallel-imported infringing copies where done otherwise than for certain purposes of a commercial nature specified in the new subsection.

4. Clause 3 adds new subsections to section 31 of the principal Ordinance ("Secondary infringement: possessing or dealing with infringing copy") to remove from the scope of infringing acts under subsection (1)(a) (possession) or subsection (1)(c) (exhibiting in public or distributing) of that section the possession, exhibiting in public or distribution of parallel-imported infringing copies where done otherwise than for certain purposes of a commercial nature specified in the new subsections.

5. Clause 4 repeals section 118 of the principal Ordinance ("Criminal liability for making or dealing with infringing articles, etc.") and replaces it with new sections 118 to 118D. Details of the main changes effected by this replacement are set out in paragraphs 6

to 12 that follow.

6. The offence under new section 118(1)(a) in clause 4 expands the offence under existing section 118(1)(a) to include the making of an infringing copy for profit or financial reward.

7. Under new section 118(1)(b), it will be an offence to import an infringing copy of a copyright work otherwise than for private and domestic use. New section 118(2) in clause 4 removes from the scope of that offence the importation of parallel-imported infringing copies where done otherwise than for certain purposes of a commercial nature specified in the provision.

8. (1) The offences under existing section 118(1)(d) and (e) are replaced by offences under new sections 118(1)(d) and (e) and 118A in clause 4.

(2) Existing section 118(1)(e) is replaced by new section 118(1)(d). Under section 118(1)(e) as read together with section 2(1) of the Suspension Ordinance, it is an offence to do certain acts specified in the provision relating to an infringing copy, if the acts are done for the purpose of trade or business. In new section 118(1)(d), the reference to trade or business is omitted, the scope of the existing specified acts is modified, and new specified acts relating to the transporting and storing of infringing copies are added.

(3) Existing section 118(1)(d) is replaced in part by new section 118(1)(e). Under section 118(1)(d) as read together with section 2(1) of the Suspension Ordinance, it is an offence to possess for the purpose of trade or business an infringing copy of a copyright work with a view to committing an infringing act. Under new section 118(1)(e), it will be an offence to possess an infringing copy with a view to doing certain acts as specified in the provision (being acts that are also acts specified in the offence under new section 118(1)(d)).

(4) Existing section 118(1)(d) is also replaced in part by new section 118A. Under section 118(1)(d) as read together with section 2(7) of the Suspension Ordinance, it is an offence to possess for the purpose of or in the course of any trade or business an infringing copy of a copyright work that is a computer program, feature film, television drama or musical (sound or visual) recording (the "4 categories of works") with a view to

committing an infringing act. Under new section 118A(1), it will be an offence to possess an infringing copy of any of the 4 categories of works for the purpose of or in the course of any trade or business where the possession is with a view to the work being used to do any act for the purpose of or in the course of the trade or business. New section 118A(2), however, removes from the scope of liability under new section 118A(1) the possession of parallel-imported infringing copies.

9. Subsections (4) and (5) of new section 118 in clause 4 introduce presumptions to facilitate proof of offences under subsection (1)(d)(iii) and (e)(ii) of that section.

10. New section 118B in clause 4 provides a defence in proceedings for an offence under new section 118(1) or 118A(1) where the defendant proves that he had no knowledge of the infringing nature of the copy. This replicates the defence under existing section 118(3), (6) and (7) in relation to offences under existing section 118(1).

11. New section 118C in clause 4 introduces a new offence in relation to copying service businesses. Under subsection (2) of that section, 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 infringing copies of a copyright work as published in a book, magazine or periodical. Certain defences are provided to the new offence, including the defence of having no knowledge of the infringing nature of the copy.

12. New section 118D in clause 4 replicates, subject to certain modifications, the offences under existing section 118(4) and (8), and the defence provided under existing section 118(5), relating to articles used or intended to be used in making infringing copies of copyright works.

13. Clause 5 amends section 119 to provide for penalties for the offences contained in new sections 118A to 118D.

14. Clause 6 amends section 120(2) to reflect the amendments made to the offences now provided for under new section 118D(1) and (2), and to make other consequential amendments to section 120.

15. Clause 7 adds new section 120B. This section replaces existing sections 118(9)

and 120(8), without change in legal effect.

16. Clause 8 adds new section 196A. This section gives a specific meaning to the expression "for the purpose of or in the course of a trade or a business".

17. Clause 9 makes a number of amendments to section 198 of the principal Ordinance, which contains definitions for terms appearing in Part II of the principal Ordinance.

Clause 9(1) amends the definition of "business" in section 198(1) to provide that "business" includes "not-for-profit" business. Clause 9(2) adds to section 198(1) definitions relevant to the 4 categories of works mentioned in new section 118A(1). Clause 9(3) repeals section 198(2) consequent on the introduction of new section 196A and other related amendments. Clause 9(4) adds a new subsection to amplify the meaning of references to a copy of a work that is "lawfully made". These references appear in new sections 30(2), 31(3) to (5), 118(2) and 118A(2) and in existing section 35(4) and (5) (existing section 35(9), which provides a similar gloss for the expression "lawfully made", will be repealed).

18. (1) Clauses 10 and 11 add to the principal Ordinance new section 282 and Schedule 6 providing for transitional matters.

(2) Section 2 of new Schedule 6 has the effect of removing any liability incurred before the commencement of this Bill as enacted for an offence under existing section 118(1)(b), (d), (e)(iii) or (e)(iv) in relation to a parallel-imported infringing copy unless the same act done after that commencement would also constitute an offence under new section 118(1)(b), (d), (e) or (f).

(3) Section 3 of new Schedule 6 provides that the defence under new section 118A(3) and (4) shall have effect in proceedings for an offence under existing section 118(1)(d) committed before the commencement of the amendments, retrospective to 1 April 2001, other than where the offence committed would also be an offence under new section 118(1)(e) if committed after that commencement.

19. (1) Clause 12 adds 2 schedules providing for miscellaneous and consequential amendments.

(2) Schedule 1 makes miscellaneous and consequential amendments to the

principal Ordinance. Section 1 of Schedule 1 amends the expression "for the purpose of, in the course of, or in connection with, any trade or business" wherever it appears throughout the principal Ordinance (other than in the offence provisions, which are amended elsewhere in the Bill) by repealing the phrase "in connection with". This reflects and modifies the application of the principal Ordinance as read together with the Suspension Ordinance. The remaining provisions of Schedule 1 make other amendments consequent on these amendments, on the introduction of new section 196A and on other provisions of this Bill.

(3) Schedule 2 makes consequential amendments to Ordinances other than the principal Ordinance.

20. Clause 13 repeals the Suspension Ordinance.

21. The table below shows the new numbering of the sections of the principal Ordinance dealing with criminal offences, and the numbering of the existing sections of the principal Ordinance which, when read together with the Suspension Ordinance, are of similar or comparable effect to those new sections.

Copyright Ordinance (Cap. 528)
Sections dealing with criminal offences

New section number	Existing section number
118(1)(a)	118(1)(a)
118(1)(b)	118(1)(b)
118(1)(c)	118(1)(c)
118(1)(d)	118(1)(e)
118(1)(e)	118(1)(d)

New section number	Existing section number
118(1)(f)	118(1)(f)
118(2)	—
118(3)	118(2)
118(4)	—
118(5)	—
118A(1)	118(1)(d)
118A(2)	—
118A(3)	—
118A(4)	—
118A(5)	118(1)(d)
118B(1)	118(3)
118B(2)	118(6)
118B(3)	118(7)
118C	—
118D(1)	118(4)
118D(2)	118(8)

New section number	Existing section number
118D(3)	118(2)
118D(4)	118(5)
120B	118(9), 120(8)
196A	118(8A), 198(2)

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 11:58 AM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	
Section:	30	Heading:	Secondary infringement: importing or exporting infringing copy	Version Date:	30/06/1997

Secondary infringement of copyright

The copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into Hong Kong or exports from Hong Kong, otherwise than for his private and domestic use, a copy of the work which is, and which he knows or has reason to believe to be, an infringing copy of the work.

[cf. 1988 c. 48 s. 22 U.K.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 11:58 AM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	31	Heading:	Secondary infringement: possessing or dealing with infringing copy	Version Date:	01/04/2001

(1) The copyright in a work is infringed by a person who, without the licence of the copyright owner- (Amended 64 of 2000 s. 2)

- (a) possesses for the purpose of, in the course of, or in connection with, any trade or business; (Replaced 64 of 2000 s. 2)
- (b) sells or lets for hire, or offers or exposes for sale or hire;
- (c) exhibits in public or distributes for the purpose of, in the course of, or in connection with, any trade or business; or (Replaced 64 of 2000 s. 2)
- (d) 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. 2)

a copy of a work which is, and which he knows or has reason to believe to be, an infringing copy of the work.

(2) It is immaterial for the purpose of subsection (1)(a) and (c) whether or not the trade or business consists of dealing in infringing copies of copyright works. (Added 64 of 2000 s. 2)

[cf. 1988 c. 48 s. 23 U.K.]

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	118	Heading:	Criminal liability for making or dealing with infringing articles, etc.	Version Date:	01/04/2001

Expanded Cross Reference:
115, 116, 117

Remarks:

The Copyright (Suspension of Amendments) Ordinance (Cap 568) provides for the suspension of the operation of certain amendments in relation to this section effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000).

Offences

- (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;
 - (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
 - (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.

- (2) Subsections (1)(b) and (c) and (4)(b) and (c) do not apply to an article in transit.

(3) It is a defence for the person charged with an offence under subsection (1), 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.

- (4) A person commits an offence if he-

- (a) makes;
- (b) imports into Hong Kong;
- (c) exports from Hong Kong;
- (d) possesses; or
- (e) sells or lets for hire, or offers or exposes for sale or hire,

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 use for the purpose of, in the course of, or in connection with, any trade or business. (Amended 64 of 2000 s. 7)

(5) It is a defence for the person charged with an offence under subsection (4) 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 the infringing copies for sale or hire or for use for the purpose of, in the course of, or in connection with, any trade or business. (Amended 64 of 2000 s. 7)

(6) For the purpose of subsections (1)(b) and (3), where a person is charged with an offence under subsection (1) 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), 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;
- (c) there were no other circumstances which would have led him reasonably to suspect that the copy was an infringing copy,

he has proved that he had no reason to believe that the copy in question was an infringing copy of the copyright work.

(7) In determining whether the person charged has proved under subsection (6) that he had no reason to believe that the copy in question was an infringing copy of the work, the court may have regard to, including but not limited to, the following-

- (a) whether he had made enquiries with a relevant trade body in respect of that category of work;
- (b) whether he had given any notice drawing attention of the copyright owner or exclusive licensee to his interest to import and to sell the copy of the work;
- (c) whether he had complied with any code of practice that may exist in respect of the supply of that category of work;
- (d) whether the response, if any, to those enquiries made by the defendant was reasonable and timely;
- (e) whether he was provided with the name, address and contact details of the copyright owner or exclusive licensee (as the case may be);
- (f) whether he was provided with the date of first day of publication of the work;
- (g) whether he was provided with proof of any relevant exclusive licence.

(8) 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 use for the purpose of, in the course of, or in connection with, any trade or business. (Amended 64 of 2000 s. 7)

(8A) It is immaterial for the purpose of subsections (1)(d) and (e), (4) and (8) whether or not the trade or business consists of dealing in infringing copies of copyright works. (Added 64 of 2000 s. 7)

(9) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section. <* Note - Exp. X-Ref.: Sections 115, 116, 117 *>

[cf. 1988 c. 48 s. 107 U.K.]

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	119	Heading:	Penalties for offences under section 118	Version Date:	01/04/2001

(1) A person who commits an offence under section 118(1) is liable on conviction on indictment to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years. (Amended 64 of 2000 s. 8)

(2) A person who commits an offence under section 118(4) or (8) is liable on conviction on indictment to a fine of \$500000 and to imprisonment for 8 years.

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 11:58 AM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	120	Heading:	Making infringing copies outside Hong Kong, etc.	Version Date:	01/04/2001

Expanded Cross Reference:
115, 116, 117

Remarks:

The Copyright (Suspension of Amendments) Ordinance (Cap 568) provides for the suspension of the operation of certain amendments in relation to this section effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000).

(1) A person commits an offence if he makes outside Hong Kong, for export to Hong Kong otherwise than for his private and domestic use, any article that he knows would, if it were made in Hong Kong, constitute an infringing copy of a copyright work.

(2) A person commits an offence if he makes outside Hong Kong an article specifically designed or adapted for making copies of a particular copyright work knowing or having reason to believe that it is to be used or is intended to be used in Hong Kong for making an infringing copy of the copyright work for sale or hire or for use for the purpose of, in the course of, or in connection with, any trade or business. (Amended 64 of 2000 s. 9)

(2A) It is immaterial for the purpose of subsection (2) whether or not the trade or business consists of dealing in infringing copies of copyright works. (Added 64 of 2000 s. 9)

(3) A person commits an offence if he makes outside Hong Kong or exports from Hong Kong an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that-

- (a) the article is to be used or is intended to be used outside Hong Kong for making another article for export to Hong Kong; and
- (b) the latter article mentioned in paragraph (a) would, if it were made in Hong Kong, constitute an infringing copy of the copyright work.

(4) A person who, in Hong Kong or elsewhere, aids, abets, counsels or procures the commission by another person of an offence under subsection (1), (2) or (3) commits that offence as a principal.

(5) The offences under subsections (1), (2) and (3) are without prejudice to the offences under section 118.

(6) A person who commits an offence under subsection (1), (2) or (3) is liable on conviction on indictment to a fine of \$500000 and to imprisonment for 8 years.

(7) For the purpose of this section, "article" (物品) does not include an article in transit.

(8) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section. <* Note - Exp. X-Ref.: Sections 115, 116, 117 *>

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 11:58 AM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	198	Heading:	Minor definitions	Version Date:	01/04/2001

(1) In this Part- (Amended 64 of 2000 s. 10)

"article" (文章), in the context of an article in a periodical, includes an item of any description;

"article in transit" (過境物品) means an article which-

- (a) is brought into Hong Kong solely for the purpose of taking it out of Hong Kong; and
- (b) remains at all times in or on the vessel or aircraft in or on which it is brought into Hong Kong;

"authorized officer" (獲授權人員) means any public officer authorized in writing by the Commissioner to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer under this Ordinance;

"business" (業務) includes a trade or profession;

"collective work" (匯集作品) means-

- (a) a work of joint authorship; or
- (b) a work in which there are distinct contributions by different authors or in which works or parts of works of different authors are incorporated;

"Commissioner" (關長) means the Commissioner of Customs and Excise and any Deputy or Assistant Commissioner of Customs and Excise; (Replaced 22 of 1999 s. 3)

"computer-generated" (電腦產生), in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work;

"electronic" (電子) means actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, and "in electronic form" (電子形式) means in a form usable only by electronic means;

"employed" (受僱), "employee" (僱員), "employer" (僱主) and "employment" (僱用) refer to employment under a contract of service or of apprenticeship;

"export" (輸出) means to take, or cause to be taken, out of Hong Kong any article;

"facsimile copy" (精確複製品) includes a copy which is reduced or enlarged in scale;

"import" (輸入) means to bring, or cause to be brought, into Hong Kong any article;

"international organization" (國際組織) means an organization the members of which include one or more countries, territories or areas;

"judicial proceedings" (司法程序) includes proceedings before any court, tribunal or person having authority to decide any matter affecting a person's legal rights or liabilities;

"producer" (製作人), in relation to a sound recording or a film, means the person by whom the arrangements necessary for the making of the sound recording or film are undertaken;

"rental right" (租賃權) means the right of a copyright owner to authorize or prohibit the rental of copies of a computer program or sound recording (see section 25);

"reprographic copy" (翻印複製品) refers to a copy made by means of a reprographic process;

"reprographic process" (翻印程序) means a process-

- (a) for making facsimile copies; or
- (b) involving the use of an appliance for making multiple copies,

and includes, in relation to a work held in electronic form, any copying by electronic means, but does not include the making of a sound recording or film;

"sufficient acknowledgement" (足夠的確認聲明) means an acknowledgement identifying the work in question by its title or other description, and identifying the author unless-

- (a) in the case of a published work, it is published anonymously;
- (b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry;

"sufficient disclaimer" (足夠的卸責聲明), in relation to an act capable of infringing the right conferred by section 92 (right to object to derogatory treatment of work), means a clear and reasonably prominent indication-

- (a) given at the time of the act; and
- (b) if the author or director is then identified, appearing along with the identification,

that the work has been subjected to treatment to which the author or director has not consented;

"telecommunications system" (電訊系統) means a system for transmitting visual images, sounds or other information by electronic means;

"typeface" (字體) includes an ornamental motif used in printing;

"unauthorized" (未經授權), as regards anything done in relation to a work, means done otherwise than-

- (a) by or with the licence of the copyright owner;
- (b) if copyright does not subsist in the work, by or with the licence of the author or, in a case where section 14(1) would have applied, the author's employer or, in either case, persons lawfully claiming under him; or
- (c) in pursuance of section 57 (copying, etc. of certain material by the Government);

"wireless telegraphy" (無線電訊) means the sending of electro-magnetic energy over paths which are not provided by any material substance constructed or arranged for that purpose;

"writing" (書面) includes any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded, and "written" (寫出) is construed accordingly.

(2) In sections 31(2), 32(3), 95(1A), 96(6A), 109(1A), 118(8A) and 120(2A), "dealing in" (經營) includes buying, selling, letting for hire, importing, exporting and distributing. (Added 64 of 2000 s. 10)
[cf. 1988 c. 48 s. 178 U.K.]

Chapter:	568	Title:	COPYRIGHT (SUSPENSION OF AMENDMENTS) ORDINANCE 2001	Gazette Number:	13 of 2001
		Heading:	Long title	Version Date:	22/06/2001

An Ordinance to provide for the suspension of the operation of certain amendments to the Copyright Ordinance effected by the Intellectual Property (Miscellaneous Amendments) Ordinance 2000.

[22 June 2001]

(Originally 13 of 2001)

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:00 PM -----

Chapter:	568	Title:	COPYRIGHT (SUSPENSION OF AMENDMENTS) ORDINANCE 2001	Gazette Number:	13 of 2001
Section:	1	Heading:	Short title	Version Date:	22/06/2001

This Ordinance may be cited as the Copyright (Suspension of Amendments) Ordinance 2001.

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:00 PM -----

Chapter:	568	Title:	COPYRIGHT (SUSPENSION OF AMENDMENTS) ORDINANCE 2001	Gazette Number:	13 of 2001
Section:	2	Heading:	Suspension of amendments	Version Date:	22/06/2001

(1) Subject to subsections (2) to (5), with effect on and from 1 April 2001, sections 118 and 120 of the Copyright Ordinance (Cap 528) shall be read as if the amendments effected by sections 2 to 7 and 9 to 18* of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000) had not been enacted.

(2) Subsection (1) does not apply in relation to an infringing copy of any of the following works-

- (a) a film commonly known as a movie;
- (b) a film commonly known as a television drama; or
- (c) a sound recording or film the whole or a predominant part of which consists of a musical work and any related literary work.

(3) Subsection (1) does not apply in relation to an infringing copy of a computer program that is an

infringing copy by virtue of section 35(2) of the Copyright Ordinance (Cap 528).

- (4) Subsection (1) does not apply in relation to an infringing copy of a computer program that-
 - (a) is an infringing copy by virtue of section 35(3) of the Copyright Ordinance (Cap 528); and
 - (b) was not lawfully made in the country, territory or area where it was made.
- (5) Subsection (1) does not apply in relation to an infringing copy of a computer program that-
 - (a) is an infringing copy by virtue of section 35(3) of the Copyright Ordinance (Cap 528); and
 - (b) was 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.
- (6) For the purposes of subsections (3), (4) and (5), "infringing copy" (侵犯版權複製品) does not include an infringing copy-
 - (a) that is in a printed form; or
 - (b) that incorporates the whole or any part of a work not being a computer program itself and that is technically required for the viewing or listening of that work by a member of the public to whom a copy of the work is made available.
- (7) With effect on and from 1 April 2001, for the purposes of any offence under section 118 or 120 of the Copyright Ordinance (Cap 528) relating to an infringing copy of any of the works described in subsections (2), (3), (4) and (5)-
 - (a) the reference to "for the purpose of, in the course of, or in connection with, any trade or business" in sections 31(1)(a) and (c), 32(1)(c), 95(1)(a) and (c), 96(5) and (6), 109(1)(a), 118(1)(d) and (e), 207(1)(b), 211(1)(b) and 228(1) of that Ordinance shall be read as a reference to "for the purpose of, or in the course of, any trade or business";
 - (b) the reference to "otherwise than for the purpose of, in the course of, or in connection with, any trade or business" in sections 31(1)(d), 95(1)(d) and 118(1)(f) of that Ordinance shall be read as a reference to "otherwise than for the purpose of, or in the course of, any trade or business"; and
 - (c) the reference to "for the purpose of, in the course of, or in connection with, any trade or business" in sections 118(4), (5) and (8), 120(2) and 273(2)(a) of that Ordinance shall be read as a reference to "for the purpose of, or in the course of, any trade or business".
- (8) Except as otherwise provided in subsection (6), the terms and expressions used in this section have the same meaning as in Part II of the Copyright Ordinance (Cap 528).

*** Note: Sections 2 to 7 and 9 to 18 of the Intellectual Property (Miscellaneous Amendments) Ordinance 2000 (64 of 2000) are reproduced as follows-**

"Copyright Ordinance

2. Secondary infringement: possessing or dealing with infringing copy

Section 31 of the Copyright Ordinance (Cap 528) is amended-

- (a) by renumbering it as section 31(1);
- (b) in subsection (1)-
 - (i) by repealing paragraph (a) and substituting-

"(a) possesses for the purpose of, in the course of, or in connection with, any trade or business;"
 - (ii) by repealing paragraph (c) and substituting-

"(c) exhibits in public or distributes for the purpose of, in the course of, or in connection with, any trade or business; or"
 - (iii) in paragraph (d), by repealing "otherwise than for the purpose of trade or business" and substituting "(otherwise than for the purpose of, in the course of, or in connection with, any trade or business)";
- (c) by adding-

"(2) It is immaterial for the purpose of subsection (1)(a) and (c) whether or not the trade or business consists of dealing in infringing copies of copyright works."

3. Secondary infringement: providing means for making infringing copies

Section 32 is amended-

- (a) in subsection (1)(c), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";
- (b) by adding-

"(3) It is immaterial for the purpose of subsection (1)(c) whether or not the trade or business consists of dealing in articles specially designed or adapted for making copies of copyright works."

4. Infringement of right by possessing or dealing with infringing article

Section 95 is amended-

- (a) in subsection (1)-
 - (i) by repealing paragraph (a) and substituting-

"(a) possesses for the purpose of, in the course of, or in connection with, any trade or business;"
 - (ii) by repealing paragraph (c) and substituting-

"(c) exhibits in public or distributes for the purpose of, in the course of, or in connection with, any trade or business; or"
 - (iii) in paragraph (d), by repealing "otherwise than for the purpose of trade or business" and substituting "(otherwise than for the purpose of, in the course of, or in connection with, any trade or business)";
- (b) by adding-

"(1A) It is immaterial for the purpose of subsection (1)(a) and (c) whether or not the trade or business consists of dealing in infringing articles."

5. False attribution of work

Section 96 is amended-

- (a) in subsections (5) and (6), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";
- (b) by adding-

"(6A) It is immaterial for the purpose of subsections (5) and (6) whether or not the trade or business consists of dealing in-

 - (a) works or copies of works in or on which there are false attributions; or
 - (b) altered works or copies of altered works."

6. Order for delivery up

Section 109 is amended-

- (a) in subsection (1)(a), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";
- (b) by adding-

"(1A) It is immaterial for the purpose of subsection (1)(a) whether or not the trade or business consists of dealing in infringing copies of copyright works."

7. Criminal liability for making or dealing

with infringing articles, etc.

Section 118 is amended-

- (a) in subsection (1)-
 - (i) in paragraphs (d) and (e), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";
 - (ii) in paragraph (f), by repealing "otherwise than for the purpose of trade or business" and substituting "(otherwise than for the purpose of, in the course of, or in connection with, any trade or business)";
- (b) in subsections (4), (5) and (8), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";
- (c) by adding-

"(8A) It is immaterial for the purpose of subsections (1)(d) and (e), (4) and (8) whether or not the trade or business consists of dealing in infringing copies of copyright works."

9. Making infringing copies outside Hong Kong, etc.

Section 120 is amended-

- (a) in subsection (2), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";
- (b) by adding-

"(2A) It is immaterial for the purpose of subsection (2) whether or not the trade or business consists of dealing in infringing copies of copyright works."

10. Minor definitions

Section 198 is amended-

- (a) by renumbering it as section 198(1);
- (b) by adding-

"(2) In sections 31(2), 32(3), 95(1A), 96(6A), 109(1A), 118(8A) and 120(2A), "dealing in" (經營) includes buying, selling, letting for hire, importing, exporting and distributing."

11. Index of defined expressions

Section 199 is amended-

- (a) by repealing "198" wherever it appears and substituting "198(1)";
- (b) by adding-

"dealing in section 198(2)".

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

Section 207 is amended-

- (a) by repealing subsection (1)(b) and substituting-

"(b) for the purpose of, in the course of, or in connection with, any trade or business-

 - (i) possesses;

- (ii) makes available to the public;
- (iii) sells or lets for hire;
- (iv) offers or exposes for sale or hire; or
- (v) distributes,";

(b) by adding-

"(1A) It is immaterial for the purpose of subsection (1)(b) whether or not the trade or business consists of dealing in infringing fixations."

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

Section 211 is amended-

(a) by repealing subsection (1)(b) and substituting-

"(b) for the purpose of, in the course of, or in connection with, any trade or business-

- (i) possesses;
- (ii) makes available to the public;
- (iii) sells or lets for hire;
- (iv) offers or exposes for sale or hire; or
- (v) distributes,";

(b) by adding-

"(1A) It is immaterial for the purpose of subsection (1)(b) whether or not the trade or business consists of dealing in infringing fixations."

14. Order for delivery up

Section 228 is amended-

(a) in subsection (1), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";

(b) by adding-

"(1A) It is immaterial for the purpose of subsection (1) whether or not the trade or business consists of dealing in infringing fixations."

15. Expressions having same meaning as in copyright provisions

Section 238 is amended by adding-

"(1A) In sections 207(1A), 211(1A) and 228(1A), "dealing in" (經營) includes buying, selling, letting for hire, importing, exporting and distributing."

16. Index of defined expressions

Section 239 is amended by adding-

(a) by repealing "198" opposite the expression "business" and substituting "198(1)";

(b) by adding-

"dealing in section 238(1A)".

17. Devices designed to circumvent copy-protection

Section 273 is amended-

(a) in subsection (2)(a), by repealing "for the purpose of trade or business" and substituting

"for the purpose of, in the course of, or in connection with, any trade or business";

(b) by adding-

"(6) It is immaterial for the purpose of subsection (2)(a) whether or not the trade or business consists of dealing in devices or means specifically designed or adapted to circumvent forms of copy-protection.

(7) In subsection (6), "dealing in" (經營) includes buying, selling, letting for hire, importing, exporting and distributing."

18. Copyright: Transitional provisions and savings

Schedule 2 is amended, in paragraph 40, by repealing "198" and substituting "198(1)".

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:00 PM -----

Chapter:	568	Title:	COPYRIGHT (SUSPENSION OF AMENDMENTS) ORDINANCE 2001	Gazette Number:	L.N. 130 of 2002
Section:	3	Heading:	Lifting of suspension	Version Date:	19/07/2002

(1) Section 2 shall cease to have effect on 31 July 2003. (Amended L.N. 130 of 2002)

(2) The Secretary for Commerce, Industry and Technology may, by notice published in the Gazette before the date specified in subsection (1), amend that subsection by substituting for that date such date as is specified in the notice. (Amended L.N. 106 of 2002)

(3) A notice under subsection (2) shall be subject to the approval of the Legislative Council.

(4) It is hereby declared that a notice under subsection (2) is subsidiary legislation.

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:02 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	31	Heading:	Secondary infringement: possessing or dealing with infringing copy	Version Date:	01/04/2001

(1) The copyright in a work is infringed by a person who, without the licence of the copyright owner- (Amended 64 of 2000 s. 2)

(a) possesses for the purpose of, in the course of, or in connection with, any trade or business; (Replaced 64 of 2000 s. 2)

(b) sells or lets for hire, or offers or exposes for sale or hire;

(c) exhibits in public or distributes for the purpose of, in the course of, or in connection with,

any trade or business; or (Replaced 64 of 2000 s. 2)

- (d) 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. 2)

a copy of a work which is, and which he knows or has reason to believe to be, an infringing copy of the work.

(2) It is immaterial for the purpose of subsection (1)(a) and (c) whether or not the trade or business consists of dealing in infringing copies of copyright works. (Added 64 of 2000 s. 2)

[cf. 1988 c. 48 s. 23 U.K.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:02 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	32	Heading:	Secondary infringement: providing means for making infringing copies	Version Date:	01/04/2001

- (1) Copyright in a work is infringed by a person who, without the licence of the copyright owner-

(a) makes;

(b) imports into Hong Kong or exports from Hong Kong;

(c) possesses for the purpose of, in the course of, or in connection with, any trade or business; or (Amended 64 of 2000 s. 3)

(d) sells or lets for hire, or offers or exposes for sale or hire,

an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.

(2) Copyright in a work is infringed by a person who, without the licence of the copyright owner, transmits the work by means of a telecommunications system (otherwise than by broadcasting or inclusion in a cable programme service), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Hong Kong or elsewhere.

(3) It is immaterial for the purpose of subsection (1)(c) whether or not the trade or business consists of dealing in articles specially designed or adapted for making copies of copyright works. (Added 64 of 2000 s. 3)

[cf. 1988 c. 48 s. 24 U.K.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:02 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	95	Heading:	Infringement of right by possessing or dealing with infringing article	Version Date:	01/04/2001

(1) The right conferred by section 92 (right to object to derogatory treatment of work) is also infringed by a person who-

- (a) possesses for the purpose of, in the course of, or in connection with, any trade or business; (Replaced 64 of 2000 s. 4)
- (b) sells or lets for hire, or offers or exposes for sale or hire;
- (c) exhibits in public or distributes for the purpose of, in the course of, or in connection with, any trade or business; or (Replaced 64 of 2000 s. 4)
- (d) distributes (otherwise than for the purpose of, in the course of, or in connection with, any trade or business) so as to affect prejudicially the honour or reputation of the author or director, (Amended 64 of 2000 s. 4)

an article which is, and which he knows or has reason to believe is, an infringing article.

(1A) It is immaterial for the purpose of subsection (1)(a) and (c) whether or not the trade or business consists of dealing in infringing articles. (Added 64 of 2000 s. 4)

(2) An "infringing article" (侵犯權利物品) means a work or a copy of a work which-

- (a) has been subjected to derogatory treatment within the meaning of section 92; and
- (b) has been or is likely to be the subject of any of the acts mentioned in that section in circumstances infringing that right.

[cf. 1988 c. 48 s. 83 U.K.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:02 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	96	Heading:	False attribution of work	Version Date:	01/04/2001

False attribution of work

(1) A person has the right in the circumstances mentioned in this section-

- (a) not to have a literary, dramatic, musical or artistic work falsely attributed to him as author; and
- (b) not to have a film falsely attributed to him as director,

and in this section an "attribution" (署名), in relation to such a work, means a statement (express or implied) as to who is the author or director.

(2) The right is infringed by a person who-

- (a) issues or makes available to the public copies of a work of any of those descriptions in or on which there is a false attribution; or

- (b) exhibits in public an artistic work, or a copy of an artistic work, in or on which there is a false attribution.
- (3) The right is also infringed by a person who-
 - (a) in the case of a literary, dramatic or musical work, performs the work in public, broadcasts it or includes it in a cable programme service as being the work of a person; or
 - (b) in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service as being directed by a person,

knowing or having reason to believe that the attribution is false.

(4) The right is also infringed by a person who issues or makes available to the public or displays in public material containing a false attribution in connection with any of the acts mentioned in subsection (2) or (3).

(5) The right is also infringed by a person who for the purpose of, in the course of, or in connection with, any trade or business- (Amended 64 of 2000 s. 5)

- (a) possesses or deals with a copy of a work of any of the descriptions mentioned in subsection (1) in or on which there is a false attribution; or
- (b) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it,

knowing or having reason to believe that there is such an attribution and that it is false.

(6) In the case of an artistic work the right is also infringed by a person who for the purpose of, in the course of, or in connection with, any trade or business- (Amended 64 of 2000 s. 5)

- (a) deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author; or
- (b) deals with a copy of such an altered work as being a copy of the unaltered work of the author,

knowing or having reason to believe that that is not the case.

(6A) It is immaterial for the purpose of subsections (5) and (6) whether or not the trade or business consists of dealing in-

- (a) works or copies of works in or on which there are false attributions; or
- (b) altered works or copies of altered works. (Added 64 of 2000 s. 5)

(7) References in this section to dealing are to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public, or distributing.

(8) This section applies where, contrary to the fact-

- (a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person; or
- (b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work,

as it applies where the work is falsely attributed to a person as author.

[cf. 1988 c. 48 s. 84 U.K.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:02 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	109	Heading:	Order for delivery up	Version Date:	01/04/2001

(1) Where a person-

- (a) has an infringing copy of a work in his possession, custody or control for the purpose of, in the course of, or in connection with, any trade or business; or (Amended 64 of 2000 s. 6)
- (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it has been or is to be used to make infringing copies,

the owner of the copyright in the work may apply to the court for an order that the infringing copy or article be delivered up to him or to such other person as the court may direct.

(1A) It is immaterial for the purpose of subsection (1)(a) whether or not the trade or business consists of dealing in infringing copies of copyright works. (Added 64 of 2000 s. 6)

(2) An application must be made before the end of the period specified in section 110 (period after which remedy of delivery up not available); and the court shall not make an order under this section unless the court also makes, or it appears to the court that there are grounds for making, an order under section 111 (order as to disposal of infringing copy or other article).

(3) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall, if an order under section 111 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

(4) Nothing in this section affects any other power of the court.

[cf. 1988 c. 48 s. 99 U.K.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:02 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	207	Heading:	Infringement of performer's rights by importing, exporting, possessing or dealing with infringing fixation	Version Date:	01/04/2001

(1) A performer's rights are infringed by a person who, without the performer's consent-

- (a) imports into Hong Kong or exports from Hong Kong, otherwise than for his private and domestic use; or
- (b) for the purpose of, in the course of, or in connection with, any trade or business-
 - (i) possesses;
 - (ii) makes available to the public;
 - (iii) sells or lets for hire;
 - (iv) offers or exposes for sale or hire; or
 - (v) distributes, (Replaced 64 of 2000 s. 12)

a fixation of a qualifying performance which is, and which that person knows or has reason to believe is, an infringing fixation.

(1A) It is immaterial for the purpose of subsection (1)(b) whether or not the trade or business consists of dealing in infringing fixations. (Added 64 of 2000 s. 12)

(2) Where in an action for infringement of a performer's rights brought by virtue of this section a defendant shows that the infringing fixation was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a

reasonable payment in respect of the act complained of.

(3) In subsection (2) "innocently acquired" (不知情地取得) means that the person acquiring the fixation did not know and had no reason to believe that it was an infringing fixation.

[cf. 1988 c. 48 s. 184 U.K.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:02 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	211	Heading:	Infringement of fixation rights by importing, exporting, possessing or dealing with infringing fixation	Version Date:	01/04/2001

(1) A person infringes the rights of a person having fixation rights in relation to a performance who, without the latter's consent or, in the case of a qualifying performance, that of the performer-

- (a) imports into Hong Kong or exports from Hong Kong, otherwise than for his private and domestic use; or
- (b) for the purpose of, in the course of, or in connection with, any trade or business-
 - (i) possesses;
 - (ii) makes available to the public;
 - (iii) sells or lets for hire;
 - (iv) offers or exposes for sale or hire; or
 - (v) distributes, (Replaced 64 of 2000 s. 13)

a fixation of the performance which is, and which that person knows or has reason to believe is, an infringing fixation.

(1A) It is immaterial for the purpose of subsection (1)(b) whether or not the trade or business consists of dealing in infringing fixations. (Added 64 of 2000 s. 13)

(2) Where in an action for infringement of those rights brought by virtue of this section a defendant shows that the infringing fixation was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2) "innocently acquired" (不知情地取得) means that the person acquiring the fixation did not know and had no reason to believe that it was an infringing fixation.

[cf. 1988 c. 48 s. 188 U.K.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:02 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	228	Heading:	Order for delivery up	Version Date:	01/04/2001

Delivery up of infringing fixation

(1) Where a person has in his possession, custody or control for the purpose of, in the course of, or in connection with, any trade or business an infringing fixation of a performance, a person having performer's rights or fixation rights in relation to the performance under this Part may apply to the court for an order that the fixation be delivered up to him or to such other person as the court may direct. (Amended 64 of 2000 s. 14)

(1A) It is immaterial for the purpose of subsection (1) whether or not the trade or business consists of dealing in infringing fixations. (Added 64 of 2000 s. 14)

(2) An application may not be made after the end of the period specified in section 230; and the court shall not make an order unless the court also makes, or it appears to the court that there are grounds for making, an order under section 231 (order as to disposal of infringing fixation).

(3) A person to whom a fixation is delivered up in pursuance of an order under this section shall, if an order under section 231 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

(4) Nothing in this section affects any other power of the court.

[cf. 1988 c. 48 s. 195 U.K.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:02 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	273	Heading:	Devices designed to circumvent copy- protection	Version Date:	01/04/2001

Expanded Cross Reference:
115, 116, 117

PART IV

TECHNOLOGICAL MEASURES AND GENERAL

Devices designed to circumvent copy-protection

(1) This section applies where-

- (a) copies of a copyright work are issued or made available to the public; or
- (b) an unfixed performance is made available to the public or copies of a fixation of a performance are issued or made available to the public,

by or with the licence of the copyright owner, the performer or the person having fixation rights in

relation to the performance, as may be appropriate, in any form which is copy-protected.

(2) The person issuing or making available the copies or the unfixed performance to the public has the same rights and remedies against a person who, knowing or having reason to believe that it will be used to make infringing copies or infringing fixations-

- (a) makes, imports, exports, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire, or possesses for the purpose of, in the course of, or in connection with, any trade or business, any device or means specifically designed or adapted to circumvent the form of copy-protection employed; or (Amended 64 of 2000 s. 17)
- (b) publishes information intended to enable or assist persons to circumvent that form of copy-protection,

as a copyright owner has in respect of an infringement of copyright.

(3) Further, the person issuing or making available the copies or the unfixed performance to the public has the same rights and remedies under section 109 (delivery up) in relation to any such device or means which a person has in his possession, custody or control with the intention that it should be used to make infringing copies of copyright works or infringing fixations of performances, as a copyright owner has in relation to an infringing copy.

(4) References in this section to copy-protection include any device or means specifically intended to prevent or restrict copying of a work or fixation of a performance or to impair the quality of copies or fixations made.

(5) Sections 115 to 117 (presumptions as to certain matters relating to copyright) apply in relation to proceedings under this section as they do in relation to proceedings under Part II (copyright), and section 111 applies, with the necessary modifications, in relation to the disposal of anything delivered up by virtue of subsection (3). <* Note - Exp. X-Ref.: Sections 115, 116, 117 *>

(6) It is immaterial for the purpose of subsection (2)(a) whether or not the trade or business consists of dealing in devices or means specifically designed or adapted to circumvent forms of copy-protection. (Added 64 of 2000 s. 17)

(7) In subsection (6), "dealing in" (經營) includes buying, selling, letting for hire, importing, exporting and distributing. (Added 64 of 2000 s. 17)

[cf. 1988 c. 48 s. 296 U.K.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:04 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	
Section:	35	Heading:	Meaning of "infringing copy"	Version Date:	30/06/1997

Expanded Cross Reference:

118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133

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-

- (a) it has been or is proposed to be imported into Hong Kong; and
- (b) 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- <* Note - Exp. X-Ref.: Sections 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133 *>

- (a) that was lawfully made in the country, territory or area where it was made;
- (b) 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
- (c) 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-

- (i) that was lawfully made in the country, territory or area where it was made;
- (ii) that has been or is proposed to be imported into Hong Kong; and
- (iii) 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-

- (a) that was lawfully made in the country, territory or area where it was made;
- (b) that has been or is proposed to be imported into Hong Kong; and
- (c) 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.

(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.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:04 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	
Section:	62	Heading:	Use of typeface in ordinary course of printing	Version Date:	30/06/1997

Typefaces

(1) It is not an infringement of copyright in an artistic work consisting of the design of a typeface-

- (a) to use the typeface in the ordinary course of typing, composing text, typesetting or printing;

- (b) to possess an article for the purpose of such use; or

- (c) to do anything in relation to material produced by such use,

and this is so notwithstanding that an article is used which is an infringing copy of the work.

(2) However, the following provisions of this Part apply in relation to persons making, importing, exporting or dealing with articles specifically designed or adapted for producing material in a particular typeface, or possessing such articles for the purpose of dealing with them, as if the production of material as mentioned in subsection (1) did infringe copyright in the artistic work consisting of the design of the typeface-

section 32 (secondary infringement: making, importing, exporting, possessing or dealing with article for making infringing copy);

section 109 (order for delivery up); and

section 118(4) (offence of making or possessing such an article).

(3) The references in subsection (2) to "dealing with" an article are to selling, letting for hire, or offering or exposing for sale or hire, exhibiting in public, or distributing.

[cf. 1988 c. 48 s. 54 U.K.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:04 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	22 of 1999
Section:	131	Heading:	Seized articles, etc. liable to forfeiture	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 22 of 1999 s. 3

(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.

(2) The Commissioner shall, subject to subsection (3) and not later than 30 days beginning on the date of the seizure or detention of the article, vessel, aircraft, vehicle or thing serve notice of the seizure or detention on a person who was to the knowledge of the Commissioner at the time of, or immediately after seizure or detention, an owner of the article, vessel, aircraft, vehicle or thing.

(3) Subsection (2) does not apply if the article, vessel, aircraft, vehicle or thing was seized or detained in the presence of-

- (a) an owner, or an employee or agent of the owner, of the article, vessel, aircraft, vehicle or thing;
 - (b) the person whose offence or suspected offence gave rise to the seizure or detention; or
 - (c) in the case of a vessel, aircraft or vehicle, the master or person in charge.
- (4) A notice given under subsection (2) is deemed to have been duly served if-
- (a) it is delivered to the person on whom it is served;
 - (b) it is sent by registered post addressed to such person at the place of residence or business of such person, if any, known to the Commissioner; or
 - (c) where it cannot be served in accordance with paragraph (a) or (b), the notice is exhibited at the Customs and Excise Department, in a place to which the public have access, for a period of not less than 7 days commencing within 30 days from the date of the seizure or detention of the article, vessel, aircraft, vehicle or thing.

(5) If an article, vessel, aircraft, vehicle or thing is liable to forfeiture under subsection (1), the owner or the authorized agent of the owner thereof, or a person who was in possession thereof at the time of seizure or detention, or a person who has a legal or equitable interest in it, may within 30 days beginning-

- (a) on the date of the seizure or detention; or
- (b) where the notice under subsection (2) is-
 - (i) served by delivery to the person to be served, on the date of service; or
 - (ii) sent by registered post, 2 days after the date of posting; or
 - (iii) exhibited as described in subsection (4)(c), on the first day it is so exhibited,

give notice in writing to the Commissioner of his full name and address for service in Hong Kong and claim that the article, vessel, aircraft, vehicle or thing is not liable to forfeiture.

(6) A claimant may withdraw a notice of a claim at any time by notice in writing to the Commissioner.

(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)

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	22 of 1999
Section:	132	Heading:	Disposal of articles, etc. where a person is charged	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 22 of 1999 s. 3

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.

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:04 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	25 of 1998; 22 of 1999
Section:	133	Heading:	Determination of application for forfeiture	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2; 22 of 1999 s. 3

(1) Where a notice of claim is given under section 131, the Commissioner or an authorized officer shall apply to a magistrate, the District Court or the Court of First Instance for the forfeiture of the article, vessel, aircraft, vehicle or thing unless the Commissioner is satisfied, within a reasonable period after the receipt of the notice of claim, that, on the basis of the evidence of the case, the article, vessel, aircraft, vehicle or thing concerned should be delivered to the claimant. (Amended 25 of 1998 s. 2)

(2) The Commissioner or authorized officer shall state in the application the name and address of the claimant.

(3) Where an application under subsection (1) is made to a magistrate, the magistrate shall issue a summons to the claimant, requiring him to appear before a magistrate upon the hearing of the application, and shall cause a copy of such summons to be served upon the Commissioner.

(4) Where an application under subsection (1) is made to the District Court or the Court of First Instance, it may be begun by motion. (Amended 25 of 1998 s. 2)

(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.

(7) If, upon the hearing of an application under subsection (1), the claimant or some other person who, though not the claimant, was, or would have been, entitled to make a claim under section 131(5), appears before a court, the court shall hear the application.

(8) A court may, at the hearing of a forfeiture application, or at an adjourned hearing, hear a person-

- (a) who has not been served with a notice of seizure or detention and was not present when an article, vessel, aircraft, vehicle or thing, was seized or detained or whose identity was not known to the Commissioner at the time of, or immediately after, seizure or detention; and
- (b) who appears to the court to have a right to claim ownership of, or a legal or equitable interest in, the article, vessel, aircraft, vehicle or thing,

on his claim as to why it should not be forfeited.

(9) If, upon the hearing of an application under subsection (1), neither the claimant nor any person who, though not the claimant, was, or would have been, entitled to make a claim under section 131(5), appears before a court and the court is satisfied-

- (a) that the summons or the notice of the hearing (if any) required to be served under subsection (3) or (4), as the case may be, was served;
- (b) that a person at the address for service or a solicitor nominated to accept service on behalf of a claimant has refused to accept service of the summons or notice of the hearing referred to in paragraph (a); or
- (c) that the address for service given to the Commissioner is inadequate for the purpose of effecting service of the summons or the notice of hearing referred to in paragraph (a),

the court shall hear and determine the application without requiring further inquiry as to the whereabouts of the claimant.

(10) An application under subsection (1) to a magistrate is deemed to be a complaint for the purposes of section 8 of the Magistrates Ordinance (Cap 227).

(11) Without prejudice to section 132, upon the hearing of an application under subsection (1) a court shall order that the article, vessel, aircraft, vehicle or thing, as the case may be, be forfeited to the Government where the court is satisfied that it is liable to forfeiture, and, if appropriate, that- (Amended 22 of 1999 s. 3)

- (a) the person who appears before the court fails to satisfy the court that he was, or would have been, entitled to make a claim under section 131(5) in respect of the seized or detained article, vessel, aircraft, vehicle or thing; and
- (b) no other person appears before the court and satisfies that he was, or would have been, entitled to make such claim.

(12) Without prejudice to section 132, upon the hearing of an application under subsection (1), in any case other than a case referred to in subsection (11) a court may, if it is satisfied-

- (a) that a person is, or would have been, entitled to make a claim under section 131(5) in respect of the seized or detained article, vessel, aircraft, vehicle or thing; and
- (b) that the article, vessel, aircraft, vehicle or thing is liable to forfeiture,

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

- (i) be forfeited to the Government; (Amended 22 of 1999 s. 3)
- (ii) subject to subsection (13), be delivered to the claimant subject to any condition which it may specify in the order; or
- (iii) be disposed of in such manner and subject to such condition as it may specify in the order.

(13) The court shall not make an order under subsection (12)(ii) in respect of an article unless the claimant satisfies the court that the article is not an infringing copy of any copyright work or, as the case may be, is not an article specifically designed or adapted to make copies of any particular copyright work which article is used or is intended to be used, for making infringing copies of any such work.

(14) If, after a court has ordered that an article, vessel, aircraft, vehicle or thing be delivered to a person, that person cannot be found or refuses to accept it, the Commissioner may apply to a court which may-

- (a) order that the article, vessel, aircraft, vehicle or thing be forfeited to the Government; or (Amended 22 of 1999 s. 3)
- (b) make any such other order as the court considers fit in the circumstances.

(15) Unless the context otherwise requires, a reference to a court in this section or section 132 includes a reference to a magistrate.

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:04 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	199	Heading:	Index of defined expressions	Version Date:	01/04/2001

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)-

acts restricted by copyright	section 22(1)
adaptation	section 29(3)
archivist (in sections 46 to 53)	section 46(5)
article (in a periodical)	section 198(1)
article in transit	section 198(1)
artistic work	section 5
author	sections 11 and 12(4)
authorized officer	section 198(1)
broadcast (and related expressions)	section 8
building	section 5
business	section 198(1)
cable programme, cable programme service (and related expressions)	section 9
collective work	section 198(1)
commencement (in Schedule 2)	paragraph 1(2) of that Schedule
commercial publication	section 196
Commissioner	section 198(1)
computer-generated	section 198(1)
copy and copying	section 23
copyright (generally)	section 2
copyright (in Schedule 2)	paragraph 2(2) of that Schedule
copyright owner	sections 112(2) and 194
Copyright Tribunal	section 169
copyright work	section 2(2)
dealing in (Added 64 of 2000 s. 11)	section 198(2)
detention order	section 135
dramatic work	section 4(1)
educational establishment	section 195(1)
electronic and electronic form	section 198(1)
employed, employee, employer and employment	section 198(1)
exclusive licence	section 103(1)
export	section 198(1)
facsimile copy	section 198(1)
film	section 7
future copyright	section 102(2)
Government copyright	sections 182(2) and 183(3)
graphic work	section 5
import	section 198(1)
infringing copy	section 35
international organization	section 198(1)
issue of copies to the public	section 24
joint authorship (work of)	section 12
judicial proceedings	section 198(1)
Legislative Council copyright	sections 184(2) and 185(5)
librarian (in sections 45 to 52)	section 46(5)
licence (in sections 158 to 162)	section 161
licence of copyright owner	sections 101(4), 102(3) and 194
licensing body (in Division VIII)	section 145(2)
licensing scheme (generally)	section 145(1)
licensing scheme (in sections 151 to 156)	section 154
literary work	section 4(1)

made (in relation to a literary, dramatic or musical work)	section 4(2)
make available copies to the public	section 26
musical work	section 4(1)
on behalf of (in relation to an educational establishment)	section 195(3)
performance	section 27(2)
photograph	section 5
prescribed conditions (in sections 46 to 52)	section 46(2)(a)
producer (in relation to a sound recording or film)	section 198(1)
programme (in the context of broadcasting)	section 8(3)
prospective owner (of copyright)	section 102(2)
publication and related expressions	section 196
published edition (in the context of copyright in the typographical arrangement)	section 10
pupil	section 195(2)
rental right	section 198(1)
reprographic copies and reprographic copying	section 198(1)
reprographic process	section 198(1)
right holder	section 135
sculpture	section 5
signed	section 197
sound recording	section 6
specified library or archive (in sections 46 to 52)	section 46(2)(b)
sufficient acknowledgement	section 198(1)
sufficient disclaimer	section 198(1)
teacher	section 195(2)
telecommunications system	section 198(1)
typeface	section 198(1)
unauthorized (as regards things done in relation to a work)	section 198(1)
unknown (in relation to the author of a work)	section 11(5)
unknown authorship (work of)	section 11(4)
wireless telegraphy	section 198(1)
work (in Schedule 2)	paragraph 2(1) of that Schedule
work of more than one author (in Division VIII)	section 145(3)
writing and written	section 198(1)

(Amended 64 of 2000 s. 11)
[cf. 1988 c. 48 s. 179 U.K.]

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	238	Heading:	Expressions having same meaning as in copyright provisions	Version Date:	01/04/2001

Interpretation

(1) The following expressions have the same meaning in this Part as in Part II (copyright)-
 article in transit;
 authorized officer;
 broadcast;
 business;
 cable programme;
 cable programme service;
 Commissioner;
 Copyright Tribunal;
 export;
 film;
 import;
 literary work;
 published; and
 sound recording.

(1A) In sections 207(1A), 211(1A) and 228(1A), "dealing in" (經營) includes buying, selling, letting for hire, importing, exporting and distributing. (Added 64 of 2000 s. 15)

(2) The provisions of section 8(3) to (5), sections 9(4) and 27(4) (supplementary provisions relating to broadcasting and cable programme services) apply for the purposes of this Part, and in relation to an infringement of the rights conferred by this Part, as they apply for the purposes of Part II and in relation to an infringement of copyright.

[cf. 1988 c. 48 s. 211 U.K.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:04 PM -----

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	239	Heading:	Index of defined expressions	Version Date:	01/04/2001

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)-

broadcast (and related expressions)	section 238 (and section 8)
business (Amended 64 of 2000 s. 16)	section 238(1) (and section 198(1))
cable programme, cable programme service (and related expressions)	section 238 (and section 9)
consent of performer (in relation to performer's economic rights)	section 215(2)
copy and copying	section 203
dealing in (Added 64 of 2000 s. 16)	section 238(1A)
exclusive fixation contract	section 208(1)
exclusive licence	section 218
film	section 238(1) (and section 7)
fixation (of a performance)	section 200(2)
fixation rights (person having)	section 208(2) and (3)
infringing fixation	section 229
literary work	section 238(1) (and section 4(1))
performance	section 200(2)
performer	section 200(2)
performer's economic rights	section 215(1)
performer's non-economic rights	section 224(1)
published	section 238(1) (and section 196)
qualifying performance	section 201
qualifying person	section 234
right of distribution	section 204(5)
right of making available to the public	section 205(5)
right of reproduction	section 203(4)
rights owner (in relation to performer's economic rights)	section 215(3) and (4)
sound recording	section 238(1) (and section 6)

[cf. 1988 c. 48 s. 212 U.K.]

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 16/01/2003 12:04 PM -----

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	L.N. 145 of 2002
Schedule:	1	Heading:	OFFENCES RELEVANT TO DEFINITIONS OF "ORGANIZED CRIME" AND "SPECIFIED OFFENCE"	Version Date:	01/01/2003

[sections 2, 8 & 31]
(Amended 26 of 2002 s. 3)

Common law offences

1. murder
2. kidnapping
3. false imprisonment
4. conspiracy to pervert the course of justice

Statutory offences

	Offence	Description*
5.	Import and Export Ordinance (Cap 60) section 6A section 6C section 6D(1) and (2) section 6E section 18	import or export of strategic commodities import of certain prohibited articles export of certain prohibited articles carriage, etc. of prescribed articles in Hong Kong waters importing or exporting unmanifested cargo
6.	Immigration Ordinance (Cap 115) section 37D(1) section 38(4) section 42(1) and (2)	arranging passage to Hong Kong of unauthorized entrants carrying an illegal immigrant false statements, forgery of documents and use and possession of forged documents
7.	Dangerous Drugs Ordinance (Cap 134) section 4(1) section 4A(1) section 6(1)	trafficking in dangerous drugs trafficking in purported dangerous drugs manufacturing a dangerous drug
8.	Gambling Ordinance (Cap 148) section 5 section 7(1)	operating, managing or controlling gambling establishment bookmaking
9.	Societies Ordinance (Cap 151) section 19 section 21 section 22	penalties on an office-bearer, etc. of an unlawful society allowing a meeting of an unlawful society to be held on premises inciting etc., a person to become a member of an unlawful society
10.	Money Lenders Ordinance (Cap 163) section 24(1)	lending money at an excessive interest rate
11.	Crimes Ordinance (Cap 200) section 24 section 25 section 53 section 54 section 55 section 60 section 61 section 71 section 75(1) section 98(1) section 100(1)	threatening a person with intent assaulting with intent to cause certain acts to be done or omitted causing explosion likely to endanger life or property attempt to cause explosion, or making or keeping explosive with intent to endanger life or property making or possession of explosive destroying or damaging property threats to destroy or damage property forgery possessing a false instrument with intent counterfeiting notes and coins with intent custody or control of counterfeit notes and coins with intent

	section 105	importation and exportation of counterfeit notes and coins
	section 118	rape
	section 119	procurement of person by threats
	section 120	procurement of person by false pretences
	section 129	trafficking to or from Hong Kong in persons
	section 130	control over person for purpose of unlawful sexual act or prostitution
	section 131	causing prostitution of person
	section 134	detention of person for unlawful sexual act or in vice establishment
	section 137	living on earnings of prostitution
	section 139	keeping a vice establishment
12.	Theft Ordinance (Cap 210)	
	section 9	theft
	section 10	robbery
	section 11(1)	burglary
	section 16A	fraud (Added 45 of 1999 s. 6)
	section 17	obtaining property by deception
	section 18	obtaining a pecuniary advantage by deception
	section 18D	procuring false entry in certain records
	section 19	false accounting
	section 23(1) and (4)	blackmail
	section 24(1)	handling stolen goods
13.	Offences against the Person Ordinance (Cap 212)	
	section 17	shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm
14.	Firearms and Ammunition Ordinance (Cap 238)	
	section 13	possession of arms or ammunition without licence
	section 14	dealing in arms or ammunition without a licence
14A.	Trade Descriptions Ordinance (Cap 362)	
	section 9(1) and (2)	offences in respect of infringement of trade mark rights
	section 12 (provided that for the purpose of this Ordinance, an offence under section 12 of the Trade Descriptions Ordinance does not include an offence relating only to false trade description)	import or export of goods bearing forged trade mark
	section 22 (provided that for the purpose of this Ordinance, "offence under this Ordinance" referred to in section 22 of the Trade	being accessory to certain offences committed outside Hong Kong (Added L.N. 11 of 2000)

Descriptions Ordinance only means an offence under-

(a) section 9(1) or (2) of that Ordinance; or

(b) section 12 of that Ordinance, excluding any offence relating only to false trade description)

15. Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) section 25(1)

dealing with property known or believed to represent proceeds of drug trafficking (Replaced 26 of 2002 s. 3)

16. Organized and Serious Crimes Ordinance (Cap 455) section 25(1)

dealing with property known or believed to represent proceeds of indictable offence (Replaced 26 of 2002 s. 3)

17. Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap 526) section 4

providing services that assist the development, production, acquisition or stockpiling of weapons of mass destruction (Added 90 of 1997 s. 15)

18. Copyright Ordinance (Cap 528) section 118(1), (4) and (8) (provided that for the purpose of this Ordinance, "infringing copy" referred to in section 118(1) and (4) 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)
section 120(1), (2), (3) and (4) (provided that for the purpose of this Ordinance, "infringing copy" referred to in section 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

offences relating to making infringing copies outside Hong Kong (Added L.N. 11 of 2000)

* Note: The short description of offences in this Schedule is for ease of reference only.

Chapter:	544	Title:	PREVENTION OF COPYRIGHT PIRACY ORDINANCE	Gazette Number:	L.N. 46 of 2001
Section:	34	Heading:	Seized optical discs, etc., liable to forfeiture	Version Date:	01/04/2001

(1) Any optical disc, machinery, equipment, video recording equipment or other thing seized, removed, detained or sealed by an authorized officer under this Ordinance is liable to forfeiture in accordance with this section and whether or not any person has been charged with an offence under this Ordinance.

(2) Sections 131 and 133 of the Copyright Ordinance (Cap 528) shall apply in respect of anything liable to forfeiture under subsection (1), with such modifications as the circumstances require.

(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)

ECONOMIC IMPLICATIONS

To maintain end-user criminal liability for computer programs, movies, television dramas and musical recordings will affirm the Government's determination to combat rampant piracy of such products. This will be conducive to the growth of the local computer software industry. It will also contribute to the development of Hong Kong as a leading information technology city in Asia.

2. By making the suspension arrangement permanent, it will remove the deterrent effect posed by the criminal sanction in relation to unauthorized copying of printed works including books and newspaper or magazine articles. As a result, the publishers concerned may not be able to obtain licence fees from users and may lose potential revenue. The precise loss is difficult to quantify.

3. To comply with the end-user criminal provisions effective from 1 April 2001, some business enterprises had incurred costs in replacing their pirated software with the legitimate ones. Since then, the business community has no problem in complying with the relevant provisions. To maintain the end-user criminal provisions should not entail any untenable compliance burden on business.

4. The removal of end-user liability in relation to parallel imports should not have any significant practical impact on copyright owners or exclusive licencees, as existing restrictions on the sale or hire of parallel imports are maintained.