

**Bills Committee on
Copyright (Amendment) Bill 2006**

Reading out newspaper articles in radio broadcast programmes

Purpose

At the meeting on 25 April 2006 of this Committee, Members were concerned if reading out newspaper articles in radio programmes would infringe the copyright in the newspaper articles concerned. The Administration undertook to provide a paper setting out the concerned provisions of the Copyright Ordinance (Cap. 528) and the interpretation of these provisions in the relevant case law. Extracts of these provisions are at Annex.

Copyright Infringement

2. Newspaper articles are literary works and enjoy copyright protection provided that they are original (Sections 2 and 4(1) of Cap. 528). By section 22(1) of the Ordinance, the owner of the copyright in a work has the exclusive right to, among others, copy the work, to perform the work in public, and to broadcast the work or include it in a cable programme service. These are called the “acts restricted by the copyright”. Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorizes another to do, any of the acts restricted by the copyright (section 22(2)). Furthermore, the doing of an act restricted by the copyright in a work includes acts done directly or indirectly (section 22(3)(b)). The ensuing paragraphs elaborate if reading out newspaper articles in radio programmes may amount to copyright infringement under any of the aforementioned sections.

Copying

3. By section 23 (2), copying of a work means reproducing the work in any material form. This includes storing the work in any medium by electronic means. Section 23(6) further provides that copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.

4. The mere reading out of newspaper articles in a radio broadcast programme does not amount to copying of the copyright works contained therein. However, if a sound recording of the programme is made, this may amount to copying, and unless done with the licence of the copyright owner, this may be an infringing act.

Public Performance

5. By section 27(1) of Cap. 528, the performance of the work in public is an act restricted by the copyright in a literary work. Performance in relation to a work includes any mode of visual or acoustic presentation including presentation by means of a sound recording or broadcast of the work (section 27(2)(b)).

6. Reading out newspaper articles in a radio programmes amounts to public performance of the literary work contained in the newspaper articles concerned. If the public performance is done without the licence of the copyright owner, there may be an infringement of copyright.

Broadcast

7. Section 28 of Cap. 528 provides that the broadcasting of the work is an act restricted by the copyright in a literary work. Reading out newspaper articles in a radio broadcast programme amounts to the broadcast of the literary work contained in newspaper articles. If this is done without the licence of the copyright owner, this may amount to an infringement of copyright.

Permitted Acts

8. The Copyright Ordinance specifies certain acts which may be done in relation to copyright works notwithstanding the subsistence of copyright. They are called permitted acts. In the case of reading out newspaper articles in a radio broadcast programme, two provisions may be relevant, namely the provision on fair dealing for criticism, review and news reporting (section 39 of Cap. 528), and the provision on public reading or recitation of a published literary work (section 68). In determining whether an act amounts to a permitted act as specified in the Ordinance, the primary consideration is that the act does not conflict with a normal exploitation of the work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner (section 37(3)).

Criticism, review and news reporting

9. Section 39 of the Ordinance provides that -

“(1) Fair dealing with a work for the purpose of criticism or review, of that or another work..., if it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work, or in the case of a published edition, in the typographical arrangement.

(2) Fair dealing with a work for the purpose of reporting current events, if (subject to subsection (3)) it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.”

10. From the English case law, “criticism or review” and “reporting current events” are regarded as expressions of wide and indefinite scope. They are expressions which should be interpreted liberally.¹ There is no direct case law on whether reading out newspaper articles in radio broadcast programmes may fall within either of these exceptions. Nevertheless, some general principles may be derived from previous cases to facilitate understanding of the scope of the exceptions.

11. On criticism or review, previous cases suggest that the criticism or review may be in respect not merely of the literary style or artistic merit of the work, but extends to the ideas, doctrine, philosophy and events contained therein.² Whether a dealing is fair for the purpose of criticism or review is a question of fact and of impression. It must also be a question of degree. Questions to be considered may include: Whether the number and extent of the quotations and extracts are too many and too long to be fair? Are they used as a basis for comment, criticism or review? Are they used to convey the same information as the author for a rival purpose? For example, to take long extracts and attach short comments may be unfair. But, short extracts and long comments may be fair. In short, fair dealing refers to the true purpose (that is, the good faith, the intention and the genuineness) of the critical work - is the programme incorporating another's copyright work a genuine piece of criticism or review, or is it something else, such as an attempt to dress up the infringement in the guise of criticism, and so profit unfairly from another's copyright work?³

12. The exception for reporting current events is intended to acknowledge the role of the media in informing the public about matters of current concern to the public. Previous cases suggest that it may cover not only events which are current in the sense of recent in time, but also matters of current interest to the public.⁴ Furthermore, the exception is not confined to the reporting of current events in a general news programme and includes, for example, the reporting of sports events in a sports news bulletin.⁵ Similar to the case of fair dealing for the purpose of criticism or review, in considering whether a dealing is fair, the court will take into account: the motives of the alleged infringer, the extent and purpose of the use, whether that extent was necessary for the purpose of reporting the current events in question and whether the work had been published or circulated to the public. It should be noted that the use of a certain proportion of a copyright work considered

¹ *Pro Sieben Media AG v Carlton UK Television Ltd* [1999]FSR 610

² *Hubbard v. Vosper* [1972]2 Q.B.84

³ *Hubbard v. Vosper*, supra and *Time Warner Entertainments Co. L.P. v. Channel Four Television Corp. plc* [1994]EMLR 1

⁴ *Pro Sieben*, supra

⁵ *British Broadcasting Corp. v British Satellite Broadcasting* [1192] Ch 141

to be fair in a particular set of circumstances might not be indicative of the same being fair in other situations. All the relevant factors have to be looked in individual circumstances. The fairness of the dealing had to be judged by the objective standard of whether a fair minded and honest person would have dealt with the copyright work in the manner that the defendant did, for the purpose of reporting the relevant current events.⁶

Public reading or recitation

13. Section 68 of the Ordinance provides -

“(1) The reading or recitation in public by one person of a reasonable extract from a published literary or dramatic work does not infringe any copyright in the work if it is accompanied by a sufficient acknowledgement.

(2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme service, of a reading or recitation which by virtue of subsection (1) does not infringe copyright in the work, if the recording, broadcast or cable programme consists mainly of material in relation to which it is not necessary to rely on that subsection.”

14. There is no case law on what amounts to a “reasonable extract” for the purpose. It has been suggested that what is a “reasonable extent” is a question of fact, impression and degree, in which it is pertinent to take into account the surrounding circumstances, in particular the amount and importance of the extract taken and any competition against or harm done to the owner of the copyright. For this reason, although the right to record, broadcast, etc the public reading or recitation is said to depend on the public reading or recitation itself not infringing copyright, it has been suggested that the very fact that the person knows his public reading or recitation is going to be thus exploited is not immaterial and might make all the difference in a borderline case.⁷

Conclusion

15. As can be seen from the above, the reading out of newspaper articles in radio programmes may lead to copyright infringement (ie. unauthorised copying, public performance or broadcast). However, depending on the facts of the case, the act may be permitted if it amounts to fair dealing for the purpose of criticism or review, fair dealing for the purpose of reporting current events, or public reading of a reasonable extract. The factors to be considered in deciding whether the exceptions apply are summarised in paragraphs 11, 12 and 14 above. It should be noted that we have not considered in this paper the possible subsequent dealing or

⁶ *Hyde Park Residence Ltd v Yelland* [2001] RPC 604

⁷ *The Modern Law of Copyright and Designs by Laddie Prescott and Vitoria, Third Edition para 20.73*

commercial exploitation of recordings of radio broadcasts which contain the reading out of newspaper articles, and the legal liabilities which may arise from such dealing or exploitation. As it is clear from the case law, it is necessary to carefully examine the facts of each case in considering whether there is legal liability arising from the use of copyright works in a particular manner for a particular purpose. This paper only sets out the provisions of the Copyright Ordinance which may be applicable to reading of newspaper articles in radio broadcast programmes. Broadcasters are advised to seek independent legal advice to ensure that they do not incur legal liability in the course of their daily operation.

16. It should be noted that the Copyright (Amendment) Bill 2006 does not seek to amend the legislative provisions considered in this paper.

Commerce, Industry and Technology Bureau
Intellectual Property Department
May 2006

Extracts of relevant provisions of the Copyright Ordinance (Cap. 528)
《版權條例》(第 528 章)的相關條文的摘錄

2. 版權及版權作品

第 II 部

版權

第 I 分部

版權的存在、擁有權及期限

引言

- (1) 版權是按照本部而存在於下列類別的作品的產權—
- (a) 原創的文學作品、戲劇作品、音樂作品或藝術作品；
 - (b) 聲音紀錄、影片、廣播或有線傳播節目；及
 - (c) 已發表版本的排印編排。
- (2) 在本部中，“版權作品”(copyright work) 指有版權存在的該等類別作品中的任何作品。
- (3) 除非本部中關於享有版權保護所須具備的資格的規定均已獲符合(參閱第 177 條及該條所提述的條文)，否則版權並不存在於任何作品。
- [比照 1988 c. 48 s. 1 U.K.]

4. 文學作品、戲劇作品及音樂作品

作品類別及有關條文

- (1) 在本部中—
- “文學作品”(literary work) 指除戲劇作品或音樂作品外的任何寫出、講出或唱出的作品，並據此包括—
- (a) 資料或其他材料的任何形式的編彙，且因其內容的選取或編排而構成智力創作，並包括(但不限於)列表；
 - (b) 電腦程式；及
 - (c) 為電腦程式而備的預備設計材料；
- “音樂作品”(musical work) 指由音樂構成的作品，但不包括擬伴隨該等音樂而唱出或講出的文字或表演的動作；
- “戲劇作品”(dramatic work) 包括舞蹈作品或默劇作品。

2. Copyright and copyright works

PART II

COPYRIGHT

DIVISION I

SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT

Introductory

- (1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work-
- (a) original literary, dramatic, musical or artistic works;
 - (b) sound recordings, films, broadcasts or cable programmes; and
 - (c) the typographical arrangement of published editions.
- (2) In this Part "copyright work" (版權作品) means a work of any of those descriptions in which copyright subsists.
- (3) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection are met (see section 177 and the provisions referred to there).

[cf. 1988 c. 48 s. 1 U.K.]

4. Literary, dramatic and musical works

Descriptions of work and related provisions

- (1) In this Part-
- "dramatic work" (戲劇作品) includes a work of dance or mime;
- "literary work" (文學作品) means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes-
- (a) a compilation of data or other material, in any form, which by reason of the selection or arrangement of its contents constitutes an intellectual creation, including but not limiting to a table;
 - (b) a computer program; and
 - (c) preparatory design material for a computer program;
- "musical work" (音樂作品) means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

22. 作品的版權所限制的作為

第 II 分部

版權擁有人的權利

受版權所限制的作為

(1) 作品的版權的擁有人按照本分部的以下條文，具有在香港作出以下作為的獨有權利—

- (a) 複製該作品(參閱第 23 條)；
- (b) 向公眾發放該作品的複製品(參閱第 24 條)；
- (c) 在該作品屬電腦程式或聲音紀錄的情況下，租賃該作品的複製品予公眾(參閱第 25 條)；
- (d) 向公眾提供該作品的複製品(參閱第 26 條)；
- (e) 公開表演、放映或播放該作品(參閱第 27 條)；
- (f) 將該作品廣播或將該作品包括在有線傳播節目服務內(參閱第 28 條)；
- (g) 製作該作品的改編本，或就該等改編本而作出任何上述作為(參閱第 29 條)。

而上述作為在本部中稱為“受版權所限制的作為”。

(2) 任何人未獲作品的版權擁有人的特許，而自行或授權他人作出任何受版權所限制的作為，即屬侵犯該作品的版權。

(3) 在本部中，凡提述作出受作品版權所限制的作為，即提述—

- (a) 就該作品的整項或其任何實質部分；及
- (b) 直接或間接地，

作出該作為，而任何介入作為本身是否侵犯版權則不具關鍵性。

(4) 本分部在下列條文的規限下有效—

- (a) 第 III 分部的條文(就版權作品而允許的作為)；及
- (b) 第 VIII 分部的條文(與版權的特許有關的條文)。

[比照 1988 c. 48 s. 16 U.K.]

22. The acts restricted by copyright in a work

DIVISION II

RIGHTS OF COPYRIGHT OWNER

The acts restricted by copyright

(1) The owner of the copyright in a work has, in accordance with the following provisions of this Division, the exclusive right to do the following acts in Hong Kong—

- (a) to copy the work (see section 23);
- (b) to issue copies of the work to the public (see section 24);
- (c) where the work is a computer program or sound recording, to rent copies of the work to the public (see section 25);
- (d) to make available copies of the work to the public (see section 26);
- (e) to perform, show or play the work in public (see section 27);
- (f) to broadcast the work or include it in a cable programme service (see section 28);
- (g) to make an adaptation of the work or do any of the above in relation to an adaptation (see section 29),

and those acts are referred to in this Part as the "acts restricted by the copyright".

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorizes another to do, any of the acts restricted by the copyright.

(3) References in this Part to the doing of an act restricted by the copyright in a work are to the doing of it—

- (a) in relation to the work as a whole or any substantial part of it; and
- (b) either directly or indirectly,

and it is immaterial whether any intervening acts themselves infringe copyright.

(4) This Division has effect subject to—

- (a) the provisions of Division III (acts permitted in relation to copyright works); and
- (b) the provisions of Division VIII (provisions with respect to copyright licensing).

[cf. 1988 c. 48 s. 16 U.K.]

23. 因複製而侵犯版權

- (1) 複製有關作品是受任何類別的版權作品的版權所限制的作為；在本部中，凡提述複製及複製品，均按以下條文解釋。
- (2) 複製任何作品指以任何實質形式複製該作品，並包括藉電子方法將作品貯存於任何媒體。
- (3) 就藝術作品而言，複製包括將平面作品製成立體的複製品以及將立體作品製成平面的複製品。
- (4) 就影片、電視廣播或有線傳播節目而言，複製包括製作的構成該影片、廣播或有線傳播節目的全部或任何實質部分的任何影像的照片。
- (5) 就已發表版本的排印編排而言，複製指製作該編排的精確複製品。
- (6) 就任何類別的作品而言，複製包括製作該等作品的短暫存在的複製品或為該等作品的其他用途而附帶製作複製品。

[比照 1988 c. 48 s. 17 U.K.]

27. 以公開表演、放映或播放作品方式侵犯版權

- (1) 公開表演有關作品是受文學作品、戲劇作品或音樂作品的版權所限制的作為。
- (2) 在本部中，就作品而言，“表演”(performance)—
 - (a) 包括講課、講話、演說或講道；及
 - (b) 一般而言，包括藉任何視像或有聲方式表達，並包括藉聲音紀錄、影片、廣播或有線傳播節目表達。
- (3) 公開播放或放映有關作品，是受聲音紀錄、影片、廣播或有線傳播節目的版權所限制的作為。
- (4) 如以器具接收藉電子方法傳送的影像或聲音而將作品公開表演、播放或放映，因而侵犯該作品的版權，則發送影像或聲音的人及(如屬表演)表演者，均不視為對侵犯版權負責。

[比照 1988 c. 48 s. 19 U.K.]

23. Infringement of copyright by copying

- (1) The copying of the work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies are construed as follows.
- (2) Copying of a work means reproducing the work in any material form. This includes storing the work in any medium by electronic means.
- (3) In relation to an artistic work copying includes the making of a copy in 3 dimensions of a 2-dimensional work and the making of a copy in 2 dimensions of a 3-dimensional work.
- (4) Copying in relation to a film, television broadcast or cable programme includes making a photograph of the whole or any substantial part of any image forming part of the film, broadcast or cable programme.
- (5) Copying in relation to the typographical arrangement of a published edition means making a facsimile copy of the arrangement.
- (6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.

[cf. 1988 c. 48 s. 17 U.K.]

27. Infringement by performance, playing or showing of work in public

- (1) The performance of the work in public is an act restricted by the copyright in a literary, dramatic or musical work.
- (2) In this Part "performance" (表演), in relation to a work—
 - (a) includes delivery in the case of lectures, addresses, speeches and sermons; and
 - (b) in general, includes any mode of visual or acoustic presentation, including presentation by means of a sound recording, film, broadcast or cable programme of the work.
- (3) The playing or showing of the work in public is an act restricted by the copyright in a sound recording, film, broadcast or cable programme.
- (4) Where copyright in a work is infringed by its being performed, played or shown in public by means of apparatus for receiving visual images or sounds transmitted by electronic means, the person by whom the visual images or sounds are sent, and in the case of a performance the performers, shall not be regarded as responsible for the infringement.

[cf. 1988 c. 48 s. 19 U.K.]

28. 以廣播作品或將作品包括在有線傳播節目服務內的方式侵犯版權

廣播有關作品或將其包括在有線傳播節目服務內，是受以下作品的版權所限制的作為－

- (a) 文學作品、戲劇作品、音樂作品或藝術作品；
- (b) 聲音紀錄或影片；或
- (c) 廣播或有線傳播節目。

[比照 1988 c. 48 s. 20 U.K.]

37. 引言條文

第 III 分部

就版權作品而允許的作為

引言

(1) 本分部的條文指明某些在儘管有版權存在的情況下仍可就版權作品而作出的作為；該等條文只關乎侵犯版權的問題而不影響限制作出任何該等指明作為的任何其他權利或義務。

(2) 凡本分部規定某項作為不屬侵犯版權，或可作出該作為而不侵犯版權，而沒有特別提及某類別的版權作品，則有關作為並不屬侵犯任何類別的作品的版權。

(3) 在決定本分部指明的作為是否可在儘管有版權存在的情況下就版權作品而作出時，基本考慮因素是該項作為並不與版權擁有人對作品的正常利用有所抵觸，以及該項作為並沒有不合理地損害版權擁有人的合法權益。

(4) 不得從憑藉本分部可予作出而不屬侵犯版權的任何作為的描述，而推論受任何類別作品的版權所限制的作為的範圍。

(5) 本分部各條條文的解釋互相獨立，故某作為並不屬於某條文的範圍，並不表示另一條文不涵蓋該作為。

[比照 1988 c. 48 s. 28 U.K.]

28. Infringement by broadcasting or inclusion in a cable programme service

The broadcasting of the work or its inclusion in a cable programme service is an act restricted by the copyright in-

- (a) a literary, dramatic, musical or artistic work;
- (b) a sound recording or film; or
- (c) a broadcast or cable programme.

[cf. 1988 c. 48 s. 20 U.K.]

37. Introductory provisions

DIVISION III

ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

Introductory

(1) The provisions of this Division specify acts which may be done in relation to copyright works notwithstanding the subsistence of copyright; they relate only to the question of infringement of copyright and do not affect any other right or obligation restricting the doing of any of the specified acts.

(2) Where it is provided by this Division that an act does not infringe copyright, or may be done without infringing copyright, and no particular description of copyright work is mentioned, the act in question does not infringe the copyright in a work of any description.

(3) In determining whether an act specified in this Division may be done in relation to a copyright work notwithstanding the subsistence of copyright, the primary consideration is that the act does not conflict with a normal exploitation of the work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner.

(4) No inference is to be drawn from the description of any act which may by virtue of this Division be done without infringing copyright as to the scope of the acts restricted by the copyright in any description of work.

(5) The provisions of this Division are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

[cf. 1988 c. 48 s. 28 U.K.]

39. 批評、評論及新聞報道

(1) 為批評或評論某一作品或另一作品或批評或評論某一作品的表演而公平處理該某一作品，只要附有足夠的確認聲明，即不屬侵犯該某一作品的任何版權，而就已發表版本而言，亦不屬侵犯其排印編排的版權。

(2) 為報導時事而公平處理某一作品，只要附有足夠的確認聲明(除第(3)款另有規定外)，不屬侵犯該作品的任何版權。

(3) 藉聲音紀錄、影片、廣播或有線傳播節目報導時事，不須附有確認聲明。
[比照 1988 c. 48 s. 30 U.K.]

68. 公開誦讀或背誦

(1) 由一個人公開誦讀或背誦已發表的文學作品或戲劇作品的合理摘錄，只要附有足夠的確認聲明，即不屬侵犯該作品的任何版權。

(2) 凡誦讀或背誦憑藉第(1)款並不屬侵犯有關作品的版權，則將該誦讀或背誦製作成聲音紀錄或予以廣播或包括在有線傳播節目服務內，並不屬侵犯該作品的版權，但構成該聲音紀錄、廣播或有線傳播節目的材料，須主要是無須就其而依賴第(1)款者。

[比照 1988 c. 48 s. 59 U.K.]

39. Criticism, review and news reporting

(1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, if it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) Fair dealing with a work for the purpose of reporting current events, if (subject to subsection (3)) it is accompanied by a sufficient acknowledgement, does not infringe any copyright in the work.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

[cf. 1988 c. 48 s. 30 U.K.]

68. Public reading or recitation

(1) The reading or recitation in public by one person of a reasonable extract from a published literary or dramatic work does not infringe any copyright in the work if it is accompanied by a sufficient acknowledgement.

(2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme service, of a reading or recitation which by virtue of subsection (1) does not infringe copyright in the work, if the recording, broadcast or cable programme consists mainly of material in relation to which it is not necessary to rely on that subsection.

[cf. 1988 c. 48 s. 59 U.K.]