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COPYRIGHT (AMENDMENT) BILL 2006

COMMITTEE STAGE

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

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 2(2) | By deleting "Secretary for Commerce, Industry and Technology" and substituting "Secretary for Commerce and Economic Development". |
| 2(2) | By deleting paragraph (a) and substituting -
"(a) section 4(1) (insofar as it relates to the new section 25(1)(c), (d), (e) and (f)), (2) and (4);". |
| New | By adding in Part 2 -
"2A. Long title amended
The long title to the Copyright Ordinance (Cap. 528) is amended by repealing everything after "An Ordinance to" and substituting "make provisions in respect of copyright and related rights and for connected purposes. |

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**2B. Duration of copyright in literary,
dramatic, musical or artistic
works**

Section 17(5)(b)(i) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

3 By deleting "of the Copyright Ordinance (Cap. 528)".

4 By renumbering the clause as clause 4(1).

4 By adding -

"(2) Section 25(3) is amended by repealing "The" and substituting "Subject to subsection (3A), the".

(3) Section 25(3)(b) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(4) Section 25 is amended by adding -

"(3A) The rental of copies of a work referred to in subsection (1)(e) or (f) includes the making available of copies of the work for on-the-spot reference use subject to direct or indirect payment.".

5 By adding -

"(2A) Section 31(1)(c) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

7 By deleting subclause (1) and substituting -

"(1) Section 35(3) is amended by repealing "Except as provided in section 35A," and substituting "Except as otherwise provided in section 35A or 35B, ".".

7(2) By deleting "9 months" and substituting "15 months".

7 By adding -

"(2A) Section 35 is amended by adding -

"(6A) Where, in any proceedings, a question arises as to whether a copy of a work that was lawfully made in the country, territory or area where it was made is an infringing copy by virtue only of subsection (3), and it is shown -

(a) in the case of a copy of a work that is stored in an optical disc, that the optical disc is not marked with a manufacturer's code as required under section 15 of the Prevention of Copyright Piracy Ordinance (Cap. 544);

(b) that a label or mark on the copy, the article in which the copy is embodied or the packaging or container in which the copy is packaged or contained indicates that

the copy was made in a country,
territory or area outside Hong Kong;
or

- (c) that a label or mark on the copy,
the article in which the copy is
embodied or the packaging or
container in which the copy is
packaged or contained indicates that
distribution, sale or supply of the
copy is prohibited in Hong Kong or
restricted to countries, territories
or areas outside Hong Kong,

then, unless there is evidence to the contrary, the
copy shall be presumed to have been imported into
Hong Kong.

(6B) In subsection (6A) (a) -

"manufacturer's code" (製造者代碼) has the meaning
assigned to it by section 2(1) of the
Prevention of Copyright Piracy Ordinance (Cap.
544);

"marked" (標上) has the meaning assigned to it by
section 15(3) of the Prevention of Copyright
Piracy Ordinance (Cap. 544);

"optical disc" (光碟) has the meaning assigned to it by section 2(1) of the Prevention of Copyright Piracy Ordinance (Cap. 544).".".

8 By deleting the proposed section 35B(1) and substituting -

"(1) A copy of a work to which this subsection applies is not -

(a) in relation to the person who imports it into Hong Kong, an infringing copy for the purposes of section 35(3) if -

(i) it was lawfully made in the country, territory or area where it was made; and

(ii) it is not imported with a view to its being dealt in by any person for the purpose of or in the course of any trade or business; or

(b) in relation to the person who possesses it, an infringing copy for the purposes of section 35(3) if -

(i) it was lawfully made in the country, territory or area where it was made; and

(ii) it is not possessed with a view to its being dealt in by any person for the purpose of or in the course of any trade or business."

8 By deleting the proposed section 35B(5) and substituting -

"(5) Where a copy of a work is not an infringing copy by virtue of subsection (1) but is subsequently dealt in for the purpose of or in the course of any trade or business -

(a) if that dealing takes place within the period of 15 months referred to in section 35(4)(b), it is, for the purposes of sections 118 to 133 (criminal provisions), to be treated, in relation to that dealing and the person who deals in it, as an infringing copy; and

(b) irrespective of the time at which that dealing takes place, it is, for the purposes of any provision of this Ordinance except sections 118 to 133, to be treated, in relation to that dealing and the person who deals in it, as an infringing copy."

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- 11 In the proposed section 40B(1), by adding "by or on behalf of the person" before "for his personal use".
- 11 In the proposed section 40B(3), by deleting "for the person" and substituting "by or on behalf of the person".
- 11 In the proposed section 40B(4), by deleting "for a person" and substituting "on behalf of a person".
- 11 In the proposed section 40C(5), by deleting "name and address" and substituting "identity and contact details".
- 11 In the proposed section 40D(5), by deleting "name and address" and substituting "identity and contact details".
- 12 In the proposed section 41A(1), by deleting "by a teacher or pupil" and substituting "by or on behalf of a teacher or by a pupil".
- 12 In the proposed section 41A, by adding -
- "(4A) Where any dealing with a work involves the making available of copies of the work through a wire or wireless network wholly or partly controlled by an educational establishment -

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- (a) if the educational establishment fails to -
- (i) adopt technological measures to restrict access to the copies of the work through the network so that the copies of the work are made available only to persons who need to use the copies of the work for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; or
 - (ii) ensure that the copies of the work are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,

the dealing is not fair dealing under subsection (1); and

(b) if the educational establishment -

(i) adopts technological measures to restrict access to the copies of the work through the network so that the copies of the work are made available only to persons who need to use the copies of the work for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; and

(ii) ensures that the copies of the work are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,

subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).

(4B) Without affecting the generality of section 37(5), where any dealing with a work involves the making of reprographic copies, the fact that the making of the copies does not fall within section 45 does not mean that it is not covered by this section, and subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).".

13 By deleting subclause (1) and substituting -

"(1) Section 43(1) is amended by repealing "an audience consisting of teachers and pupils at an educational establishment and other persons" and substituting "an audience consisting wholly or mainly of teachers and pupils at an educational establishment, parents or guardians of pupils at the establishment, and other persons".".

13 By deleting subclause (3) and substituting -

"(3) Section 43(3) is repealed.".

14 By deleting the clause.

15 By deleting subclause (3).

16 In the English text, by deleting the heading and substituting
"Sections added".

16 In the English text, by deleting "is added" and substituting
"are added".

16 In the proposed section 54A(1), by deleting "the Legislative
Council,".

16 By adding after the proposed section 54A -

"54B. Legislative Council

(1) Copyright is not infringed by -

(a) anything done for the purposes of the
proceedings of the Legislative Council;

or

(b) anything done by or on behalf of -

(i) the members of the Legislative
Council; or

(ii) The Legislative Council
Commission,

for the purposes of the exercise and
discharge by the Legislative Council of
its powers and functions.

(2) Copyright is not infringed by anything done for the purposes of reporting the proceedings of the Legislative Council; but this is not to be construed as authorizing the copying of a work which is itself a published report of the proceedings."

New By adding -

"16A. Legislative Council and judicial proceedings

(1) Section 54 is amended by repealing the heading and substituting "**Judicial proceedings**".

(2) Section 54(1) is amended by repealing "the proceedings of the Legislative Council or".

(3) Section 54(2) is amended, in the Chinese text, by repealing "立法會程序或".

16B. Use of typeface in ordinary course of printing

Section 62(3) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

17 By renumbering the clause as clause 17(1).

17 By adding -

"(2) Section 72(2) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".".

18 In the proposed section 81A(1), by adding "primarily" after "inside a vehicle".

18 By deleting the proposed section 81A(2) and substituting -

"(2) In subsection (1), "vehicle" (車輛) means any vehicle constructed or adapted for use on roads.".

New By adding -

"18A. Right to be identified as author or director

(1) Section 89(1) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(2) Section 89(4)(a) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(3) Section 89(7)(c) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(4) Section 89(8) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

18B. Requirement that right be asserted

(1) Section 90 is amended, in the heading, in the Chinese text, by repealing "體現" and substituting "宣示".

(2) Section 90(1) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(3) Section 90(2) is amended, in the Chinese text, by repealing "體現" where it twice appears and substituting "宣示".

(4) Section 90(2)(a) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(5) Section 90(3) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(6) Section 90(3) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(7) Section 90(3)(b) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(8) Section 90(3)(b) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(9) Section 90(4) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(10) Section 90(4)(a) is amended, in the Chinese text, by repealing "體現" where it twice appears and substituting "宣示".

(11) Section 90(4)(b) is amended, in the Chinese text, by repealing "體現" where it twice appears and substituting "宣示".

(12) Section 90(4)(c) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(13) Section 90(4)(d) is amended, in the Chinese text, by repealing "體現" where it twice appears and substituting "宣示".

(14) Section 90(5) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

18C. Exceptions to right

(1) Section 91(4) is amended by adding -
"(ca) section 54B (Legislative Council);".

(2) Section 91(4)(d) is amended by repealing "Legislative Council and".

18D. Right to object to derogatory treatment of work

Section 92(4)(a) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

19 By adding -

"(2A) Section 95(1)(c) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

20 By adding before subclause (1) -

"(1A) Section 96(2)(b) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

20 By adding -

"(3) Section 96(7) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

New By adding -

"20A. Application of provisions to joint works

(1) Section 99(1) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(2) Section 99(2) is amended, in the Chinese text, by repealing "達成" and substituting "體現".

20B. Transmission of moral rights on death

(1) Section 106(3)(a) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(2) Section 106(3)(b) is amended, in the Chinese text, by repealing "達成" and substituting "體現".

- 22 By adding before subclause (1) -
- "(1A) Section 118 is amended, in the heading, by repealing "**Criminal liability for**" and substituting "**Offences in relation to**"."
- 22(1) In the proposed section 118(1)(f), in the Chinese text, by deleting "目的是" and substituting "以期".
- 22(2) In the proposed section 118(1B)(a), in the Chinese text, by deleting "以令" and substituting "以期令".
- 22(3) In the proposed section 118(2A), by deleting "Without prejudice to subsection (1), a" and substituting "A".
- 22(3) In the proposed section 118(2A), in the Chinese text, by deleting "以令" and substituting "以期令".
- 22(3) By deleting the proposed section 118(2D)(a) and (b) and substituting -
- "(a) the computer program incorporates the whole or any part of a work that is not a computer program itself, and the computer program is technically required for the viewing or listening of the work by a member of the public to whom a copy of the

work is made available; or

- (b) the computer program is incorporated in a work that is not a computer program itself, and the computer program is technically required for the viewing or listening of the work by a member of the public to whom a copy of the work is made available."

22(3) By adding after the proposed section 118(2D) -

"(2DA) Subsection (2A) does not apply to the possession of an infringing copy of a movie, television drama, musical sound recording or musical visual recording by the Hong Kong Film Archive for the purpose of heritage conservation if -

- (a) the infringing copy was donated or given to the Hong Kong Film Archive by the public; or
- (b) the infringing copy was made by the Hong Kong Film Archive to preserve or replace the infringing copy referred to in paragraph (a) against loss, deterioration or damage.

(2DB) Subsection (2A) does not apply to the possession of an infringing copy of a movie, television drama, musical sound recording or musical visual recording by the Hong Kong Film Archive for the purpose of doing any act in relation to the infringing copy

(other than for the purpose referred to in subsection (2DA)) if -

(a) the infringing copy was -

(i) an infringing copy donated or given to the Hong Kong Film Archive by the public; or

(ii) an infringing copy made by the Hong Kong Film Archive to preserve or replace the infringing copy referred to in subparagraph (i) against loss, deterioration or damage;

(b) it is not possible by reasonable enquiry to ascertain the identity and contact details of the copyright owner of the work in question; and

(c) a copy (other than an infringing copy) of the work in question cannot be obtained on reasonable commercial terms."

22(3) By deleting the proposed section 118(2E)(a) and substituting -

"(a) the person who possesses an infringing copy does so for the purpose of providing legal service in relation to the infringing copy, and -

(i) the person is enrolled on the roll of solicitors or the roll of barristers kept under the Legal Practitioners Ordinance (Cap. 159); or

(ii) the person has been admitted as a legal practitioner in a jurisdiction other than Hong Kong;

(aa) the person who possesses an infringing copy is serving a pupillage under the Barristers (Qualification for Admission and Pupillage) Rules (Cap. 159 sub. leg. AC) and he possesses the infringing copy for the purpose of assisting the barrister with whom he serves the pupillage in providing legal service in relation to the infringing copy;".

22(4) In the proposed section 118(2F), by deleting "he proves" and substituting "there is evidence showing".

22(4) By deleting the proposed section 118(2G) and (2H) and substituting -

"(2G) A defendant charged with an offence under subsection (2A) by virtue of subsection (2F) is taken not to have done the act in question if -

- (a) sufficient evidence is adduced to raise an issue that he did not authorize the act to be done; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (2H) For the purposes of subsection (2G) (a) -
- (a) the defendant shall be taken to have adduced sufficient evidence if the court is satisfied that -
 - (i) the defendant has caused the body corporate or partnership concerned to set aside financial resources, and has directed the use of the resources, for the acquisition of a sufficient number of copies of the copyright work to which the proceedings relate, which are not infringing copies, for the use of the body corporate or partnership; or
 - (ii) the body corporate or partnership concerned has incurred expenditure for the acquisition of a sufficient

number of copies of the
copyright work to which the
proceedings relate, which are
not infringing copies, for the
use of the body corporate or
partnership;

(b) subject to paragraph (a), in determining
whether sufficient evidence is adduced,
the court may have regard to, including
but not limited to, the following -

(i) whether the defendant has
introduced policies or
practices against the use of
infringing copies of copyright
works by the body corporate or
partnership;

(ii) whether the defendant has taken
action to prevent the use of
infringing copies of copyright
works by the body corporate or
partnership."

22 By adding -

"(8A) Section 118(6) is amended by repealing "not
being excluded under section 35(4)" and substituting
"not being excluded under section 35(4) and which was

lawfully made in the country, territory or area where it was made".

24 In the proposed section 119B, in the heading, by deleting "**of making for distribution or distributing**" and substituting "**in relation to making for distribution or distributing on a regular or frequent basis**".

24 By deleting the proposed section 119B(1) and substituting -

"(1) A person commits an offence if he does any of the following acts on a regular or frequent basis for the purpose of or in the course of any trade or business -

(a) without the licence of the copyright owner of a copyright work described in subsection (2), makes an infringing copy of the work for distribution, resulting in a financial loss to the copyright owner; or

(b) without the licence of the copyright owner of a copyright work described in subsection (2), distributes an infringing copy of the work, resulting in a financial loss to the copyright owner."

24 In the proposed section 119B(2), by deleting "Subsection (1) applies to" and substituting "The copyright work referred to in subsection (1)(a) and (b) is".

24 By deleting the proposed section 119B(3) and substituting -
"(3) Subsection (1) does not apply in circumstances where -

(a) the making or distribution of the infringing copies of one or more than one copyright work referred to in subsection (1) does not exceed the extent specified in the regulations made under subsection (14); or

(b) the infringing copies of one or more than one copyright work referred to in subsection (1) are made or distributed in the manner specified in the regulations made under subsection (16)."

24 In the proposed section 119B, by adding -
"(5A) Subsection (1) does not apply if the infringing copy -

- (a) forms part of the special collection of a library or archive owned by the Government, or a library or archive designated under subsection (5E)(a); and
- (b) is distributed solely -

- (i) for on-the-spot reference use in, or during an activity organized by, a library or archive referred to in paragraph (a); or
- (ii) for loan to other libraries or archives for the purpose of exhibition or research.

(5B) Subsection (1) does not apply to the making or distribution by a library or archive referred to in subsection (5A)(a) of a single copy of any item forming the special collection for the purpose of preserving or replacing the item against loss, deterioration or damage, but the copy may only be distributed for the use referred to in subsection (5A)(b).

(5C) In subsections (5A) and (5B), "special collection" (特別收藏品) -

- (a) in the case of a library or archive owned by the Government, means a collection consisting primarily of works or articles, or copies of works or articles, donated or given by the public that are, in the opinion of the Director of Leisure and Cultural Services, of cultural, historical or heritage importance or value;
- (b) in the case of a library or archive designated under subsection (5E)(a), means a collection consisting primarily of works or articles, or copies of works or articles, donated or given by the public that are, in the opinion of the head or controlling body (by whatever name called) of the library or archive, of cultural, historical or heritage importance or value.

(5D) For the purposes of the exception under subsections (5A) and (5B), an archive owned by the Government includes a museum owned by the Government.

(5E) The Secretary for Commerce and Economic Development may, having regard to the advice of the Director of Leisure and Cultural Services -

- (a) by notice published in the Gazette designate for the purposes of subsection (5A) (a) any library or archive that is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112); and
- (b) by regulations prescribe the conditions that a library or archive designated under paragraph (a) must comply in order to be eligible for the exemption provided by subsections (5A) and (5B)."

24 In the proposed section 119B(6), by deleting "he proves" and substituting "there is evidence showing".

24 By deleting the proposed section 119B(7) and (8) and substituting -

"(7) A defendant charged with an offence under subsection (1) by virtue of subsection (6) is taken not to have done the act in question if -

- (a) sufficient evidence is adduced to raise an issue that he did not authorize the act to be done; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

(8) For the purposes of subsection (7)(a) -

(a) the defendant shall be taken to have adduced sufficient evidence if the court is satisfied that -

(i) the defendant has caused the body corporate or partnership concerned to set aside financial resources, and has directed the use of the resources, for the acquisition of appropriate licences, in accordance with the needs of the body corporate or partnership, to make or distribute, or to make and distribute, copies of the copyright work to which the proceedings relate for the use of the body corporate or partnership;

(ii) the defendant has caused the body corporate or partnership concerned to set aside financial resources, and has directed the use of the

resources, for the acquisition of a sufficient number of copies of the copyright work to which the proceedings relate, which are not infringing copies, for the use of the body corporate or partnership;

(iii) the body corporate or partnership concerned has incurred expenditure for the acquisition of appropriate licences, in accordance with the needs of the body corporate or partnership, to make or distribute, or to make and distribute, copies of the copyright work to which the proceedings relate for the use of the body corporate or partnership; or

(iv) the body corporate or partnership concerned has incurred expenditure for the acquisition of a sufficient number of copies of the copyright work to which the

proceedings relate, which are not infringing copies, for the use of the body corporate or partnership;

(b) subject to paragraph (a), in determining whether sufficient evidence is adduced, the court may have regard to, including but not limited to, the following -

(i) whether the defendant has introduced policies or practices against the making and distribution of infringing copies of copyright works by the body corporate or partnership;

(ii) whether the defendant has taken action to prevent the making or distribution of infringing copies of copyright works by the body corporate or partnership."

24 By deleting the proposed section 119B(9)(b) and (c) and substituting -

"(b) he has made reasonable efforts but failed to obtain commercially available copies of the copyright work in question and the copyright owner in question has refused to grant him a licence on reasonable commercial terms;

(c) he did not know and had no reason to believe that the copies made or distributed are infringing copies; or

(d) he cannot, after making reasonable enquiries, ascertain the identity and contact details of the copyright owner in question."

24 By deleting the proposed section 119B(14) and substituting -

"(14) For the purposes of subsection (3)(a), the Secretary for Commerce and Economic Development may, in relation to one or more than one copyright work referred to in subsection (1), make regulations to prescribe that subsection (1) does not apply in circumstances where the making or distribution of the infringing copies of the copyright work or works does not exceed the extent specified in the regulations."

24 In the proposed section 119B, by adding -

"(15) The Secretary for Commerce and Economic Development may, in the regulations made under subsection (14), specify the extent referred to in that subsection by reference to -

- (a) the number of infringing copies made or distributed;
- (b) the value of those infringing copies; and
- (c) any other factors that he may consider relevant,

and provide for a method or methods for determining the number of those infringing copies, and a method or methods for determining the value of those infringing copies, having regard to the retail value of the related books, magazines, periodicals or newspaper, and any other factors that he may consider relevant.

(16) For the purposes of subsection (3)(b), the Secretary for Commerce and Economic Development may, in relation to one or more than one copyright work referred to in subsection (1), make regulations to prescribe that subsection (1) does not apply in circumstances where the infringing copies of the copyright work or works are made or distributed in the manner specified in the regulations, after having regard to -

- (a) the availability of any licensing scheme that covers the making or distribution of copies of the copyright work or works in the specified manner; and
- (b) any other factors that he may consider relevant."

27 By deleting subclause (1) and substituting -

"(1) Section 121(1) is amended by repealing "An affidavit which purports to have been made by or on behalf of the owner of a copyright work" and substituting "For the purpose of facilitating the proof of subsistence and ownership of copyright, and without prejudice to the operation of sections 11 to 16 (authorship and ownership of copyright) and sections 17 to 21 (duration of copyright), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work"."

27 By adding -

"(2A) Section 121(1)(c) is amended by repealing "owner of the work" and substituting "copyright owner"."

27 By deleting subclause (3) and substituting -

"(3) Section 121(2) is amended by repealing "Without prejudice to subsection (1), an affidavit which purports to have been made by or on behalf of the owner of a copyright work" and substituting "For the purpose of facilitating the proof of subsistence and ownership of copyright, and without prejudice to subsection (1) and the operation of sections 11 to 16 (authorship and ownership of copyright) and sections 17 to 21 (duration of copyright), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work".".

27 By adding -

"(3A) Section 121(2)(a)(iii) is amended by repealing "owner of the work" and substituting "copyright owner".".

27(4) By adding before the proposed section 121(2A) -

"(2AA) For the purposes of facilitating the establishment of the matter referred to in section 35(3)(b), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which -

- (a) states the name of the copyright owner;
- (b) states that a copy of the work exhibited to the affidavit is a true copy of the work;
- (c) states -
 - (i) that the copy of the work exhibited to the affidavit was made in a place outside Hong Kong by the copyright owner; or
 - (ii) that the copy of the work exhibited to the affidavit was made in a place outside Hong Kong by a person who has the licence of the copyright owner to make copies of the work in that place, but does not have the licence of the copyright owner to make copies of the work in Hong Kong; and
- (d) states the name and address of the person (if any) referred to in paragraph (c)(ii),

shall, subject to the conditions contained in subsection (4), be admitted without further proof in any proceedings under this Ordinance."

27(4) By deleting the proposed section 121(2A) and (2B) and substituting -

"(2A) For the purposes of any proceedings instituted under section 118(1), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which -

(a) states the name of the copyright owner; and

(b) states that the person named in the affidavit does not have the licence of the copyright owner to do an act referred to in section 118(1)(a), (b), (c), (d), (e), (f) or (g) in respect of the work, shall, subject to the conditions contained in subsection (4), be admitted without further proof in those proceedings.

(2B) For the purposes of any proceedings instituted under section 118(2A), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which -

(a) states the name of the copyright owner; and

(b) states that the person named in the affidavit does not have the licence of the copyright owner to do an act referred

to in section 118(2A) in respect of the
work,

shall, subject to the conditions contained in subsection
(4), be admitted without further proof in those
proceedings."

27(5) By deleting the proposed section 121(2C) and substituting -

"(2C) For the purposes of any proceedings
instituted under section 119B(1), an affidavit which
purports to have been made by or on behalf of the
copyright owner of a copyright work and which -

(a) states the name of the copyright owner;
and

(b) states that the person named in the
affidavit does not have the licence of
the copyright owner to do an act referred
to in section 119B(1) in respect of the
work,

shall, subject to the conditions contained in subsection
(4), be admitted without further proof in those
proceedings."

27(6) By adding "(2AA)," after "(2),".

27(7) By adding "(2AA)," after "(2),".

27(8) By adding "(2AA)," after "(2),".

27 By adding -

"(8A) Section 121(8)(b) is repealed and the following substituted -

"(b) the court may of its own motion or, if the defendant who has served a notice under subsection (5) in relation to an affidavit satisfies the court -

- (i) that the ownership or subsistence of the copyright in a work is, insofar as that matter is stated in the affidavit, genuinely in issue;
- (ii) that whether a person has the licence of the copyright owner of a copyright work to do a particular act is, insofar as that matter is stated in the affidavit, genuinely in issue; or
- (iii) where the affidavit is made under subsection (2AA), that any matter stated in the affidavit, other than those referred to in subparagraphs (i) and (ii), is genuinely in issue,

either before or during the hearing, require the deponent to the affidavit to attend before the court and give evidence."."

27(9) By adding "(2AA)," after "(2),".

31 By deleting the clause and substituting -

**"31. Licensing schemes to which sections
155 to 160 apply**

Section 154(b) is amended by repealing "a computer program or sound recording" and substituting "a work referred to in section 25(1)(a), (b), (c), (d), (e) or (f)".

32 By deleting the clause and substituting -

**"32. Licences to which sections
162 to 166 apply**

Section 161(b) is amended by repealing "a computer program or sound recording" and substituting "a work referred to in section 25(1)(a), (b), (c), (d), (e) or (f)".

34 By renumbering the clause as clause 34(2).

34 By adding -

"(1) Section 187 is amended, in the heading, by repealing "**parallel import**" and substituting "**parallel-imported** copies of works".".

New By adding -

"34A. Folklore, etc.: anonymous unpublished works

Section 189 is amended, in the heading, in the Chinese text, by repealing "民間傳說" and substituting "民間文學藝術".

34B. Meaning of "publication" and "commercial publication"

Section 196(4)(b)(i) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

34C. Requirement of signature: application in relation to body corporate

(1) Section 197(1) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(2) Section 197(1) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(3) Section 197(2) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".".

35(1) By deleting the proposed definition of "business" and substituting -

"business" (業務) includes -

- (a) a trade or profession; and
- (b) business conducted otherwise than for profit;".

35(3) In the proposed definition of "specified course of study", in paragraph (a), by deleting "the Curriculum Development Council" and substituting "a body or authority specified in Schedule 1A".

35 By adding -

"(5) Section 198(3) is repealed and the following substituted -

"(3) In this Part, "lawfully made"

(合法地製作), in relation to a copy of a work made in a country, territory or area -

(a) means that the copy was made by -

- (i) a person who is entitled to the copyright in the work in the country, territory or area, as the case may be; or

(ii) a person who is licensed by the person referred to in subparagraph (i) to make the copy in the country, territory or area, as the case may be; but

(b) does not include a copy that 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) Section 198 is amended by adding -

"(4) The Secretary for Commerce and Economic Development may, by notice published in the Gazette, amend Schedule 1A."."

37 By deleting subclause (2) and substituting -

"(2) Section 200(2) is amended, in the definition of "performance", by adding -

"(ca) a performance of an artistic work;

(cb) an expression of folklore; or"."

44 By adding -

"(3) Section 229(8) is repealed and the following substituted -

"(8) In subsection (5)(a), "lawfully made" (合法地製作), in relation to a fixation of a performance made in a country, territory or area -

(a) means that the fixation was made by -

(i) the performer;

(ii) a person having fixation rights in relation to the performance in the country, territory or area, as the case may be; or

(iii) a person having the consent of the performer or the person referred to in subparagraph (ii) to make the fixation in the country, territory or area, as the case may be; but

(b) does not include a fixation that was made in a country, territory or area where there is no law protecting rights in performances in the performance or where the rights in performances in the performance has expired."."

45 By deleting the proposed section 229A(1) and substituting -

"(1) A fixation of a performance to which this subsection applies is not -

(a) in relation to the person who imports it into Hong Kong, an infringing fixation for the purposes of section 229(4) if -

(i) it was lawfully made in the country, territory or area where it was made; and

(ii) it is not imported with a view to its being dealt in by any person for the purpose of or in the course of any trade or business; or

(b) in relation to the person who possesses it, an infringing fixation for the purposes of section 229(4) if -

- (i) it was lawfully made in the country, territory or area where it was made; and
- (ii) it is not possessed with a view to its being dealt in by any person for the purpose of or in the course of any trade or business."

45 By deleting the proposed section 229A(5) and (6) and substituting -

"(5) Where a fixation of a performance which is not an infringing fixation by virtue of subsection (1) is subsequently dealt in for the purpose of or in the course of any trade or business, it is to be treated, in relation to that dealing and the person who deals in it, as an infringing fixation.

(6) In this section, "lawfully made" (合法地製作), in relation to a fixation of a performance made in a country, territory or area -

- (a) means that the fixation was made by -
 - (i) the performer;
 - (ii) a person having fixation rights in relation to the performance in the country, territory or area, as the case may be; or

(iii) a person having the consent of the performer or the person referred to in subparagraph (ii) to make the fixation in the country, territory or area, as the case may be; but

(b) does not include a fixation that was made in a country, territory or area where there is no law protecting rights in performances in the performance or where the rights in performances in the performance has expired."

New By adding -

"46A. Expressions having same meaning as in copyright provisions

(1) Section 238(1) is amended by adding -

"artistic work;".

(2) Section 238(1) is amended, in the Chinese text, by repealing -

"獲授權人員；及
關長。"

and substituting -

"獲授權人員；
關長；及".

47 By renumbering the clause as clause 47(2).

47 By adding -

"(1) Section 239 is amended, in the Table, by adding -

"artistic work section 238(1) (and section 5)".

48 In the proposed section 242A(1), by deleting "by a teacher or pupil" and substituting "by or on behalf of a teacher or by a pupil".

48 In the proposed section 242A, by adding -

"(3A) Where any dealing with a fixation involves the making available of copies of the fixation through a wire or wireless network wholly or partly controlled by an educational establishment -

(a) if the educational establishment fails to -

(i) adopt technological measures to restrict access to the copies of the fixation through the network so that the copies of the fixation are made available only to persons who need to use the copies of the fixation for

the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; or

- (ii) ensure that the copies of the fixation are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,

the dealing is not fair dealing under subsection (1); and

- (b) if the educational establishment -
 - (i) adopts technological measures to restrict access to the copies of the fixation through the network so that the copies of the fixation are made available only to persons who need to use the copies of the

fixation for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; and

- (ii) ensures that the copies of the fixation are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,

subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).".

49 By deleting subclause (1) and substituting -

"(1) Section 244(1) is amended by repealing "an audience consisting of teachers and pupils at the establishment and other persons" and substituting "an audience consisting wholly or mainly of teachers and pupils at the establishment, parents or guardians of

pupils at the establishment, and other persons".

49 By deleting subclause (2).

50 By deleting the clause.

51 In the English text, by deleting the heading and substituting
"Sections added".

51 In the English text, by deleting "is added" and substituting
"are added".

51 In the proposed section 246A(1), by deleting "the Legislative
Council,".

51 By adding after the proposed section 246A -

"246B. Legislative Council

(1) The rights conferred by this Part are not
infringed by -

(a) anything done for the purposes of the
proceedings of the Legislative Council or
for the purposes of reporting such
proceedings; or

(b) anything done by or on behalf of -

(i) the members of the Legislative
Council; or

(ii) The Legislative Council
Commission,

for the purposes of the exercise and
discharge by the Legislative Council of
its powers and functions.

(2) Expressions used in this section have the same
meaning as in section 54B."

New By adding -

**"51A. Legislative Council and judicial
proceedings**

(1) Section 247 is amended by repealing the
heading and substituting "**Judicial proceedings**".

(2) Section 247(1) is amended by repealing "the
proceedings of the Legislative Council or".

52 In the proposed section 258A(1), by adding "primarily" after
"inside a vehicle".

53 In the proposed section 272D(4), by adding -
"(ca) section 246B (Legislative Council);".

53 In the proposed section 272D(4)(d), by deleting "Legislative
Council and".

53 By deleting the proposed section 272E(2)(a) and substituting -

"(a) in relation to a live aural performance, subjects the performance, or causes the performance to be subjected, to derogatory treatment when the performance is caused to be heard in public, broadcasted, included in a cable programme service or made available to the public live;".

55 By deleting the proposed section 273(1) and substituting -

"(1) In sections 273A to 273H, "circumvent" (規避), in relation to an effective technological measure which has been applied in relation to a copyright work -

(a) where the use of the work is controlled through the measure by the copyright owner of the work, means to circumvent the measure without the authority of the copyright owner;

(b) where the use of the work is controlled through the measure by an exclusive licensee of the copyright owner of the work, means to circumvent the measure without the authority of the exclusive licensee; or

(c) where the use of the work is controlled through the measure by any other person who, with the licence of the copyright owner of the copyright work -

(i) issues to the public copies of the work;

(ii) makes available to the public copies of the work; or

(iii) broadcasts the work, or includes the work in a cable programme service,

means to circumvent the measure without the authority of that other person."

55 In the proposed section 273(2), by deleting "the copyright owner of the work" and substituting "any person referred to in subsection (1)(a), (b) or (c)".

56 In the proposed section 273A(1), by deleting everything after "to believe" and substituting ", that he is doing an act which circumvents the measure."

56 In the proposed section 273A(2)(c), by adding ", with the licence of the copyright owner of the work" after "who".

56 In the proposed section 273B(1), by deleting everything after paragraph (a) and substituting -

"(b) exhibits in public, possesses or distributes any relevant device for the purpose of or in the course of any trade or business;

(c) distributes (otherwise than for the purpose of or in the course of any trade or business) any relevant device to such an extent as to affect prejudicially the owner of the copyright; or

(d) provides any relevant service.".

56 In the proposed section 273B(3)(c), by adding ", with the licence of the copyright owner of the work" after "who".

56 In the proposed section 273C, in the heading, by deleting "**Criminal liability for**" and substituting "**Offences in relation to**".

56 In the proposed section 273C(1)(f), in the Chinese text, by deleting "目的是" and substituting "以期".

56 In the proposed section 273C(2), by deleting the definition of "circumvention device" and substituting -

"circumvention device" (規避器件) means any device, product, component or means -

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures;".

56 In the proposed section 273C(2), in the definition of "relevant device", by deleting paragraph (a) and substituting

-

"(a) subject to paragraph (b), means any device, product, component or means -

- (i) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;
- (ii) which has only a limited commercially significant purpose or use other than to circumvent the measure; or
- (iii) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of the

measure;".

56 In the proposed section 273C(2), by deleting the definition of "relevant service" and substituting -

"relevant service" (有關服務), in relation to the effective technological measure referred to in that subsection, means any service -

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;
- (b) which has only a limited commercially significant purpose or use other than to circumvent the measure; or
- (c) which is performed for the purpose of enabling or facilitating the circumvention of the measure."

56 By deleting the proposed section 273D(1)(c) and (d) and substituting -

"(c) the act is done for the sole purpose of achieving interoperability of an independently created computer program with the computer program or another computer program;

(d) the copy of computer program in relation to which the act is done is not an infringing copy; and

- (e) the act of identification or analysis referred to in paragraph (b) does not constitute an infringement of copyright."

56 By deleting the proposed section 273D(3)(a) and (b) and substituting -

"(a) where the research is conducted by or on behalf of a specified educational establishment, or for the purposes of giving or receiving instruction in a specified course of study in the field of cryptography provided by a specified educational establishment -

- (i) the research does not constitute an infringement of copyright;
- (ii) it is necessary for the act to be done in order to conduct the research; and
- (iii) the information derived from the research is not disseminated to the public except in a specified manner; or

(b) in any other case -

- (i) the research does not constitute an infringement of copyright;
- (ii) it is necessary for the act to be done in order to conduct the research; and

- (iii) the act or the dissemination to the public of information derived from the research does not affect prejudicially the copyright owner."

56 In the proposed section 273D(4), by deleting the definition of "specified educational establishment" and substituting -
"specified educational establishment" (指明教育機構)

means -

- (a) an educational establishment specified in section 4, 6, 7, 8, 9, 12, 14 or 15 of Schedule 1; or
- (b) Hong Kong Shue Yan University registered under the Post Secondary Colleges Ordinance (Cap. 320);".

56 In the proposed section 273D(4), in the Chinese text, in the definition of "指明方式", by deleting paragraph (b) and substituting -

- "(b) 包括在期刊或會議中發布該等資料，而該等期刊或會議的目標讀者或聽眾，屬主要是從事密碼學範疇或有關科技範疇的工作的人或正在修讀密碼學範疇或有關科技範疇的課程的人；".

56 In the proposed section 273D(7), by deleting everything after "technological measure" and before paragraph (d) and substituting -

"if -

- (a) the measure has been applied in relation to a copyright work of any description issued to the public in a physical article;
- (b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis;
- (c) the act is done for the sole purpose of overcoming the regional coding, technology, device, component or means, as the case may be, contained in the measure so as to gain access to the work; and".

56 In the proposed section 273D, by adding -

"(7A) Section 273A does not apply to an act which circumvents an effective technological measure if -

- (a) the measure has been applied in relation to a copy of any description mentioned in section 50(1), 51(1) or 53;
- (b) the act of circumvention is done by the librarian or archivist of a specified library or archive; and
- (c) the act is done for the sole purpose of the doing of any of the acts permitted under sections 50, 51 and 53."

56 In the proposed section 273E, by adding -

"(10A) Section 273B does not apply to a relevant device or relevant service if -

- (a) an effective technological measure has been applied in relation to a copyright work issued to the public in a physical article;
- (b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis; and

- (c) the sole purpose of the relevant device or relevant service, as the case may be, is to overcome the regional coding, technology, device, component or means, as the case may be, contained in the measure."

56 In the proposed section 273F(1), by deleting the definition of "relevant device" and substituting -

"relevant device" (有關器件) means any device, product, component or means -

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures;".

56 In the proposed section 273F(1), by deleting the definition of "relevant service" and substituting -

"relevant service" (有關服務) means any service -

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is performed for the purpose of enabling or facilitating the circumvention of effective technological measures."

56 In the proposed section 273F(2)(b)(iii), in the Chinese text, by deleting "目的是" and substituting "以期".

56 In the proposed section 273F(4)(b)(iii), in the Chinese text, by deleting "目的是" and substituting "以期".

56 In the proposed section 273F(6)(b)(iii), in the Chinese text, by deleting "目的是" and substituting "以期".

56 By deleting the proposed section 273F(11) and substituting -
"(11) Section 273C does not apply to a relevant device or relevant service if -

- (a) an effective technological measure has been applied in relation to a copyright work issued to the public in a physical article;
- (b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis; and
- (c) the sole purpose of the relevant device or relevant service, as the case may be, is to overcome the regional coding, technology, device, component or means, as the case may be, contained in the measure."

56 By deleting the proposed section 273F(12).

56 In the proposed section 273H, by deleting "Secretary for Commerce, Industry and Technology" and substituting "Secretary for Commerce and Economic Development".

56 In the proposed section 273H(b), by adding ", or is likely to be," after "has been".

57 By deleting the proposed section 274(2B) and substituting -

"(2B) If the copyright owner of a work to which rights management information is attached, or the copyright owner's exclusive licensee, is not the person who provides the rights management information, the copyright owner or the exclusive licensee, as the case may be, has the same rights and remedies as the person who provides the rights management information has against the person referred to in subsection (2).".

New By adding -

"60A. Schedule 1A added

The following is added -

"SCHEDULE 1A [s. 198]

BODIES AND AUTHORITIES SPECIFIED FOR
PURPOSES OF DEFINITION OF "SPECIFIED
COURSE OF STUDY"

1. Curriculum Development Council the members of which are appointed by the Chief Executive."."

61 In the proposed Schedule 7, in section 2, by deleting "14, 15, 16, 18, 48, 49, 50," and substituting "15, 16, 18, 48, 49,".

- 61 In the proposed Schedule 7, in section 16(3), by deleting "affects any right of action" and substituting "relieves any person from liability to civil action".
- 61 In the proposed Schedule 7, in section 19, in the heading, by deleting "**section 118(2E)**" and substituting "**section 118(2DA), (2DB), (2E)**".
- 61 In the proposed Schedule 7, in section 19(1), by deleting "Section 118(2E)" and substituting "Section 118(2DA), (2DB), (2E)".
- 61 In the proposed Schedule 7, in section 20(3), by deleting "affects any right of action" and substituting "relieves any person from liability to civil action".