

A BILL

To

Amend the Copyright Ordinance to provide for the circumstances in which section 119B(1) of the Ordinance does not apply.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Copyright (Amendment) Ordinance 2009.

2. Commencement

This Ordinance comes into operation on the day appointed for the commencement of section 33 of the Copyright (Amendment) Ordinance 2007 (15 of 2007).

3. Offence in relation to making for distribution or distributing on a regular or frequent basis infringing copies of copyright works in printed form contained in books, etc.

(1) Section 119B(3) of the Copyright Ordinance (Cap. 528), as added by section 33 of the Copyright (Amendment) Ordinance 2007 (15 of 2007), is repealed and the following substituted—

“(3) Subsection (1) does not apply in the circumstances described in Schedules 1AA and 1AB.”.

(2) Section 119B(19), (20) and (21) is repealed.

(3) Section 119B is amended by adding—

“(22) The Secretary for Commerce and Economic Development may, by notice published in the Gazette, amend Schedules 1AA and 1AB.”.

4. Schedules 1AA and 1AB added

The following are added immediately after Schedule 1—

“SCHEDULE 1AA

[s. 119B]

CIRCUMSTANCES IN WHICH SECTION 119B(1) OF THIS
ORDINANCE DOES NOT APPLY (EXTENT OF MAKING
OR DISTRIBUTION OF INFRINGING COPIES)

PART 1

INTRODUCTORY

1. Interpretation

- (1) In this Schedule—
- “A4 size” (A4 尺寸) means a size measuring 29.7 cm × 21 cm;
- “infringing page” (侵犯版權頁) means a side of a page that embodies, whether in whole or in part, an infringing copy of any copyright work in a printed form that is contained in a magazine, periodical (other than a specified journal) or newspaper;
- “marked retail price” (標示零售價)—
- (a) in relation to a copy of a book, means its retail price as printed in or on it by the publisher;
 - (b) in relation to a copy of a publication series or multi-volume set of books, means its retail price as printed in or on it by the publisher; or
 - (c) in relation to a copy of an issue of a specified journal, means its retail price as printed in or on it by the publisher;
- “marked subscription price” (標示訂閱價), in relation to a specified journal, means the subscription price of the journal as printed in or on a copy of an issue of the journal by the publisher;
- “qualifying copy” (限定複製品)—

- (a) in relation to a book, means a set of pages, whether in a printed or electronic form, that embodies, whether in whole or in part, an infringing copy of any copyright work in a printed form that is contained in a copy of the book, and corresponds to more than 25% of the printed pages of that copy of the book; or
- (b) in relation to a specified journal, means—
 - (i) a set of pages, whether in a printed or electronic form, that embodies, whether in whole or in part, an infringing copy of any copyright work in a printed form that is contained in a copy of an issue of the journal, and corresponds to more than 25% of the printed pages of that copy of the issue; or
 - (ii) a set of pages, whether in a printed or electronic form, that embodies an infringing copy made from the whole of an article in a printed copy of an issue of the journal, and corresponds to not more than 25% of the printed pages of that copy of the issue;

“recommended retail price” (建議零售價)—

- (a) in relation to a copy of a book, means its retail price as recommended by the publisher before any discount is given to traders or consumers;
- (b) in relation to a copy of a publication series or multi-volume set of books, means its retail price as recommended by the publisher before any discount is given to traders or consumers; or
- (c) in relation to a copy of an article in an issue of a specified journal, means its retail price as recommended by the publisher before any discount is given to traders or consumers;

“recommended subscription price” (建議訂閱價), in relation to a specified journal, means its subscription price as recommended by the publisher before any discount is given to traders or consumers;

“specified journal” (指明期刊) means a periodical that contains scholarly articles relating to a discipline, normally at least one of which in an issue has been peer-reviewed by one or more than one expert or scholar in the discipline.

(2) Expressions used in this Schedule that are defined for the purposes of Part II (copyright) of this Ordinance have the same meaning as in that Part.

PART 2

EXTENT OF MAKING OR DISTRIBUTION
OF INFRINGING COPIES**2. Magazines, periodicals (other than specified journals) and newspapers**

(1) Section 119B(1) of this Ordinance does not apply to the making for distribution by a person, within any period of 14 days, of infringing copies of one or more than one copyright work in a printed form that is contained in magazines, periodicals (other than specified journals) or newspapers if the total number of infringing pages made by the person within that period does not exceed 500.

(2) Section 119B(1) of this Ordinance does not apply to the distribution by a person, within any period of 14 days, of infringing copies of one or more than one copyright work in a printed form that is contained in magazines, periodicals (other than specified journals) or newspapers if the total number of infringing pages distributed by the person within that period does not exceed 500.

(3) Part 3 of this Schedule sets out provisions relating to the calculation of the total number of infringing pages for the purposes of subsections (1) and (2).

3. Books and specified journals

(1) Section 119B(1) of this Ordinance does not apply to the making for distribution by a person, within any period of 180 days, of infringing copies of one or more than one copyright work in a printed form that is contained in books or specified journals if the total value of qualifying copies made by the person within that period does not exceed \$6,000.

(2) Section 119B(1) of this Ordinance does not apply to the distribution by a person, within any period of 180 days, of infringing copies of one or more than one copyright work in a printed form that is contained in books or specified journals if the total value of qualifying copies distributed by the person within that period does not exceed \$6,000.

(3) Section 119B(1) of this Ordinance does not apply to the making for distribution by a person of infringing copies of one or more than one copyright work in a printed form that is contained in a book if the set of pages embodying such infringing copies made by the person does not fall within the meaning of paragraph (a) of the definition of “qualifying copy” in section 1(1) of this Schedule.

(4) Section 119B(1) of this Ordinance does not apply to the making for distribution by a person of infringing copies of one or more than one copyright work in a printed form that is contained in a specified journal if the set of pages embodying such infringing copies made by the person does not fall within the meaning of paragraph (b) of the definition of “qualifying copy” in section 1(1) of this Schedule.

(5) Section 119B(1) of this Ordinance does not apply to the distribution by a person of infringing copies of one or more than one copyright work in a printed form that is contained in a book if the set of pages embodying such infringing copies distributed by the person does not fall within the meaning of paragraph (a) of the definition of “qualifying copy” in section 1(1) of this Schedule.

(6) Section 119B(1) of this Ordinance does not apply to the distribution by a person of infringing copies of one or more than one copyright work in a printed form that is contained in a specified journal if the set of pages embodying such infringing copies distributed by the person does not fall within the meaning of paragraph (b) of the definition of “qualifying copy” in section 1(1) of this Schedule.

(7) Part 4 of this Schedule sets out provisions relating to the determination of the value of qualifying copies for the purposes of subsections (1) and (2).

PART 3

CALCULATION OF TOTAL NUMBER OF INFRINGING PAGES

4. Calculation of total number of infringing pages

(1) This section applies to the calculation of the total number of infringing pages for the purposes of section 2(1) and (2) of this Schedule.

(2) In calculating the total number of infringing pages, the following formula is to be used—

$$A = B + C + D$$

where—

A means the total number of infringing pages;

B means the number of infringing pages of A4 size, as adjusted in accordance with subsections (3) and (4), if applicable;

C means the number of infringing pages smaller than A4 size, as adjusted in accordance with subsections (3) and (4), if applicable;

D means the number of infringing pages larger than A4 size, as adjusted in accordance with subsections (3) and (4), if applicable.

(3) In calculating the total number of infringing pages made or distributed in a printed form—

- (a) if any of the infringing pages are smaller than A4 size, the number of those infringing pages shall be adjusted downward in proportion to the difference between the size of those infringing pages and an infringing page of A4 size, with the result expressed to 2 decimal places without rounding off;
- (b) if any of the infringing pages are larger than A4 size, the number of those infringing pages shall be adjusted upward in proportion to the difference between the size of those infringing pages and an infringing page of A4 size, with the result expressed to 2 decimal places without rounding off;
- (c) if any of the infringing pages embody, whether in whole or in part, an image (referred to in this paragraph as “the reduced image”) of an infringing copy that has been reduced in size from the image (referred to in this paragraph as “the original image”) of the work from which the infringing copy was made, the number of those infringing pages shall be adjusted upward in proportion to the difference between the size of the reduced image and that of the original image, with the result expressed to 2 decimal places without rounding off; and
- (d) if any of the infringing pages embody, whether in whole or in part, an image (referred to in this paragraph as “the enlarged image”) of an infringing copy that has been enlarged in size from the image (referred to in this paragraph as “the original image”) of the work from which the infringing copy was made, the number of those infringing pages shall be adjusted downward in proportion to the difference between the size of the enlarged image and that of the original image, with the result expressed to 2 decimal places without rounding off.

(4) In calculating the total number of infringing pages made or distributed in electronic form—

- (a) all images of infringing copies embodied in the documents so made or distributed shall be printed on paper of A4 size and each side of such printout is taken to be one infringing page;

- (b) if any of the infringing pages so printed embody, whether in whole or in part, an image (referred to in this paragraph as “the reduced image”) of an infringing copy that has been reduced in size from the image (referred to in this paragraph as “the original image”) of the work from which the infringing copy was made, the number of those infringing pages shall be adjusted upward in proportion to the difference between the size of the reduced image and that of the original image, with the result expressed to 2 decimal places without rounding off; and
- (c) if any of the infringing pages so printed embody, whether in whole or in part, an image (referred to in this paragraph as “the enlarged image”) of an infringing copy that has been enlarged in size from the image (referred to in this paragraph as “the original image”) of the work from which the infringing copy was made, the number of those infringing pages shall be adjusted downward in proportion to the difference between the size of the enlarged image and that of the original image, with the result expressed to 2 decimal places without rounding off.

PART 4

DETERMINATION OF VALUE OF QUALIFYING COPIES

5. **Determination of value of qualifying copies made from books**

(1) This section applies to the determination, for the purposes of section 3(1) and (2) of this Schedule, of the value of qualifying copies within the meaning of paragraph (a) of the definition of “qualifying copy” in section 1(1) of this Schedule.

(2) A qualifying copy is taken to have the same value as a copy of a book (referred to in this section as a “comparable copy”) that—

- (a) is not an infringing copy; and
 - (b) contains the copyright work that is the subject of the qualifying copy.
- (3) The value of a comparable copy is taken to be—
- (a) the marked retail price of the comparable copy;
 - (b) if the comparable copy has no marked retail price, the recommended retail price of the comparable copy; or

- (c) if the comparable copy has neither a marked retail price nor a recommended retail price, subject to subsection (4), the market value of the comparable copy in so far as it is readily ascertainable.

(4) If the comparable copy forms one of the volumes in a copy of a publication series or multi-volume set (referred to in this section as a “comparable set”), and the comparable copy has neither a marked retail price nor a recommended retail price, the value of the comparable copy is taken to be—

- (a) a fraction of the marked retail price of the comparable set in which the denominator is the total number of printed pages of the comparable set and the numerator is the number of printed pages of the comparable copy, with the result expressed to 2 decimal places without rounding off; or
- (b) if the comparable set has no marked retail price, a fraction of the recommended retail price of the comparable set in which the denominator is the total number of printed pages of the comparable set and the numerator is the number of printed pages of the comparable copy, with the result expressed to 2 decimal places without rounding off.

(5) For the purposes of subsection (3)(a), if the comparable copy has 2 or more than 2 marked retail prices denominated in different currencies, the currency by reference to which the value of the comparable copy is to be calculated shall be determined in accordance with the following order—

- (a) firstly, Hong Kong dollar;
- (b) secondly, United States dollar; and
- (c) thirdly, the currency in which the first marked retail price as printed in or on the comparable copy is denominated.

(6) For the purposes of subsection (4)(a), if the comparable set has 2 or more than 2 marked retail prices denominated in different currencies, the currency by reference to which the value of the comparable copy is to be calculated shall be determined in accordance with the following order—

- (a) firstly, Hong Kong dollar;
- (b) secondly, United States dollar; and
- (c) thirdly, the currency in which the first marked retail price as printed in or on the comparable set is denominated.

6. Determination of value of qualifying copies made from specified journals (general provisions)

(1) This section applies to the determination, for the purposes of section 3(1) and (2) of this Schedule, of the value of qualifying copies within the meaning of paragraph (b) of the definition of “qualifying copy” in section 1(1) of this Schedule.

(2) If—

- (a) a qualifying copy within the meaning of paragraph (b)(i) of the definition of “qualifying copy” in section 1(1) of this Schedule is made from a copy of an issue of a specified journal; and
- (b) that qualifying copy consists of one or more than one qualifying copy within the meaning of paragraph (b)(ii) of the definition of “qualifying copy” in section 1(1) of this Schedule,

in determining the total value of the qualifying copies referred to in paragraphs (a) and (b), only the value of the qualifying copy referred to in paragraph (a) is to be taken into account.

7. Determination of value of qualifying copies made from specified journals (issues)

(1) This section applies to the determination, for the purposes of section 3(1) and (2) of this Schedule, of the value of qualifying copies within the meaning of paragraph (b)(i) of the definition of “qualifying copy” in section 1(1) of this Schedule.

(2) A qualifying copy is taken to have the same value as a copy of an issue of a specified journal (referred to in this section as a “comparable copy”) that—

- (a) is not an infringing copy; and
 - (b) contains the copyright work that is the subject of the qualifying copy.
- (3) The value of a comparable copy is taken to be—
- (a) the marked retail price of the comparable copy;
 - (b) if the comparable copy has no marked retail price, the marked subscription price of the specified journal concerned as printed in or on the comparable copy divided by the number of issues covered in the subscription, with the result expressed to 2 decimal places without rounding off; or

- (c) if the comparable copy has no marked retail price and the specified journal concerned has no marked subscription price as printed in or on the comparable copy, the recommended subscription price of the specified journal concerned divided by the number of issues covered in the subscription, with the result expressed to 2 decimal places without rounding off.

(4) For the purposes of subsection (3)(a), if the comparable copy has 2 or more than 2 marked retail prices denominated in different currencies, the currency by reference to which the value of the comparable copy is to be calculated shall be determined in accordance with the following order—

- (a) firstly, Hong Kong dollar;
- (b) secondly, United States dollar; and
- (c) thirdly, the currency in which the first marked retail price as printed in or on the comparable copy is denominated.

(5) For the purposes of subsection (3)(b), if the specified journal concerned has 2 or more than 2 marked subscription prices, as printed in or on the comparable copy, denominated in different currencies, the currency by reference to which the value of the comparable copy is to be calculated shall be determined in accordance with the following order—

- (a) firstly, Hong Kong dollar;
- (b) secondly, United States dollar; and
- (c) thirdly, the currency in which the first marked subscription price as printed in or on the comparable copy is denominated.

8. Determination of value of qualifying copies made from specified journals (articles)

(1) This section applies to the determination, for the purposes of section 3(1) and (2) of this Schedule, of the value of qualifying copies within the meaning of paragraph (b)(ii) of the definition of “qualifying copy” in section 1(1) of this Schedule.

(2) A qualifying copy is taken to have the same value as a copy of an article in an issue of a specified journal (referred to in this section as a “comparable copy”) that—

- (a) is not an infringing copy; and
- (b) contains the copyright work that is the subject of the qualifying copy.

(3) The value of a comparable copy is taken to be its recommended retail price.

SCHEDULE 1AB

[s. 119B]

CIRCUMSTANCES IN WHICH SECTION 119B(1) OF THIS
ORDINANCE DOES NOT APPLY (MANNER OF
DISTRIBUTION OF INFRINGING COPIES)

1. Interpretation

Expressions used in this Schedule that are defined for the purposes of Part II (copyright) of this Ordinance have the same meaning as in that Part.

2. Manner of distribution of infringing copies

(1) Subject to subsection (2), section 119B(1) of this Ordinance does not apply to the distribution through a wire or wireless network of an infringing copy to which access is restricted by procedures of authentication or identification.

(2) Subsection (1) does not apply to an infringing copy embodied in a document that is distributed to an electronic mail address or facsimile number.”.

Explanatory Memorandum

The main purpose of this Bill is to amend the Copyright Ordinance (Cap. 528) (“the Ordinance”) to provide for the circumstances in which section 119B(1) of the Ordinance does not apply.

2. Clause 1 provides for the short title of the Bill when enacted.

3. Clause 2 provides for the commencement of the Bill when enacted.

4. Clause 3 amends section 119B of the Ordinance, as added by section 33 of the Copyright (Amendment) Ordinance 2007 (15 of 2007), to provide that section 119B(1) of the Ordinance does not apply in the circumstances described in the new Schedules 1AA and 1AB to the Ordinance.

5. Clause 4 adds the new Schedules 1AA and 1AB to the Ordinance to provide for the circumstances in which section 119B(1) of the Ordinance does not apply. In particular—

- (a) section 1 of the new Schedule 1AA defines certain expressions used in that Schedule (including “infringing page”, “qualifying copy” and “specified journal”);
- (b) section 2 of the new Schedule 1AA provides that section 119B(1) of the Ordinance does not apply in circumstances where the making or distribution of infringing copies in relation to magazines, periodicals (other than specified journals) and newspapers does not, in terms of the number of infringing pages made or distributed, exceed the specified extent;
- (c) section 3 of the new Schedule 1AA provides that section 119B(1) of the Ordinance does not apply in circumstances where the making or distribution of infringing copies in relation to books and specified journals does not, in terms of the value of qualifying copies made or distributed, exceed the specified extent;
- (d) section 4 of the new Schedule 1AA provides for the calculation of the total number of infringing pages made or distributed in relation to magazines, periodicals (other than specified journals) and newspapers;
- (e) section 5 of the new Schedule 1AA provides for the determination of the value of qualifying copies made or distributed in relation to books;
- (f) sections 6, 7 and 8 of the new Schedule 1AA provide for the determination of the value of qualifying copies made or distributed in relation to specified journals; and
- (g) the new Schedule 1AB provides that section 119B(1) of the Ordinance does not apply in circumstances where infringing copies are distributed through an intranet.