

31. Secondary infringement: possessing or dealing with infringing copy

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

- (a) possesses for the purpose of or in the course of any trade or business; (*Replaced 64 of 2000 s. 2*)
 - (b) sells or lets for hire, or offers or exposes for sale or hire;
 - (c) exhibits in public or distributes for the purpose of or in the course of any trade or business; or (*Replaced 64 of 2000 s. 2*)
 - (d) distributes (otherwise than for the purpose of or in the course of any trade or business) to such an extent as to affect prejudicially the owner of the copyright, (*Amended 64 of 2000 s. 2*)
- a copy of a work which is, and which he knows or has reason to believe to be, an infringing copy of the work. (*Amended 15 of 2007 s. 7*)

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

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

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

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||△>

△ (3) For the purposes of subsection (1)(d), in determining whether any distribution of an infringing copy of a work is made to such an extent as to affect prejudicially the owner of the copyright, the court may take into account all the circumstances of the case and, in particular—

- (a) the purpose of the distribution;
- (b) the nature of the work, including its commercial value;
- (c) the amount and substantiality of the portion copied (in relation to the work as a whole) that was distributed;
- (d) the mode of distribution; and
- (e) the economic prejudice caused to the owner of the copyright as a consequence of the distribution, including the effect of the distribution on the potential market for or value of the work.

LC Paper No. CB(1)1522/11-12(01)

↑
(if any)

Copyright Ordinance

37. Introductory provisions

(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.]

Copyright (Amendment) Bill 2011

37. Introductory provisions

(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.

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(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.]

△ (6) In sections 40B(5), 40C(7), 40D(7), 41A(7), 54A(3) and 72(2)—

dealt with (被用以進行交易), in relation to a copy of a work, means—

- (a) possessed for the purpose of or in the course of any trade or business;
- (b) sold or let for hire, or offered or exposed for sale or hire;
- (c) exhibited in public or distributed for the purpose of or in the course of any trade or business; or
- (d) distributed (otherwise than for the purpose of or in the course of any trade or business) to such an extent as to affect prejudicially the owner of the copyright in the work.

(7) For the purposes of paragraph (d) of the definitions of *dealt with* in subsection (6) and sections 41(6), 44(4) and 45(4), in determining whether any distribution of a copy of a work is made to such an extent as to affect prejudicially the owner of the copyright, the court may take into account all the circumstances of the case and, in particular—

- (a) the purpose of the distribution;
- (b) the nature of the work, including its commercial value;
- (c) the amount and substantiality of the portion copied (in relation to the work as a whole) that was distributed;
- (d) the mode of distribution; and
- (e) the economic prejudice caused to the owner of the copyright as a consequence of the distribution, including the effect of the distribution on the potential market for or value of the work.

Committee Stage Amendments
to be moved by the Secretary for Commerce
and Economic Development
(as at 28.3.2012)

37. Introductory provisions

(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.]

△ (6) In sections 40B(5), 40C(7), 40D(7), 41A(7), 54A(3) and 72(2)—

dealt with (被用以進行交易), in relation to a copy of a work, means—

- (a) possessed for the purpose of or in the course of any trade or business;
- (b) sold or let for hire, or offered or exposed for sale or hire;
- (c) exhibited in public or distributed for the purpose of or in the course of any trade or business; or
- (d) distributed (otherwise than for the purpose of or in the course of any trade or business) to such an extent as to affect prejudicially the owner of the copyright in the work.

(7) For the purposes of paragraph (d) of the definitions of *dealt with* in subsection (6) and sections 41(6), 44(4) and 45(4), in determining whether any distribution of a copy of a work is made to such an extent as to affect prejudicially the owner of the copyright, the court may take into account all the circumstances of the case and, in particular—

- (a) the purpose of the distribution;
- (b) the nature of the work, including its commercial value;
- (c) the amount and substantiality of the portion copied (in relation to the work as a whole) that was distributed;
- (d) the mode of distribution; and
- (e) the economic prejudice caused to the owner of the copyright as a consequence of the distribution, including the effect of the distribution on the potential market for or value of the work.

Copyright Ordinance

40B. Making a single accessible copy for a person with a print disability

- (1) If—
- a person with a print disability possesses a copy of the whole or part of a literary, dramatic, musical or artistic work (referred to in this section as “master copy”); and
 - the master copy is not accessible to him because of the disability, it is not an infringement of copyright in the work or, in the case of a published edition, in the typographical arrangement, for one accessible copy of the master copy to be made by or on behalf of the person for his personal use.
- (2) Subsection (1) does not apply—
- if the master copy is an infringing copy;
 - if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
 - if the master copy is of a dramatic work or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the work or part of the work.
- (3) Subsection (1) does not apply unless, at the time when the accessible copy is made by or on behalf of the person with a print disability, the maker of the copy is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to the person cannot be obtained at a reasonable commercial price.
- (4) If a person makes an accessible copy on behalf of a person with a print disability under this section and charges for it, the sum charged must not exceed the cost incurred in making and supplying the copy.
- (5) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
- for the purpose of that dealing; and
 - if that dealing infringes copyright, for all subsequent purposes.
- (6) In subsection (5), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 13)

Copyright (Amendment) Bill 2011

40B. Making a single accessible copy for a person with a print disability

- (1) If—
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- (2) Subsection (1) does not apply—
- if the master copy is an infringing copy;
 - if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
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- (3) Subsection (1) does not apply unless, at the time when the accessible copy is made by or on behalf of the person with a print disability, the maker of the copy is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to the person cannot be obtained at a reasonable commercial price.
- (4) If a person makes an accessible copy on behalf of a person with a print disability under this section and charges for it, the sum charged must not exceed the cost incurred in making and supplying the copy.
- (5) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
- for the purpose of that dealing; and
 - if that dealing infringes copyright, for all subsequent purposes.
- ~~(6) In subsection (5), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.~~

(Added 15 of 2007 s. 13)

Committee Stage Amendments
to be moved by the Secretary for Commerce
and Economic Development
(as at 28.3.2012)

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- (2) Subsection (1) does not apply—
- if the master copy is an infringing copy;
 - if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
 - if the master copy is of a dramatic work or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the work or part of the work.
- (3) Subsection (1) does not apply unless, at the time when the accessible copy is made by or on behalf of the person with a print disability, the maker of the copy is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to the person cannot be obtained at a reasonable commercial price.
- (4) If a person makes an accessible copy on behalf of a person with a print disability under this section and charges for it, the sum charged must not exceed the cost incurred in making and supplying the copy.
- (5) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
- for the purpose of that dealing; and
 - if that dealing infringes copyright, for all subsequent purposes.
- ~~(6) In subsection (5), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.~~

(Added 15 of 2007 s. 13)

△ (6) For the purposes of subsection (5), an accessible copy is dealt with if it is—

- possessed, exhibited in public or distributed, by any person other than the person by whom the copy is made or to whom the copy is supplied under subsection (1), for the purpose of or in the course of any trade or business; or
- sold or let for hire, or offered or exposed for sale or hire.

Copyright Ordinance

40C. Making multiple accessible copies by specified bodies for persons with a print disability

- (1) If—
- a specified body possesses a copy of the whole or part of a commercial publication of a literary, dramatic, musical or artistic work (referred to in this section as “master copy”); and
 - the master copy is not accessible to persons with a print disability,

it is not an infringement of copyright in the work or, in the case of a published edition, in the typographical arrangement, for the specified body to make for those persons or supply to those persons accessible copies of the master copy for their personal use.

(2) Subsection (1) does not apply—

- if the master copy is an infringing copy;
- if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
- if the master copy is of a dramatic work or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the work or part of the work.

(3) Subsection (1) does not apply unless, at the time when the accessible copies are made, the specified body is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to a person with a print disability cannot be obtained at a reasonable commercial price.

(4) The specified body must—

- within a reasonable time before making or supplying the accessible copies, notify the relevant copyright owner of its intention to make or supply the accessible copies; or
- within a reasonable time after making or supplying the accessible copies, notify the relevant copyright owner of the fact that it has made or supplied the accessible copies.

(5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.

(6) If the specified body charges for making and supplying an accessible copy under this section, the sum charged must not exceed the cost incurred in making and supplying the copy.

(7) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- for the purpose of that dealing; and
- if that dealing infringes copyright, for all subsequent purposes.

(8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 13)

Copyright (Amendment) Bill 2011

40C. Making multiple accessible copies by specified bodies for persons with a print disability

- (1) If—
- a specified body possesses a copy of the whole or part of a commercial publication of a literary, dramatic, musical or artistic work (referred to in this section as “master copy”); and
 - the master copy is not accessible to persons with a print disability,

it is not an infringement of copyright in the work or, in the case of a published edition, in the typographical arrangement, for the specified body to make for those persons or supply to those persons accessible copies of the master copy for their personal use.

(2) Subsection (1) does not apply—

- if the master copy is an infringing copy;
- if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
- if the master copy is of a dramatic work or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the work or part of the work.

(3) Subsection (1) does not apply unless, at the time when the accessible copies are made, the specified body is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to a person with a print disability cannot be obtained at a reasonable commercial price.

(4) The specified body must—

- within a reasonable time before making or supplying the accessible copies, notify the relevant copyright owner of its intention to make or supply the accessible copies; or
- within a reasonable time after making or supplying the accessible copies, notify the relevant copyright owner of the fact that it has made or supplied the accessible copies.

(5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.

(6) If the specified body charges for making and supplying an accessible copy under this section, the sum charged must not exceed the cost incurred in making and supplying the copy.

(7) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- for the purpose of that dealing; and
- if that dealing infringes copyright, for all subsequent purposes.

(8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 13)

Committee Stage Amendments
to be moved by the Secretary for Commerce
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(as at 28.3.2012)

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- a specified body possesses a copy of the whole or part of a commercial publication of a literary, dramatic, musical or artistic work (referred to in this section as “master copy”); and
 - the master copy is not accessible to persons with a print disability,

it is not an infringement of copyright in the work or, in the case of a published edition, in the typographical arrangement, for the specified body to make for those persons or supply to those persons accessible copies of the master copy for their personal use.

(2) Subsection (1) does not apply—

- if the master copy is an infringing copy;
- if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
- if the master copy is of a dramatic work or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the work or part of the work.

(3) Subsection (1) does not apply unless, at the time when the accessible copies are made, the specified body is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to a person with a print disability cannot be obtained at a reasonable commercial price.

(4) The specified body must—

- within a reasonable time before making or supplying the accessible copies, notify the relevant copyright owner of its intention to make or supply the accessible copies; or
- within a reasonable time after making or supplying the accessible copies, notify the relevant copyright owner of the fact that it has made or supplied the accessible copies.

(5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.

(6) If the specified body charges for making and supplying an accessible copy under this section, the sum charged must not exceed the cost incurred in making and supplying the copy.

(7) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- for the purpose of that dealing; and
- if that dealing infringes copyright, for all subsequent purposes.

(8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 13)

△ (8) For the purposes of subsection (7), an accessible copy is dealt with if it is—

- possessed, exhibited in public or distributed, by any person other than the specified body by whom the copy is made under subsection (1) or the person to whom the copy is supplied under that subsection, for the purpose of or in the course of any trade or business; or

- sold or let for hire, or offered or exposed for sale or hire.

40D. Intermediate copies

(1) A specified body entitled to make accessible copies of a master copy under section 40C may possess an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but—

- (a) the specified body may possess the intermediate copy only for the purpose of the production of further accessible copies; and
- (b) the specified body must destroy the intermediate copy within 3 months after it is no longer required for that purpose.

(2) An intermediate copy possessed otherwise than in accordance with subsection (1) is to be treated as an infringing copy.

(3) A specified body may lend or transfer an intermediate copy possessed under subsection (1) to another specified body which is also entitled to make accessible copies of the relevant copyright work under section 40C.

(4) The specified body must—

- (a) within a reasonable time before lending or transferring the intermediate copy, notify the relevant copyright owner of its intention to lend or transfer the intermediate copy; or
- (b) within a reasonable time after lending or transferring the intermediate copy, notify the relevant copyright owner of the fact that it has lent or transferred the intermediate copy.

(5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.

(6) If the specified body charges for lending or transferring an intermediate copy under this section, the sum charged must not exceed the cost incurred in lending or transferring the copy.

(7) Where an intermediate copy which apart from this section would be an infringing copy is possessed, lent or transferred in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes copyright, for all subsequent purposes.

(8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 13)

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(1) A specified body entitled to make accessible copies of a master copy under section 40C may possess an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but—

- (a) the specified body may possess the intermediate copy only for the purpose of the production of further accessible copies; and
- (b) the specified body must destroy the intermediate copy within 3 months after it is no longer required for that purpose.

(2) An intermediate copy possessed otherwise than in accordance with subsection (1) is to be treated as an infringing copy.

(3) A specified body may lend or transfer an intermediate copy possessed under subsection (1) to another specified body which is also entitled to make accessible copies of the relevant copyright work under section 40C.

(4) The specified body must—

- (a) within a reasonable time before lending or transferring the intermediate copy, notify the relevant copyright owner of its intention to lend or transfer the intermediate copy; or
- (b) within a reasonable time after lending or transferring the intermediate copy, notify the relevant copyright owner of the fact that it has lent or transferred the intermediate copy.

(5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.

(6) If the specified body charges for lending or transferring an intermediate copy under this section, the sum charged must not exceed the cost incurred in lending or transferring the copy.

(7) Where an intermediate copy which apart from this section would be an infringing copy is possessed, lent or transferred in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes copyright, for all subsequent purposes.

~~(8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.~~

(Added 15 of 2007 s. 13)

40D. Intermediate copies

(1) A specified body entitled to make accessible copies of a master copy under section 40C may possess an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but—

- (a) the specified body may possess the intermediate copy only for the purpose of the production of further accessible copies; and
- (b) the specified body must destroy the intermediate copy within 3 months after it is no longer required for that purpose.

(2) An intermediate copy possessed otherwise than in accordance with subsection (1) is to be treated as an infringing copy.

(3) A specified body may lend or transfer an intermediate copy possessed under subsection (1) to another specified body which is also entitled to make accessible copies of the relevant copyright work under section 40C.

(4) The specified body must—

- (a) within a reasonable time before lending or transferring the intermediate copy, notify the relevant copyright owner of its intention to lend or transfer the intermediate copy; or
- (b) within a reasonable time after lending or transferring the intermediate copy, notify the relevant copyright owner of the fact that it has lent or transferred the intermediate copy.

(5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.

(6) If the specified body charges for lending or transferring an intermediate copy under this section, the sum charged must not exceed the cost incurred in lending or transferring the copy.

(7) Where an intermediate copy which apart from this section would be an infringing copy is possessed, lent or transferred in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes copyright, for all subsequent purposes.

~~(8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.~~

(Added 15 of 2007 s. 13)

△ (8) For the purposes of subsection (7), an intermediate copy is dealt with if it is—

- (a) exhibited in public or distributed, by any person other than the specified body entitled to possess the copy under subsection (1) or the specified body to whom the copy is lent or transferred under subsection (3), for the purpose of or in the course of any trade or business; or
- (b) sold or let for hire, or offered or exposed for sale or hire.

41A. Fair dealing for purposes of giving or
receiving instruction

(1) Fair dealing with a work by or on behalf of a teacher or by a pupil for the purposes of giving or receiving instruction in a specified course of study provided by an educational establishment does not infringe the copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) In determining whether any dealing with a work is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (b) the nature of the work;
- (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
- (d) the effect of the dealing on the potential market for or value of the work.

(3) Where any dealing with a work involves the inclusion of any passage or excerpt from a published literary or dramatic work in an anthology—

- (a) if the inclusion is not accompanied by a sufficient acknowledgement, the dealing is not fair dealing under subsection (1); and
- (b) if the inclusion is accompanied by a sufficient acknowledgement, subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).

(4) Where any dealing with a work involves the making of a recording of a broadcast or cable programme or a copy of such a recording—

- (a) if an acknowledgement of authorship or other creative effort contained in the work recorded is not incorporated in the recording, the dealing is not fair dealing under subsection (1); and
- (b) if an acknowledgement of authorship or other creative effort contained in the work recorded is incorporated in the recording, subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).

(5) 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—

- (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

Copyright Ordinance

(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).

(6) 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).

(7) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

(a) for the purpose of that dealing; and

(b) if that dealing infringes copyright, for all subsequent purposes.

(8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 14)

Copyright (Amendment) Bill 2011

(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).

(6) 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).

(7) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

(a) for the purpose of that dealing; and

(b) if that dealing infringes copyright, for all subsequent purposes.

~~(8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.~~

(Added 15 of 2007 s. 14)

Committee Stage Amendments
to be moved by the Secretary for Commerce
and Economic Development
(as at 28.3.2012)

(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).

(6) 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).

(7) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

(a) for the purpose of that dealing; and

(b) if that dealing infringes copyright, for all subsequent purposes.

~~(8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.~~

(Added 15 of 2007 s. 14)

△ (8) For the purposes of subsection (7), a copy is dealt with if it is—

(a) possessed, exhibited in public or distributed (otherwise than for the purposes mentioned in subsection (1)) for the purpose of or in the course of any trade or business; or

(b) sold or let for hire, or offered or exposed for sale or hire.

41. Things done for purposes of instruction or examination

- (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied, to a reasonable extent, in the course of instruction or of preparation for instruction, if the copying—
- (a) is done by a person giving or receiving instruction; and
 - (b) is not by means of a reprographic process.
- (2) Copyright in a sound recording, film, broadcast or cable programme is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, if the copying is done by a person giving or receiving instruction.
- (3) Copyright is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions.
- (4) Subsection (3) does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.
- (5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, the copy is treated as an infringing copy for the purpose of that dealing and if that dealing infringes copyright, for all subsequent purposes.
- For this purpose “dealt with” (進行交易) means sold or let for hire or offered or exposed for sale or hire.

[cf. 1988 c. 48 s. 32 U.K.]

41. Things done for purposes of instruction or examination

- (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied, to a reasonable extent, in the course of instruction or of preparation for instruction, if the copying—
- (a) is done by a person giving or receiving instruction; and
 - (b) is not by means of a reprographic process.
- (2) Copyright in a sound recording, film, broadcast or cable programme is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, if the copying is done by a person giving or receiving instruction.
- (3) Copyright is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions.
- (4) Subsection (3) does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.
- (5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, the copy is treated as an infringing copy for the purpose of that dealing and if that dealing infringes copyright, for all subsequent purposes.
- For this purpose “dealt with” (進行交易) means sold or let for hire or offered or exposed for sale or hire.

[cf. 1988 c. 48 s. 32 U.K.]

- △ (6) In subsection (5) **dealt with** (被用以進行交易), in relation to a copy of a work, means—
- (a) possessed for the purpose of or in the course of any trade or business;
 - (b) sold or let for hire, or offered or exposed for sale or hire;
 - (c) exhibited in public or distributed for the purpose of or in the course of any trade or business;
 - (d) distributed (otherwise than for the purpose of or in the course of any trade or business) to such an extent as to affect prejudicially the owner of the copyright in the work; or
 - (e) communicated to the public, unless that communication is not an infringement of copyright by virtue of subsection (3).

- ☐ (6) For the purposes of subsection (5), a copy is dealt with if it is—
- (a) possessed, exhibited in public or distributed (otherwise than for the purposes of instruction or examination) for the purpose of or in the course of any trade or business;
 - (b) sold or let for hire, or offered or exposed for sale or hire; or
 - (c) communicated to the public, unless that communication is not an infringement of copyright by virtue of subsection (3).

44. Recording by educational establishments
of broadcasts and cable programmes

(1) A recording of a broadcast or cable programme, or a copy of such a recording may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast or cable programme, or in any work included in it, if—

- (a) an acknowledgement of authorship or other creative effort contained in the work recorded is incorporated in the recording made by the establishment; and
- (b) it is not made for gain.

(2) Recording or copying is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the recording or copying in question and the person making the recording or copies knew or ought to have been aware of that fact.

44. ~~Recording by educational establishments
of broadcasts and cable programmes~~

(1) A recording of a broadcast or cable programme, or a copy of such a recording may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast or cable programme, or in any work included in it, if—

- (a) an acknowledgement of authorship or other creative effort contained in the work recorded is incorporated in the recording made by the establishment; and
- (b) it is not made for gain.

~~(2) Recording or copying is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the recording or copying in question and the person making the recording or copies knew or ought to have been aware of that fact.~~

↑ Recording, copying or communication by educational
establishments: broadcasts or cable programmes

△(1A) A person authorized by an educational establishment may, without infringing copyright, communicate to an authorized recipient a recording or copy of a recording of a broadcast or cable programme that has been made in accordance with subsection (1) if—

- (a) the person makes the communication for the educational purposes of the establishment; and
- (b) the establishment takes all reasonable steps to ensure that—
 - (i) only authorized recipients receive the communication; and
 - (ii) the authorized recipients do not make any copy or further transmission of the communication.

□ (2) Recording, copying or communicating to authorized recipients is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the recording, copying or communication in question and the person making the recording, copies or communication in question knew or ought to have been aware of that fact.

Copyright Ordinance

(3) Where a recording or copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, the copy is treated as an infringing copy for the purposes of that dealing and if that dealing infringes copyright, for all subsequent purposes.
For this purpose “dealt with” (進行交易) means sold or let for hire or offered or exposed for sale or hire.

[cf. 1988 c. 48 s. 35 U.K.]

Copyright (Amendment) Bill 2011

(3) Where a recording or copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, the copy is treated as an infringing copy for the purposes of that dealing and if that dealing infringes copyright, for all subsequent purposes.
~~For this purpose “dealt with” (進行交易) means sold or let for hire or offered or exposed for sale or hire.~~

[cf. 1988 c. 48 s. 35 U.K.]

- △ (4) In this section—
- /△ *authorized recipient* (獲授權收訊人), in relation to a communication made by a person authorized by an educational establishment, means a teacher or pupil of the establishment who has been authorized by or on behalf of the establishment to receive the communication;
- dealt with* (被用以進行交易), in relation to a copy of a work, means—
- (a) possessed for the purpose of or in the course of any trade or business;
 - (b) sold or let for hire, or offered or exposed for sale or hire;
 - (c) exhibited in public or distributed for the purpose of or in the course of any trade or business;
 - (d) distributed (otherwise than for the purpose of or in the course of any trade or business) to such an extent as to affect prejudicially the owner of the copyright in the work; or
 - (e) communicated to the public, unless that communication is not an infringement of ~~copyright by virtue of subsection (1A).~~

Committee Stage Amendments
to be moved by the Secretary for Commerce
and Economic Development
(as at 28.3.2012)

- (4) For the purposes of subsection (3), a recording or copy is dealt with if it is—
- (a) possessed, exhibited in public or distributed (otherwise than for the educational purposes of the educational establishment concerned) for the purpose of or in the course of any trade or business;
 - (b) sold or let for hire, or offered or exposed for sale or hire; or
 - (c) communicated to the public, unless that communication is not an infringement of copyright by virtue of subsection (1A).
- (5) In this section—
- authorized recipient* (獲授權收訊人), in relation to a communication made by a person authorized by an educational establishment, means a teacher or pupil of the establishment who has been authorized by or on behalf of the establishment to receive the communication.

45. Reprographic copying made by educational establishments or pupils of passages from published works

(Amended 15 of 2007 s. 16)

(1) Reprographic copies of artistic works or of passages from published literary, dramatic or musical works may, to a reasonable extent, be made by or on behalf of an educational establishment for the purposes of giving instruction, or by a pupil for the purposes of receiving instruction in a specified course of study provided by an educational establishment, without infringing any copyright in the work, or in the typographical arrangement. (Amended 15 of 2007 s. 16)

45. Reprographic copying made by educational establishments or pupils of passages from published works

(Amended 15 of 2007 s. 16)

(1) Reprographic copies of artistic works or of passages from published literary, dramatic or musical works may, to a reasonable extent, be made by or on behalf of an educational establishment for the purposes of giving instruction, or by a pupil for the purposes of receiving instruction in a specified course of study provided by an educational establishment, without infringing any copyright in the work, or in the typographical arrangement. (Amended 15 of 2007 s. 16)



↑ Copying or communication by educational establishments or pupils: passages or extracts from published works

↑ Copies

↑, or extracts from published sound recordings or films,

↓ in the typographical arrangement, or in the sound recording or film (as the case may be)

△ (1A) A person authorized by an educational establishment may, without infringing copyright, communicate to an authorized recipient a copy of an artistic work, a passage from a published literary, dramatic or musical work, or an extract from a published sound recording or film, that has been made in accordance with subsection (1) if—

- (a) the person makes the communication for the educational purposes of the establishment; and
- (b) the establishment takes all reasonable steps to ensure that—
 - (i) only authorized recipients receive the communication; and
 - (ii) the authorized recipients do not make any copy or further transmission of the communication.

Copyright Ordinance

(2) Copying is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the copying in question and the person making the copies knew or ought to have been aware of that fact.

(3) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it is treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright, for all subsequent purposes.

For this purpose "dealt with" (進行交易) means sold or let for hire or offered or exposed for sale or hire.

[cf. 1988 c. 48 s. 36 U.K.]

Copyright (Amendment) Bill 2011

~~(2) Copying is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the copying in question and the person making the copies knew or ought to have been aware of that fact.~~

(3) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it is treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright, for all subsequent purposes.

~~For this purpose "dealt with" (進行交易) means sold or let for hire or offered or exposed for sale or hire.~~

[cf. 1988 c. 48 s. 36 U.K.]

△ (2) Copying or communicating to authorized recipients is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the copying or communication in question and the person making the copies or communication in question knew or ought to have been aware of that fact.

- (4) In this section—
- △ **authorized recipient** (獲授權收訊人), in relation to a communication made by a person authorized by an educational establishment, means a teacher or pupil of the establishment who has been authorized by or on behalf of the establishment to receive the communication;
- dealt with** (被用以進行交易), in relation to a copy of a work, means—
- possessed for the purpose of or in the course of any trade or business;
 - sold or let for hire, or offered or exposed for sale or hire;
 - exhibited in public or distributed for the purpose of or in the course of any trade or business;
 - distributed (otherwise than for the purpose of or in the course of any trade or business) to such an extent as to affect prejudicially the owner of the copyright in the work; or
 - communicated to the public, unless that communication is not an infringement of copyright by virtue of subsection (1A).

Committee Stage Amendments
to be moved by the Secretary for Commerce
and Economic Development
(as at 28.3.2012)

- ▽ (4) For the purposes of subsection (3), a copy is dealt with if it is—
- possessed, exhibited in public or distributed (otherwise than for the educational purposes of the educational establishment concerned) for the purpose of or in the course of any trade or business;
 - sold or let for hire, or offered or exposed for sale or hire; or
 - communicated to the public, unless that communication is not an infringement of copyright by virtue of subsection (1A).

(5) In this section—

authorized recipient (獲授權收訊人), in relation to a communication made by a person authorized by an educational establishment, means a teacher or pupil of the establishment who has been authorized by or on behalf of the establishment to receive the communication.

54A. Fair dealing for purposes of public administration

(1) Fair dealing with a work by the Government, the Executive Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe the copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) In determining whether any dealing with a work is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (b) the nature of the work;
- (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
- (d) the effect of the dealing on the potential market for or value of the work.

(3) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes copyright, for all subsequent purposes.

(4) In subsection (3), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

(Added 15 of 2007 s. 17)

54A. Fair dealing for purposes of public administration

(1) Fair dealing with a work by the Government, the Executive Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe the copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) In determining whether any dealing with a work is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (b) the nature of the work;
- (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
- (d) the effect of the dealing on the potential market for or value of the work.

(3) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes copyright, for all subsequent purposes.

~~(4) In subsection (3), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.~~

(Added 15 of 2007 s. 17)

54A. Fair dealing for purposes of public administration

(1) Fair dealing with a work by the Government, the Executive Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe the copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) In determining whether any dealing with a work is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (b) the nature of the work;
- (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
- (d) the effect of the dealing on the potential market for or value of the work.

(3) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes copyright, for all subsequent purposes.

~~(4) In subsection (3), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.~~

(Added 15 of 2007 s. 17)

△ (4) For the purposes of subsection (3), a copy is dealt with if it is—

- (a) possessed, exhibited in public or distributed (otherwise than for the purposes mentioned in subsection (1)) for the purpose of or in the course of any trade or business; or
- (b) sold or let for hire, or offered or exposed for sale or hire.

65. Certain acts permitted where works made available to the public

Notwithstanding section 23, copyright in a work is not infringed by the making of a transient and incidental copy which 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.

65. Certain acts permitted where works made available to the public

Notwithstanding section 23, copyright in a work is not infringed by the making of a transient and incidental copy which 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.

11A

△

65A. Temporary reproduction by service providers

- (1) The copyright in a work is not infringed by the making and storage of a copy of the work by a service provider if—
- (a) the sole purpose of the making and storage of the copy is to enable more efficient transmission of the work by the service provider through a network;
 - (b) the making and storage of the copy forms an automatic and essential part of a technological process, and that process neither modifies the work, nor interferes with the lawful use of technology to obtain data on the use of the work;
 - (c) the storage of the copy is temporary;
 - (d) the service provider updates the database in which the copy is stored in accordance with reasonable industry practice;
 - (e) the service provider complies with conditions (if any) on access to the work; and
 - (f) the service provider acts promptly to remove the copy or disable access to the copy when either of the following facts comes to the service provider's actual knowledge—
 - (i) the work has been removed from the original source from which the copy was made; or
 - (ii) access to the work at the original source from which the copy was made has been disabled.

(2) In this section **service provider** (服務提供者) has the meaning given by section 88A.

↑ in the event that

□ (2) In this section—

hosting (寄存) means providing space on a network server or any electronic retrieval system for storage of information or material at the direction of a user;

information location tools (資料搜尋工具) means tools such as directories, indexes, references, pointers, or hypertext links that link or refer users to an online location;

online service (聯線服務) includes—

- (a) the transmission, routing, or provision of connections for digital online communications, between or among points specified by a user, of material of the user's choosing;
- (b) the hosting of information or material that can be accessed by a user;
- (c) the storing of information or material on a system or network that can be accessed by a user;
- (d) the linking or referral of users to an online location by the use of information location tools; and
- (e) the provision of online social networking services to users;

routing (路由選擇) means directing or choosing the means or routes for the transmission of data;

service provider (服務提供者) means a person who, by means of electronic equipment or a network, or both, provides, or operates facilities for, any online services.

CAP. 528
Copyright Ordinance

0015
Copyright (Amendment) Bill 2011

Committee Stage Amendments
to be moved by the Secretary for Commerce
and Economic Development
(as at 28.3.2012)

72. Advertisement of sale of artistic work

(1) It is not an infringement of copyright in an artistic work to copy it, or to issue or make available copies to the public, for the purpose of advertising the sale of the work.

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, the copy is treated as an infringing copy for the purposes of that dealing and, if that dealing infringes copyright, for all subsequent purposes. (*Amended 15 of 2007 s. 20*)

For this purpose “dealt with” (進行交易) means sold or let for hire, offered or exposed for sale or hire, exhibited in public or distributed.
[cf. 1988 c. 48 s. 63 U.K.]

72. Advertisement of sale of artistic work

(1) It is not an infringement of copyright in an artistic work to copy it, or to issue or make available copies to the public, for the purpose of advertising the sale of the work.

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, the copy is treated as an infringing copy for the purposes of that dealing and, if that dealing infringes copyright, for all subsequent purposes. (*Amended 15 of 2007 s. 20*)

~~For this purpose “dealt with” (進行交易) means sold or let for hire, offered or exposed for sale or hire, exhibited in public or distributed.~~
[cf. 1988 c. 48 s. 63 U.K.]

- △ (3) For the purposes of subsection (2), a copy is dealt with if it is—
- (a) possessed, exhibited in public or distributed (otherwise than for the purpose mentioned in subsection (1)) for the purpose of or in the course of any trade or business; or
 - (b) sold or let for hire, or offered or exposed for sale or hire.

88. Things done in reliance on registration of design

The copyright in an artistic work is not infringed by anything done—

- (a) in pursuance of an assignment or licence made or granted by a person registered under the Registered Designs Ordinance (Cap. 522) as the registered owner of a corresponding design; and
 - (b) in good faith in reliance on the registration and without notice of any proceedings for the cancellation of the registration or for rectifying the relevant entry in the register of designs,
- and this is so notwithstanding that the person registered as the registered owner was not the owner of the design for the purposes of that Ordinance.

[cf. 1988 c. 48 s. 53(1) U.K.]



88. Things done in reliance on registration of design

The copyright in an artistic work is not infringed by anything done—

- (a) in pursuance of an assignment or licence made or granted by a person registered under the Registered Designs Ordinance (Cap. 522) as the registered owner of a corresponding design; and
 - (b) in good faith in reliance on the registration and without notice of any proceedings for the cancellation of the registration or for rectifying the relevant entry in the register of designs,
- and this is so notwithstanding that the person registered as the registered owner was not the owner of the design for the purposes of that Ordinance.

[cf. 1988 c. 48 s. 53(1) U.K.]



Division IIIA

Limitations on Liability of Service Providers Relating to Online Materials

88A. Definitions

In this Division—

code of practice (《實務守則》) means the code of practice published by the Secretary for Commerce and Economic Development under section 88I;

complainant (投訴人), in relation to a notice of alleged infringement given to a service provider, means the person who gives the notice;

counter notice (異議通知) means a notice given to a service provider under section 88D(3) in relation to an alleged copyright infringement;

~~*hosting* (寄存) means providing space on a network server or any electronic retrieval system for storage of information or material at the direction of a user;~~

information location tools (資料搜尋工具) means tools such as directories, indexes, references, pointers, or hypertext ~~links that link or refer users to an online location;~~

notice of alleged infringement (指稱侵權通知) means a notice given to a service provider under section 88C(1) in relation to an alleged copyright infringement;

↑ 88D(1)

~~online service (聯線服務) includes~~

- > (a) the transmission, routing, or provision of connections for or access to digital online communications, between or among points specified by a user, of material of the user's choosing;
- (b) the hosting of material that can be accessed by a user;
- (c) the storing of material in a person's system or network temporarily as an automatic response to the request of another person without modifying the material;
- (d) the linking or referral of users to an online location by the use of information location tools;
- (e) the provision of application-based services to users such as social networking services; and
- ~~(f) the provision of access to the Internet;~~

~~routing (路由選擇) means directing or choosing the means or routes for the transmission of data;~~

service platform (服務平台), in relation to a service provider, means a system or network controlled or operated by or for the service provider that is accessible to the users of online services provided by the service provider;

service provider (服務提供者) means a person who, by means of electronic equipment or a network, or both, provides ~~or operates facilities for~~ any online services;

▷ *standard technical measures* (標準技術措施) means any technical measure widely accepted by the industry that—

- (a) is used to identify or protect copyright works;
- (b) has been developed through an open, voluntary process by a broad consensus of copyright owners and service providers;
- (c) is available to any person on reasonable and non-discriminatory terms; and
- (d) does not impose substantial costs on service providers or substantial burdens on the systems or networks controlled or operated by or for service providers.

88B. Limitations on liability of service providers

- (1) If the conditions specified in subsection (2) are complied with, a service provider is not liable for damages or any other pecuniary remedy for infringement of the copyright in a work that occurs on the service provider's service platform merely because the service provider provides ~~or operates facilities for~~ online services.

□ *online service* (聯線服務) has the meaning given by section 65A(2) but does not include any service provided through an intranet;

□, or operates facilities for,

▽ *personal data* (個人資料) has the meaning given by section 2(1) of the Personal Data (Privacy) Ordinance (Cap. 486);

- (2) The conditions are—
- (a) that the service provider has taken reasonable steps to limit or stop the infringement as soon as practicable after the service provider—
 - (i) received a notice of alleged infringement in relation to the infringement;
 - (ii) became aware that the infringement has occurred; or
 - (iii) became aware of facts or circumstances that would lead inevitably to the conclusion that the infringement has occurred;
 - (b) that the service provider has not received and is not receiving any financial benefit directly attributable to the infringement;
 - (c) that the service provider accommodates and does not interfere with standard technical measures that are used by copyright owners to identify or protect their copyright works; and
 - (d) that the service provider designates an agent to receive notices of alleged infringements, by supplying through the service provider's service, including on the service provider's website in a location accessible to the public, ~~the name, address, telephone number and electronic mail address of the agent.~~
- (3) For the purposes of subsection (2)(a), a service provider is to be treated as having taken reasonable steps to limit or stop the infringement in question if the service provider complies with all the provisions in the code of practice respecting the course of action that a service provider may adopt in limiting or stopping an alleged infringement.
- (4) For the purposes of subsection (2)(b)—
- (a) in determining whether a service provider has received or is receiving a financial benefit directly attributable to the infringement in question, the court may take into account all the circumstances of the case and, in particular—
 - (i) industry practice in relation to the charging for online services provided by other service providers that are similar to the online service to which the infringement relates;
 - (ii) whether the fee of the online service provided by the service provider is for, and the value of the online service provided by the service provider lies in, providing access to infringing material; and
 - (iii) whether the financial benefit obtained by the service provider for providing the online service to which the infringement relates was greater than the benefit that would usually result from charging for the online service in accordance with accepted industry practices; and

↑ the agent's name and contact details.

- (b) financial benefits directly attributable to the infringement do not include one-off set up fees or flat periodic payments that are charged by the service provider in respect of all users on a non-discriminatory basis.
- (5) To avoid doubt—
 - (a) nothing in this Division requires a service provider to—
 - (i) monitor the service provider's service or actively seek facts that indicate infringing activity, except to the extent consistent with a standard technical measure complying with subsection (2)(c); or
 - (ii) gain access to, remove, or disable access to material in cases where such actions are prohibited by law,
 - in order to qualify for the limitations on liability established by this section; and
 - (b) the failure of a service provider to qualify for the limitations on liability established by this section has no adverse bearing on the consideration of any defence that may be available to the service provider in proceedings for infringement of copyright.
- (6) This section does not apply to proceedings for infringement of copyright commenced before the day on which this section comes into operation.

88C. Notice of alleged infringement

- (1) If it is alleged that an infringement of the copyright in a work has occurred or is occurring on a service provider's service platform, a notice in respect of the alleged infringement may be given to the service provider under this section.
- (2) A notice of alleged infringement—
 - (a) must be in writing;
 - (b) must be signed or otherwise authenticated by the owner of the allegedly infringed copyright or that owner's authorized representative; and
 - (c) must be provided to the designated agent of the service provider by ~~electronic or other means~~ ^{the means specified by the service provider under subsection (6)}
- (3) A notice of alleged infringement—
 - (a) ~~must contain the name and address of the complainant and any other information that is reasonably sufficient for contacting the complainant;~~
 - (b) must substantially identify the copyright work that is alleged to have been infringed or, if the notice alleges that multiple copyright works have been infringed at a single online site, must identify ~~a representative number of such works,~~

☐ (ab) (if the service provider specifies the form of the notice under subsection (5)) must be in the form specified by the service provider;

[↑] the means specified by the service provider under subsection (6)

- ☒ (a) must contain the complainant's name and address for service in Hong Kong and any other information that is reasonably sufficient for contacting the complainant;
- (b) must substantially identify the copyright work that is alleged to have been infringed;

- (c) must identify—
- (i) the material, or the link or reference to the material, that is alleged to be infringing or to be the subject of infringing activity;
 - (ii) the activity, or the link or reference to the activity, that is alleged to be infringing;
- (d) must contain information sufficient to enable the service provider to locate the material, activity, link or reference mentioned in paragraph (c);
- ☒ (e) must contain a statement to the effect that the complainant believes in good faith that use of the material, or conduct of the activity, in the manner complained of is not authorized by law, and has not been authorized by the copyright owner or the authorized representative of the copyright owner;
- (f) must contain a statement to the effect that the complainant requests the service provider to—
- (i) send a copy of the notice to the service provider's subscriber whose account for online services has been used or involved in the alleged infringement; and
 - (ii) if applicable, remove the material to which the alleged infringement relates, or disable access to the material or activity to which the alleged infringement relates; and
- (g) must contain a declaration to the effect that—
- (i) the information contained in the notice is true and accurate to the best of the complainant's knowledge and belief;
 - (ii) the complainant is the copyright owner or is authorized to act on behalf of the copyright owner; and
 - (iii) the complainant understands that the complainant commits an offence and is liable to pay compensation by way of damages to any person who suffers loss or damage as a result of any false statement contained in the notice.

☒ ~~(4) A notice of alleged infringement that does not comply with subsections (2) and (3) is of no effect for the purposes of section 88B(2)(a).~~



- ☐ (da) must contain a description of how the material or activity mentioned in paragraph (c) infringes the rights of the copyright owner of the copyright work;
- ☒ (4) If a notice of alleged infringement given to a service provider does not comply with subsection (2) or (3)—
- (a) the notice is of no effect for the purposes of section 88B(2)(a)(i); and
 - (b) in determining whether the service provider was aware of any of the matters mentioned in section 88B(2)(a)(ii) or (iii), no account is to be taken of the notice.
- (5) For the purposes of subsection (2)(ab), a service provider may specify the form of a notice of alleged infringement in so far as it is not inconsistent with the provisions in subsection (3).
- (6) For the purposes of subsection (2)(c), a service provider must specify, through the service provider's service (which may include on the service provider's website), the means (which may include electronic means) by which a notice of alleged infringement is to be provided to the designated agent of the service provider.
- (7) On receiving a notice of alleged infringement from a complainant, a service provider may—
- (a) send a copy of the notice to the service provider's subscriber whose account for online services has been used or involved in the alleged infringement;
 - (b) notify the subscriber that the subscriber may contact the complainant directly;
 - (c) remove the material to which the alleged infringement relates, or disable access to the material or activity to which the alleged infringement relates; and
 - (d) (if the service provider removes the material to which the alleged infringement relates, or disables access to the material or activity to which the alleged infringement relates) notify the subscriber of the removal or disabling.

★ **88CA. Notice given by service provider**

If a service provider becomes aware that an infringement of the copyright in a work has occurred on the service provider's service platform or becomes aware of facts or circumstances that would lead inevitably to the conclusion that the infringement has occurred, the service provider may—

- (a) remove the material to which the infringement relates, or disable access to the material or activity to which the infringement relates; and
- (b) by notice in writing given to the service provider's subscriber whose account for online services has been used or involved in the infringement, notify the subscriber of the removal or disabling.

88D. Counter notice

- ☐ (1) ~~On receiving a notice of alleged infringement from a complainant, a service provider may—~~
- (a) send a copy of the notice to the service provider's subscriber whose account for online services has been used or involved in the alleged infringement; and
 - (b) notify the subscriber that the subscriber may contact the complainant directly.
- (2) If a service provider becomes aware that an infringement of the copyright in a work has occurred on the service provider's service platform or becomes aware of facts or circumstances that would lead inevitably to the conclusion that the infringement has occurred, the service provider may—
- (a) remove the material to which the infringement relates, or disable access to the material or activity to which the infringement relates; and
 - (b) by notice in writing given to the service provider's subscriber whose account for online services has been used or involved in the infringement, notify the subscriber of the removal or disabling.
- (3) On receiving a copy of notice of alleged infringement sent by the service provider under subsection (1) or a notice given by the service provider under subsection (2), the subscriber may give a counter notice to the service provider—
- (a) disputing or denying the infringement alleged by the complainant or service provider; and
 - (b) if the service provider has removed any material, or disabled access to any material or activity, requesting the service provider to take reasonable steps to reinstate the material, or cease disabling access to the material or activity, within a reasonable time after receiving the counter notice.
- (4) A counter notice—
- (a) must be in writing;
 - ☐ (b) must be signed or otherwise authenticated by the subscriber; and
 - (c) must be provided to the designated agent of the service provider by ~~electronic or other means~~.
- (5) A counter notice—
- ☐ (a) ~~must contain the name, address and telephone number of the subscriber;~~
 - (b) must identify—
 - (i) the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled;
 - (ii) the activity to which access has been disabled, and the location at which the activity appeared before access to it was disabled;

- ☐ (1) Within a reasonable time after receiving a copy of notice of alleged infringement sent by the service provider under section 88C(7) in respect of the matter mentioned in section 88C(7)(d) or a notice given by the service provider under section 88CA(b), the service provider's subscriber may give a counter notice to the service provider—
- (a) disputing or denying the infringement alleged by the complainant or service provider; and
 - (b) requesting the service provider to take reasonable steps to reinstate the material, or cease disabling access to the material or activity, within a reasonable time after receiving the counter notice.

- ☐ (ab) (if the service provider specifies the form of the counter notice under subsection (7)) must be in the form specified by the service provider;

☐ the means specified by the service provider under subsection (8)

- ☐ (a) must contain the subscriber's name and address for service in Hong Kong and any other information that is reasonably sufficient for contacting the subscriber;

- (c) must contain a statement to the effect that the subscriber believes in good faith that the material was removed, or access to the material or activity was disabled, as a result of a mistake or misidentification; ~~and~~

☐ (d) must contain a declaration to the effect that—

- (i) the information contained in the counter notice is true and accurate to the best of the subscriber's knowledge and belief; and
- (ii) the subscriber understands that the subscriber commits an offence and is liable to pay compensation by way of damages to any person who suffers loss or damage as a result of any false statement contained in the counter notice.

☐ ~~(6) A counter notice that does not comply with subsections (4) and (5) is of no effect for the purposes of subsection (3)(b).~~

88E. Offence of making false statements

- (1) A person commits an offence if the person—
- (a) makes any statement in a notice of alleged infringement or counter notice that the person knows to be false in a material respect; or
- (b) recklessly makes any statement in a notice of alleged infringement or counter notice that is false in a material respect.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 2 and to imprisonment for 2 years.

88F. Civil liability for making false statements

- (1) Any person who makes any statement in a notice of alleged infringement or counter notice that the person knows to be false, or does not believe to be true, in a material respect, is liable in damages to any person who suffers loss or damage as a result of the making of the statement.

- (2) In this section—

loss or damage (損失或損害), in relation to a statement, means loss or damage that is reasonably foreseeable as likely to result from the making of the statement.

88G. Exemption of service providers from liability for removal of material etc.

- (1) Subject to subsection (2), if a service provider has, in good faith, removed any material, or disabled access to any material or activity, pursuant to a notice of alleged infringement, the service provider is not liable to any person for any claim made in respect of the removal or disabling, whether or not the material or activity is ultimately determined to be infringing.

☐ (ca) must contain the grounds for the subscriber's belief mentioned in paragraph (c);

(cb) (if the subscriber is an individual) must state whether the subscriber opts for or against the service provider's disclosure of the subscriber's personal data contained in the counter notice to the complainant; and

☐ (6) A counter notice that does not comply with subsection (4) or (5) is of no effect for the purposes of subsection (1)(b).

(7) For the purposes of subsection (4)(ab), a service provider may specify the form of a counter notice in so far as it is not inconsistent with the provisions in subsection (5).

(8) For the purposes of subsection (4)(c), a service provider must specify, through the service provider's service (which may include on the service provider's website), the means (which may include electronic means) by which a counter notice is to be provided to the designated agent of the service provider.

↑ actual and

- (2) Subsection (1) does not apply with respect to material residing at the direction of a subscriber of the service provider on the service provider's service platform and that is removed, or to material or activity residing at the direction of a subscriber of the service provider on the service provider's service platform and to which access is disabled, unless—
- (a) the service provider takes reasonable steps to notify the subscriber that the service provider has removed the material or disabled access to the material or activity;
 - (b) the service provider takes reasonable steps to send a copy of the notice of alleged infringement to the subscriber; and
 - (c) where the subscriber gives a counter notice to the service provider—
 - (i) the service provider promptly sends a copy of the counter notice to the complainant; ~~and~~
 - ☐ (ii) subject to subsection (7), the service provider takes reasonable steps to reinstate the material, or cease disabling access to the material or activity, within a reasonable time after receiving the counter notice.
- (3) Subject to subsection (4), if a service provider has, in good faith, removed any material, or disabled access to any material or activity, after the service provider became aware that the material or activity relates to an infringement of copyright or became aware of facts or circumstances that would lead inevitably to the conclusion that the infringement has occurred, the service provider is not liable to any person for any claim made in respect of the removal or disabling, whether or not the material or activity is ultimately determined to be infringing.
- (4) Subsection (3) does not apply with respect to material residing at the direction of a subscriber of the service provider on the service provider's service platform and that is removed, or to material or activity residing at the direction of a subscriber of the service provider on the service provider's service platform and to which access is disabled, unless—
- (a) the service provider takes reasonable steps to notify the subscriber that the service provider has removed the material or disabled access to the material or activity;
 - (b) the service provider takes reasonable steps to provide the subscriber with—
 - (i) information reasonably sufficient to enable the subscriber to identify the material or activity; and
 - (ii) the service provider's reasons for the removal or disabling; and
 - (c) subject to subsection (7), where the subscriber gives a counter notice to the service provider, the service provider takes reasonable steps to reinstate the material, or cease disabling access to the material or activity, within a reasonable time after receiving the counter notice.

- ☐ (ia) (if the subscriber is an individual) the service provider acts in accordance with the subscriber's option stated in the counter notice under section 88D(5)(cb); and

(5) Subject to subsections (6) and (7), if a service provider has, in good faith, reinstated any material, or ceased disabling access to any material or activity, pursuant to a counter notice, the service provider is not liable to any person for any claim made in respect of the reinstatement or cessation, whether or not the material or activity is ultimately determined to be infringing.

□ (6) ~~Subsection (5) does not apply in a case where the material was removed, or access to the material or activity was disabled, pursuant to a notice of alleged infringement unless the service provider takes reasonable steps to send a copy of the counter notice to the complainant.~~

(7) Subsections (2)(c)(ii), (4)(c) and (5) do not apply if the designated agent of the service provider has been notified that proceedings have been commenced in Hong Kong seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material or activity on the service provider's service platform.

88H. Evidence of compliance with conditions

In an action relating to the liability of a service provider, if the service provider adduces evidence tending to show that the service provider has complied with—

- (a) a condition described in section 88B; or
- (b) a condition specified in the code of practice,

the court must presume, in the absence of evidence to the contrary, that the service provider has complied with that condition.

88I. Code of practice

- (1) The Secretary for Commerce and Economic Development may publish in the Gazette a code of practice for providing practical guidance to service providers in respect of this Division.
- (2) Without limiting subsection (1), the Secretary for Commerce and Economic Development may in the code of practice specify—
 - (a) the procedures for giving a notice of alleged infringement or counter notice, including the forms of and information to be contained in the notice, the manner of sending the notice and the manner of verification of statements in the notice; and
 - (b) the course of action that a service provider may adopt on receiving a notice of alleged infringement or counter notice.
- (3) The Secretary for Commerce and Economic Development may from time to time revise the whole or any part of the code of practice published under subsection (1) in a manner consistent with the Secretary's power to publish the code under that subsection, and any reference to the code of practice in this Ordinance is to be construed as a reference to the code as so revised.
- (4) Any code of practice published under subsection (1) is not subsidiary legislation.

□ (6) Subsection (5) does not apply in a case where the material was removed, or access to the material or activity was disabled, pursuant to a notice of alleged infringement unless—

- (a) the service provider promptly sends a copy of the counter notice to the complainant; and
- (b) (if the subscriber is an individual) the service provider acts in accordance with the subscriber's option stated in the counter notice under section 88D(5)(cb).

(7) Subsections (2)(c)(ii), (4)(c) and (5) do not apply if—

- (a) proceedings have been commenced in Hong Kong seeking a court order in connection with any infringing activity that relates to the material or activity mentioned in those subsections; and
- (b) the designated agent of the service provider has been notified in writing, by the person who brings the proceedings, of the proceedings—
 - (i) in the case of subsection (2)(c)(ii) or (5), within a reasonable time after the service provider sent a copy of the counter notice to the complainant; or
 - (ii) in the case of subsection (4)(c), within a reasonable time after the service provider received the counter notice.

↑ including

108. Provisions as to damages in infringement action

(1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

(2) The court may in an action for infringement of copyright having regard to all the circumstances, and in particular to—

- (a) the flagrancy of the infringement;
- (b) any benefit accruing to the defendant by reason of the infringement; and
- (c) the completeness, accuracy and reliability of the defendant's business accounts and records,

award such additional damages as the justice of the case may require.
[cf. 1988 c. 48 s. 97 U.K.]

108. Provisions as to damages in infringement action

(1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

(2) The court may in an action for infringement of copyright having regard to all the circumstances, and in particular to—

- (a) the flagrancy of the infringement;
- (b) any benefit accruing to the defendant by reason of the infringement; and
- (c) the completeness, accuracy and reliability of the defendant's business accounts and records,

award such additional damages as the justice of the case may require.
[cf. 1988 c. 48 s. 97 U.K.]

↑ records;

- △ (d) ~~the conduct of the defendant after the act constituting the infringement occurred, including but not limited to the conduct of the defendant after having been informed of the infringement; and~~
- (e) the likelihood of widespread circulation of infringing copies as a result of the infringement,

- (d) any unreasonable conduct of the defendant after the act constituting the infringement occurred, including any act done or attempt made by the defendant to destroy, conceal or disguise evidence of the infringement after having been informed of the infringement by the plaintiff; and

118. Offences in relation to making or dealing
with infringing articles, etc.

(Amended 15 of 2007 s. 31)

(1) A person commits an offence if he, without the licence of the copyright owner of a copyright work—

- (a) makes for sale or hire an infringing copy of the work;
- (b) imports an infringing copy of the work into Hong Kong otherwise than for his private and domestic use;
- (c) exports an infringing copy of the work from Hong Kong otherwise than for his private and domestic use;
- (d) sells, lets for hire, or offers or exposes for sale or hire an infringing copy of the work for the purpose of or in the course of any trade or business;
- (e) exhibits in public or distributes an infringing copy of the work for the purpose of or in the course of any trade or business which consists of dealing in infringing copies of copyright works;
- (f) possesses an infringing copy of the work with a view to—
 - (i) its being sold or let for hire by any person for the purpose of or in the course of any trade or business; or
 - (ii) its being exhibited in public or distributed by any person for the purpose of or in the course of any trade or business which consists of dealing in infringing copies of copyright works; or
- (g) distributes an infringing copy of the work (otherwise than for the purpose of or in the course of any trade or business which consists of dealing in infringing copies of copyright works) to such an extent as to affect prejudicially the copyright owner
(Replaced 15 of 2007 s. 31)

(1A) Where—

- (a) a person exhibits in public or distributes an infringing copy of a copyright work for the purpose of or in the course of any trade or business; and
- (b) the circumstances in which the infringing copy is so exhibited or distributed give rise to a reasonable suspicion that the trade or business consists of dealing in infringing copies of copyright works,

then, unless there is evidence to the contrary, the trade or business is presumed, for the purposes of any proceedings instituted under subsection (1)(e), to be a trade or business which consists of dealing in infringing copies of copyright works. *(Added 15 of 2007 s. 31)*

(1B) Where—

- (a) a person possesses an infringing copy of a copyright work with a view to its being exhibited in public or distributed by any person for the purpose of or in the course of any trade or business; and
- (b) the circumstances in which the infringing copy is so possessed give rise to a reasonable suspicion that the trade or business consists of dealing in infringing copies of copyright works,

then, unless there is evidence to the contrary, the trade or business is presumed, for the purposes of any proceedings instituted under subsection (1)(f)(ii), to be a trade or business which consists of dealing in infringing copies of copyright works. *(Added 15 of 2007 s. 31)*

Copyright Ordinance

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

(2A) A person commits an offence if he, without the licence of the copyright owner of a copyright work to which this subsection applies, possesses an infringing copy of the work for the purpose of or in the course of any trade or business with a view to its being used by any person for the purpose of or in the course of that trade or business. *(Added 15 of 2007 s. 31)*

(2B) Subsection (2A) applies to a copyright work that is—

- (a) a computer program;
- (b) a movie;
- (c) a television drama;
- (d) a musical sound recording; or
- (e) a musical visual recording. *(Added 15 of 2007 s. 31)*

(2C) Subsection (2A) does not apply to an infringing copy of a computer program in a printed form. *(Added 15 of 2007 s. 31)*

(2D) Subsection (2A) does not apply to the possession of an infringing copy of a computer program if—

- (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. *(Added 15 of 2007 s. 31)*

Copyright (Amendment) Bill 2011

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



(2A) A person commits an offence if he, without the licence of the copyright owner of a copyright work to which this subsection applies, possesses an infringing copy of the work for the purpose of or in the course of any trade or business with a view to its being used by any person for the purpose of or in the course of that trade or business. *(Added 15 of 2007 s. 31)*

(2B) Subsection (2A) applies to a copyright work that is—

- (a) a computer program;
- (b) a movie;
- (c) a television drama;
- (d) a musical sound recording; or
- (e) a musical visual recording. *(Added 15 of 2007 s. 31)*

(2C) Subsection (2A) does not apply to an infringing copy of a computer program in a printed form. *(Added 15 of 2007 s. 31)*

(2D) Subsection (2A) does not apply to the possession of an infringing copy of a computer program if—

- (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. *(Added 15 of 2007 s. 31)*



~~(2AA) For the purposes of subsection (1)(g), in determining whether any distribution of an infringing copy of the work is made to such an extent as to affect prejudicially the copyright owner, the court may take into account all the circumstances of the case and, in particular—~~

- ~~(a) the purpose of the distribution;~~
- ~~(b) the nature of the work, including its commercial value;~~
- ~~(c) the amount and substantiality of the portion copied (in relation to the work as a whole) that was distributed;~~
- ~~(d) the mode of distribution; and~~
- ~~(e) the economic prejudice caused to the copyright owner as a consequence of the distribution, including the effect of the distribution on the potential market for or value of the work.~~

Committee Stage Amendments
to be moved by the Secretary for Commerce
and Economic Development
(as at 28.3.2012)

☐ (2AA) For the purposes of subsection (1)(g), in determining whether any distribution of an infringing copy of the work is made to such an extent as to affect prejudicially the copyright owner, the court may take into account all the circumstances of the case and, in particular, whether more than trivial economic prejudice is caused to the copyright owner as a consequence of the distribution having regard to, amongst others—

- (a) the nature of the work, including its commercial value (if any);
- (b) the mode and scale of distribution; and
- (c) whether the infringing copy so distributed amounts to a substitution for the work.

Copyright Ordinance

(2E) 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. *(Added 15 of 2007 s. 31)*

(2F) 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 (2E)) 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. *(Added 15 of 2007 s. 31)*

Copyright (Amendment) Bill 2011

(2E) 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. *(Added 15 of 2007 s. 31)*

(2F) 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 (2E)) 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. *(Added 15 of 2007 s. 31)*

↑ recording by a specified library, museum or archive

□ the library, museum or archive

**Committee Stage Amendments
to be moved by the Secretary for Commerce
and Economic Development
(as at 28.3.2012)**

(2E) 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. *(Added 15 of 2007 s. 31)*

(2F) 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 (2E)) 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. *(Added 15 of 2007 s. 31)*

□ the library, museum or archive

▽ recording by a designated library, museum or archive

△ (2FA) In subsections (2E) and (2F), references to a designated library, museum or archive are to—

- (a) a library, museum or archive owned by the Government; or
- (b) a library, museum or archive designated by the Secretary for Commerce and Economic Development under subsection (2FB).

(2FB) The Secretary for Commerce and Economic Development may, having regard to the advice of the Director of Leisure and Cultural Services, by notice published in the Gazette, designate, for the purposes of subsection (2FA)(b), any library, museum or archive that is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112).

(2G) Subsection (2A) does not apply if—

- (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;
- (b) 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;
- (c) the person who possesses an infringing copy does so for the purpose of providing investigation service in relation to the infringing copy to the copyright owner or exclusive licensee of the copyright work concerned; or
- (d) the person who possesses an infringing copy does so on his client's premises and the infringing copy is provided to him by his client. *(Added 15 of 2007 s. 31)*

(2H) Without prejudice to section 125, where a body corporate or a partnership has done an act referred to in subsection (2A), the following person shall, unless there is evidence showing that he did not authorize the act to be done, be presumed also to have done the act—

- (a) in the case of the body corporate—
 - (i) any director of the body corporate who, at the time when the act was done, was responsible for the internal management of the body corporate; or
 - (ii) if there was no such director, any person who, at the time when the act was done, was responsible under the immediate authority of the directors of the body corporate for the internal management of the body corporate;
- (b) in the case of the partnership—
 - (i) any partner in the partnership who, at the time when the act was done, was responsible for the internal management of the partnership; or
 - (ii) if there was no such partner, any person who, at the time when the act was done, was responsible under the immediate authority of the partners in the partnership for the internal management of the partnership. *(Added 15 of 2007 s. 31)*

(2I) A defendant charged with an offence under subsection (2A) by virtue of subsection (2H) 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. *(Added 15 of 2007 s. 31)*

(2J) For the purposes of subsection (2I)(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. *(Added 15 of 2007 s. 31)*
- (3) It is a defence for the person charged with an offence under subsection (1) or (2A), to prove that he did not know and had no reason to believe that the copy in question was an infringing copy of the copyright work. *(Amended 15 of 2007 s. 31)*
- (3A) It is a defence for the person charged with an offence under subsection (2A) to prove that—
- (a) he possessed the infringing copy in question in the course of his employment; and
- (b) the infringing copy in question was provided to him by or on behalf of his employer for use in the course of his employment. *(Added 15 of 2007 s. 31)*
- (3B) Subsection (3A) does not apply to an employee—
- (a) who, at the time when the infringing copy in question was acquired, was in a position to make or influence a decision regarding the acquisition of the infringing copy; or
- (b) who, at the time when the offence in question was committed, was in a position to make or influence a decision regarding the use or removal of the infringing copy in question. *(Added 15 of 2007 s. 31)*
- (4) A person commits an offence if he—
- (a) makes;
- (b) imports into Hong Kong;
- (c) exports from Hong Kong;
- (d) possesses; or
- (e) sells or lets for hire, or offers or exposes for sale or hire, an article specifically designed or adapted for making copies of a particular copyright work which article is used or intended to be used to make infringing copies of the copyright work for sale or hire or for use for the purpose of or in the course of any trade or business. *(Amended 64 of 2000 s. 7; 15 of 2007 s. 31)*
- (5) It is a defence for the person charged with an offence under subsection (4) to prove that he did not know and had no reason to believe that the article was used or was intended to be used to make the infringing copies for sale or hire or for use for the purpose of or in the course of any trade or business. *(Amended 64 of 2000 s. 7; 15 of 2007 s. 31)*

(6) For the purpose of subsections (1)(b) and (3), where a person is charged with an offence under subsection (1) in respect of a copy of a copyright work which is an infringing copy by virtue only of section 35(3) and not being excluded under section 35(4) and which was lawfully made in the country, territory or area where it was made, if he proves that— *(Amended 15 of 2007 s. 31)*

- (a) he had made reasonable enquiries sufficient to satisfy himself that the copy in question was not an infringing copy of the work;
 - (b) he had reasonable grounds to be satisfied in the circumstances of the case that the copy was not an infringing copy;
 - (c) there were no other circumstances which would have led him reasonably to suspect that the copy was an infringing copy,
- he has proved that he had no reason to believe that the copy in question was an infringing copy of the copyright work.

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

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

Copyright Ordinance

(8) A person commits an offence if he has in his possession an article knowing or having reason to believe that it is used or is intended to be used to make infringing copies of any copyright work for sale or hire or for use for the purpose of or in the course of any trade or business. (*Amended 64 of 2000 s. 7; 15 of 2007 s. 31*)

(8A) (*Repealed 15 of 2007 s. 31*)

(9) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section.

(10) In this section, "dealing in" (經銷) means selling, letting for hire, or distributing for profit or reward. (*Added 15 of 2007 s. 31*)

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

Copyright (Amendment) Bill 2011

(8) A person commits an offence if he has in his possession an article knowing or having reason to believe that it is used or is intended to be used to make infringing copies of any copyright work for sale or hire or for use for the purpose of or in the course of any trade or business. (*Amended 64 of 2000 s. 7; 15 of 2007 s. 31*)

||△> (8A) (*Repealed 15 of 2007 s. 31*)

(9) Sections 115 to 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section.

(10) In this section, "dealing in" (經銷) means selling, letting for hire, or distributing for profit or reward. (*Added 15 of 2007 s. 31*)

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

△ (8B) A person commits an offence if the person—

- (a) without the licence of the copyright owner of a copyright work, communicates the work to the public for the purpose of or in the course of any trade or business that consists of communicating works to the public for profit or reward; or
- (b) without the licence of the copyright owner of a copyright work, communicates the work to the public (otherwise than for the purpose of or in the course of any trade or business that consists of communicating works to the public for profit or reward) to such an extent as to affect prejudicially the copyright owner.

□> (8C) ~~For the purposes of subsection (8B)(b), in determining whether any communication of the work to the public is made to such an extent as to affect prejudicially the copyright owner, the court may take into account all the circumstances of the case and, in particular—~~

- (a) the purpose of the communication;
- (b) the nature of the work, including its commercial value;
- (c) the amount and substantiality of the portion communicated in relation to the work as a whole;
- (d) the mode of communication; and
- (e) the economic prejudice caused to the copyright owner as a consequence of the communication, including the effect of the communication on the potential market for or value of the work.

(8D) It is a defence for a person charged with an offence under subsection (8B) to prove that the person did not know and had no reason to believe that, by communicating the work in question in the circumstances described in subsection (8B)(a) or (b), the person was infringing the copyright in the work.

**Committee Stage Amendments
to be moved by the Secretary for Commerce
and Economic Development
(as at 28.3.2012)**

□ (8C) For the purposes of subsection (8B)(b), in determining whether any communication of the work to the public is made to such an extent as to affect prejudicially the copyright owner, the court may take into account all the circumstances of the case and, in particular, whether more than trivial economic prejudice is caused to the copyright owner as a consequence of the communication having regard to, amongst others—

- (a) the nature of the work, including its commercial value (if any);
- (b) the mode and scale of communication; and
- (c) whether the communication amounts to a substitution for the work.

119. Penalties for offences under section 118

(1) A person who commits an offence under section 118(1) or (2A) is liable on conviction on indictment to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years. (*Amended 64 of 2000 s. 8; 15 of 2007 s. 32*)

(2) A person who commits an offence under section 118(4) or (8) is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 8 years.

119. Penalties for offences under section 118

(1) A person who commits an offence under ~~section 118(1) or (2A)~~ is liable on conviction on indictment to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years. (*Amended 64 of 2000 s. 8; 15 of 2007 s. 32*)

(2) A person who commits an offence under section 118(4) or (8) is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 8 years.

↑ section 118(1), (2A) or (8B)

119. Penalties for offences under section 118

(1) A person who commits an offence under section 118(1) or (2A) is liable on conviction on indictment to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years. (*Amended 64 of 2000 s. 8; 15 of 2007 s. 32*)

(2) A person who commits an offence under section 118(4) or (8) is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 8 years.

△ (1A) A person who commits an offence under section 118(8B) is liable on conviction on indictment to a fine at level 5 in respect of each copyright work and to imprisonment for 4 years.

199. Index of defined expressions

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

acts restricted by copyright	section 22(1)
adaptation	section 29(3)
archivist (in sections 46 to 53)	section 46(5)
article (in a periodical)	section 198(1)
article in transit	section 198(1)
artistic work	section 5
author	sections 11 and 12(4)
authorized officer	section 198(1)
broadcast (and related expressions)	section 8
building	section 5
business	section 198(1)
cable programme, cable programme service (and related expressions)	section 9
collective work	section 198(1)
commencement (in Schedule 2)	paragraph 1(2) of that Schedule
commercial publication	section 196
Commissioner	section 198(1)
computer-generated	section 198(1)
copy and copying	section 23
copyright (generally)	section 2
copyright (in Schedule 2)	paragraph 2(2) of that Schedule
copyright owner	sections 112(2) and 194
Copyright Tribunal	section 169
copyright work	section 2(2)
dealing in (<i>Added 64 of 2000 s. 11</i>)	section 198(2)
detention order	section 135
dramatic work	section 4(1)
educational establishment	section 195(1)
electronic and electronic form	section 198(1)
employed, employee, employer and employment	section 198(1)
exclusive licence	section 103(1)
export	section 198(1)

199. Index of defined expressions

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

acts restricted by copyright	section 22(1)
adaptation	section 29(3)
archivist (in sections 46 to 53)	section 46(5)
article (in a periodical)	section 198(1)
article in transit	section 198(1)
artistic work	section 5
author	sections 11 and 12(4)
authorized officer	section 198(1)
broadcast (and related expressions)	section 8
building	section 5
business	section 198(1)
cable programme, cable programme service (and related expressions)	section 9
collective work	section 198(1)
commencement (in Schedule 2)	paragraph 1(2) of that Schedule
commercial publication	section 196
Commissioner	section 198(1)
computer-generated	section 198(1)
copy and copying	section 23
copyright (generally)	section 2
copyright (in Schedule 2)	paragraph 2(2) of that Schedule
copyright owner	sections 112(2) and 194
Copyright Tribunal	section 169
copyright work	section 2(2)
dealing in (<i>Added 64 of 2000 s. 11</i>)	section 198(2)
detention order	section 135
dramatic work	section 4(1)
educational establishment	section 195(1)
electronic and electronic form	section 198(1)
employed, employee, employer and employment	section 198(1)
exclusive licence	section 103(1)
export	section 198(1)



communication to the public
curator (in sections 46 to 53)

section 28A
section 46(5)

**Committee Stage Amendments
to be moved by the Secretary for Commerce
and Economic Development
(as at 28.3.2012)**

199. Index of defined expressions

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

acts restricted by copyright	section 22(1)
adaptation	section 29(3)
archivist (in sections 46 to 53)	section 46(5)
article (in a periodical)	section 198(1)
article in transit	section 198(1)
artistic work	section 5
author	sections 11 and 12(4)
authorized officer	section 198(1)
broadcast (and related expressions)	section 8
building	section 5
business	section 198(1)
cable programme, cable programme service (and related expressions)	section 9
collective work	section 198(1)
commencement (in Schedule 2)	paragraph 1(2) of that Schedule
commercial publication	section 196
Commissioner	section 198(1)
computer-generated	section 198(1)
copy and copying	section 23
copyright (generally)	section 2
copyright (in Schedule 2)	paragraph 2(2) of that Schedule
copyright owner	sections 112(2) and 194
Copyright Tribunal	section 169
copyright work	section 2(2)
dealing in (<i>Added 64 of 2000 s. 11</i>)	section 198(2)
detention order	section 135
dramatic work	section 4(1)
educational establishment	section 195(1)
electronic and electronic form	section 198(1)
employed, employee, employer and employment	section 198(1)
exclusive licence	section 103(1)
export	section 198(1)



communication to the public
curator (in sections 46 to 53)

section 28A(2)
section 46(5)

facsimile copy	section 198(1)
film	section 7
future copyright	section 102(2)
Government copyright	sections 182(2) and 183(3)
graphic work	section 5
import	section 198(1)
infringing copy	section 35
international organization	section 198(1)
issue of copies to the public	section 24
joint authorship (work of)	section 12
judicial proceedings	section 198(1)
lawfully made (<i>Added 27 of 2003 s. 6</i>)	section 198(3)
Legislative Council copyright	sections 184(2) and 185(5)
librarian (in sections 45 to 52)	section 46(5)
licence (in sections 158 to 162)	section 161
licence of copyright owner	sections 101(4), 102(3) and 194
licensing body (in Division VIII)	section 145(2)
licensing scheme (generally)	section 145(1)
licensing scheme (in sections 151 to 156)	section 154
literary work	section 4(1)
made (in relation to a literary, dramatic or musical work)	section 4(2)
make available copies to the public	section 26
movie (<i>Added 27 of 2003 s. 6</i>)	section 198(1)
musical sound recording (<i>Added 27 of 2003 s. 6</i>)	section 198(1)
musical visual recording (<i>Added 27 of 2003 s. 6</i>)	section 198(1)
musical work	section 4(1)
on behalf of (in relation to an educational establishment)	section 195(3)

facsimile copy	section 198(1)
film	section 7
future copyright	section 102(2)
Government copyright	sections 182(2) and 183(3)
graphic work	section 5
import	section 198(1)
infringing copy	section 35
international organization	section 198(1)
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judicial proceedings	section 198(1)
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licence of copyright owner	sections 101(4), 102(3) and 194
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musical work	section 4(1)
on behalf of (in relation to an educational establishment)	section 195(3)

↑ librarian (in sections 46 to 53)

facsimile copy	section 198(1)
film	section 7
future copyright	section 102(2)
Government copyright	sections 182(2) and 183(3)
graphic work	section 5
import	section 198(1)
infringing copy	section 35
international organization	section 198(1)
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joint authorship (work of)	section 12
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librarian (in sections 45 to 52)	section 46(5)
licence (in sections 158 to 162)	section 161
licence of copyright owner	sections 101(4), 102(3) and 194
licensing body (in Division VIII)	section 145(2)
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literary work	section 4(1)
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musical visual recording (<i>Added 27 of 2003 s. 6</i>)	section 198(1)
musical work	section 4(1)
on behalf of (in relation to an educational establishment)	section 195(3)

↑ librarian (in sections 46 to 53)

△ make available to the public section 28A(3)

Copyright Ordinance

performance	section 27(2)
photograph	section 5
prescribed conditions (in sections 46 to 52)	section 46(2)(a)
producer (in relation to a sound recording or film)	section 198(1)
programme (in the context of broadcasting)	section 8(3)
prospective owner (of copyright)	section 102(2)
publication and related expressions	section 196
published edition (in the context of copyright in the typographical arrangement)	section 10
pupil	section 195(2)
rental right	section 198(1)
reprographic copies and reprographic copying	section 198(1)
reprographic process	section 198(1)
right holder	section 135
sculpture	section 5
signed	section 197
sound recording	section 6
specified course of study (Added 15 of 2007 s. 48)	section 198(1)
specified library or archive (in sections 46 to 52)	section 46(2)(b)
sufficient acknowledgement	section 198(1)
sufficient disclaimer	section 198(1)
teacher	section 195(2)
telecommunications system	section 198(1)
television drama (Added 27 of 2003 s. 6)	section 198(1)
typeface	section 198(1)
unauthorized (as regards things done in relation to a work)	section 198(1)
unknown (in relation to the author of a work)	section 11(5)
unknown authorship (work of)	section 11(4)
wireless telegraphy	section 198(1)
work (in Schedule 2)	paragraph 2(1) of that Schedule
work of more than one author (in Division VIII)	section 145(3)
writing and written	section 198(1) (Amended 64 of 2000 s. 11) [cf. 1988 c. 48 s. 179 U.K.]

Copyright (Amendment) Bill 2011

performance	section 27(2)
photograph	section 5
prescribed conditions (in sections 46 to 52)	section 46(2)(a)
producer (in relation to a sound recording or film)	section 198(1)
programme (in the context of broadcasting)	section 8(3)
prospective owner (of copyright)	section 102(2)
publication and related expressions	section 196
published edition (in the context of copyright in the typographical arrangement)	section 10
pupil	section 195(2)
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typeface	section 198(1)
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work (in Schedule 2)	paragraph 2(1) of that Schedule
work of more than one author (in Division VIII)	section 145(3)
writing and written	section 198(1) (Amended 64 of 2000 s. 11) [cf. 1988 c. 48 s. 179 U.K.]

↑ specified library, museum or archive (in sections 46 to 53)

221. Provisions as to damages in
infringement action

(1) Where in an action for infringement of a performer's economic rights or of any right conferred by this Part on a person having fixation rights it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that the rights subsisted in the fixation to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

(2) The court may in an action for infringement of a performer's economic rights or of any right conferred by this Part on a person having fixation rights having regard to all the circumstances, and in particular to—

- (a) the flagrancy of the infringement;
 - (b) any benefit accruing to the defendant by reason of the infringement; and
 - (c) the completeness, accuracy and reliability of the defendant's business accounts and records,
- award such additional damages as the justice of the case may require.

[cf. 1988 c. 48 s. 191J U.K.]

221. Provisions as to damages in
infringement action

(1) Where in an action for infringement of a performer's economic rights or of any right conferred by this Part on a person having fixation rights it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that the rights subsisted in the fixation to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

(2) The court may in an action for infringement of a performer's economic rights or of any right conferred by this Part on a person having fixation rights having regard to all the circumstances, and in particular to—

- (a) the flagrancy of the infringement;
 - (b) any benefit accruing to the defendant by reason of the infringement; and
 - (c) the completeness, accuracy and reliability of the defendant's business accounts and records,
- award such additional damages as the justice of the case may require.

[cf. 1988 c. 48 s. 191J U.K.]

△>

↑ records;

- △ ~~(d) the conduct of the defendant after the act constituting the infringement occurred, including but not limited to the conduct of the defendant after having been informed of the infringement; and~~
- ↓ (e) the likelihood of widespread circulation of infringing copies as a result of the infringement;

- ↓ (d) any unreasonable conduct of the defendant after the act constituting the infringement occurred, including any act done or attempt made by the defendant to destroy, conceal or disguise evidence of the infringement after having been informed of the infringement by the plaintiff; and

**242A. Fair dealing for purposes of giving
or receiving instruction**

(1) Fair dealing with a performance or fixation by or on behalf of a teacher or by a pupil for the purposes of giving or receiving instruction in a specified course of study provided by an educational establishment does not infringe any of the rights conferred by this Part.

(2) In determining whether any dealing with a performance or fixation is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (b) the nature of the performance or fixation;
- (c) the amount and substantiality of the portion dealt with in relation to the performance or fixation as a whole; and
- (d) the effect of the dealing on the potential market for or value of the performance or fixation.

(3) Where a fixation which apart from this section would be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing fixation—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes any of the rights conferred by this Part, for all subsequent purposes.

(4) 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

**242A. Fair dealing for purposes of giving
or receiving instruction**


(1) Fair dealing with a performance or fixation by or on behalf of a teacher or by a pupil for the purposes of giving or receiving instruction in a specified course of study provided by an educational establishment does not infringe any of the rights conferred by this Part.

(2) In determining whether any dealing with a performance or fixation is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (b) the nature of the performance or fixation;
- (c) the amount and substantiality of the portion dealt with in relation to the performance or fixation as a whole; and
- (d) the effect of the dealing on the potential market for or value of the performance or fixation.

(3) Where a fixation which apart from this section would be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing fixation—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes any of the rights conferred by this Part, for all subsequent purposes.

 (4) 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



(3A) For the purposes of subsection (3), a fixation is dealt with if it is—

- (a) possessed, shown or played in public or distributed (otherwise than for the purposes mentioned in subsection (1)) for the purpose of or in the course of any trade or business; or
- (b) sold or let for hire, or offered or exposed for sale or hire.

- (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).
- (5) Expressions used in this section have the same meaning as in section 41A.
- (Added 15 of 2007 s. 61)*

- (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).
- (5) Expressions used in this section have the same meaning as in section 41A.
- (Added 15 of 2007 s. 61)*

243. Things done for purposes of instruction or examination

(1) The rights conferred by this Part are not infringed by the copying of a fixation of a performance, to a reasonable extent, in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, if the copying is done by a person giving or receiving instruction.

(2) The rights conferred by this Part are not infringed—

(a) by the copying of a fixation of a performance for the purposes of setting or answering the questions in an examination; or

(b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

(3) Where a fixation which would otherwise be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is treated as an infringing fixation for the purposes of that dealing, and if that dealing infringes any right conferred by this Part, for all subsequent purposes.

For this purpose “dealt with” (進行交易) means sold or let for hire, or offered or exposed for sale or hire.

(4) Expressions used in this section have the same meaning as in section 41.

[cf. 1988 c. 48 Sch. 2 para. 4 U.K.]

243. Things done for purposes of instruction or examination


(1) The rights conferred by this Part are not infringed by the copying of a fixation of a performance, to a reasonable extent, in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, if the copying is done by a person giving or receiving instruction.

(2) The rights conferred by this Part are not infringed—

(a) by the copying of a fixation of a performance for the purposes of setting or answering the questions in an examination; or

(b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

(3) Where a fixation which would otherwise be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is treated as an infringing fixation for the purposes of that dealing, and if that dealing infringes any right conferred by this Part, for all subsequent purposes.

 For this purpose “dealt with” (進行交易) means sold or let for hire, or offered or exposed for sale or hire.

(4) Expressions used in this section have the same meaning as in section 41.

[cf. 1988 c. 48 Sch. 2 para. 4 U.K.]



(3A) For the purposes of subsection (3), a fixation is dealt with if it is—

(a) possessed, shown or played in public or distributed (otherwise than for the purposes of instruction or examination) for the purpose of or in the course of any trade or business;

(b) sold or let for hire, or offered or exposed for sale or hire; or

(c) communicated to the public, unless that communication is not an infringement of copyright by virtue of subsection

(2).

245. Recording of broadcasts and cable programmes by educational establishments

(1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing any of the rights conferred by this Part in relation to any performance or fixation included in it.

(2) Recording or copying is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the recording or copying in question and the person making the recordings or copies knew or ought to have been aware of that fact.

245. ~~Recording of broadcasts and cable programmes by educational establishments~~

(1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing any of the rights conferred by this Part in relation to any performance or fixation included in it.

~~(2) Recording or copying is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the recording or copying in question and the person making the recordings or copies knew or ought to have been aware of that fact.~~

↑ Recording, copying or communication by educational establishments: broadcasts or cable programmes

△ (1A) A person authorized by an educational establishment may, without infringing the rights conferred by this Part, communicate to an authorized recipient a recording or copy of a recording of a broadcast or cable programme that has been made in accordance with subsection (1) if—

- (a) the person makes the communication for the educational purposes of the establishment; and
- (b) the establishment takes all reasonable steps to ensure that—
 - (i) only authorized recipients receive the communication; and
 - (ii) the authorized recipients do not make any copy or further transmission of the communication.

□ (2) Recording, copying or communicating to authorized recipients is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the recording, copying or communication in question and the person making the recording, copies or communication in question knew or ought to have been aware of that fact.

(3) Where a recording or copy which would otherwise be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is treated as an infringing fixation for the purposes of that dealing, and if that dealing infringes any right conferred by this Part, for all subsequent purposes.

For this purpose “dealt with” (進行交易) means sold or let for hire, or offered or exposed for sale or hire.

(4) Expressions used in this section have the same meaning as in section 44.

[cf. 1988 c. 48 Sch. 2 para. 6 U.K.]

(3) Where a recording or copy which would otherwise be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is treated as an infringing fixation for the purposes of that dealing, and if that dealing infringes any right conferred by this Part, for all subsequent purposes.

⇒ ~~For this purpose “dealt with” (進行交易) means sold or let for hire, or offered or exposed for sale or hire.~~

(4) Expressions used in this section have the same meaning as in section 44.

[cf. 1988 c. 48 Sch. 2 para. 6 U.K.]

- △ (3A) For the purposes of subsection (3), a recording or copy is dealt with if it is—
- (a) possessed, shown or played in public or distributed (otherwise than for the educational purposes of the educational establishment concerned) for the purpose of or in the course of any trade or business;
 - (b) sold or let for hire, or offered or exposed for sale or hire; or
 - (c) communicated to the public, unless that communication is not an infringement of copyright by virtue of subsection (1A).

245A. Copying or communication by educational establishments:
sound recordings or films

- (1) The making of a copy of part of a sound recording or film by or on behalf of an educational establishment ~~for the education purposes of that establishment~~ does not infringe any of the rights conferred by this Part in relation to any performance or fixation included in it.
- (2) A person authorized by an educational establishment may, without infringing the rights conferred by this Part, communicate to an authorized recipient a copy of part of a sound recording or film that has been made in accordance with subsection (1) if—
- the person makes the communication for the educational purposes of the establishment; and
 - the establishment takes all reasonable steps to ensure that—
 - only authorized recipients receive the communication; and
 - the authorized recipients do not make any copy or further transmission of the communication.
- (3) Copying or communicating to authorized recipients is not authorized by this section if, or to the extent that, licences under licensing schemes are available authorizing the copying or communication in question and the person making the copies or communication in question knew or ought to have been aware of that fact.
- (4) Where a copy which would otherwise be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing fixation for the purposes of that dealing, and if that dealing infringes any right conferred by this Part, for all subsequent purposes.
- (5) Expressions used in this section have the same meaning as in section 45.



educational purposes of the establishment



- (4A) For the purposes of subsection (4), a copy is dealt with if it is—
- possessed, shown or played in public or distributed (otherwise than for the educational purposes of the educational establishment concerned) for the purpose of or in the course of any trade or business;
 - sold or let for hire, or offered or exposed for sale or hire; or
 - communicated to the public, unless that communication is not an infringement of copyright by virtue of subsection (2).

246. Copying by librarians or archivists: articles of cultural or historical importance

(1) The librarian or archivist of a specified library or archive may make a copy of an article of cultural or historical importance or interest and deposit the copy at the library or archive without infringing any right conferred by this Part in respect of that article if the article is likely to be lost to Hong Kong through sale or export.

(2) Expressions used in this section have the same meaning as in section 53.

[cf. 1988 c. 48 Sch. 2 para. 7 U.K.]

246. Copying by librarians[↑] or archivists: articles of cultural or historical importance

(1) The ~~librarian or archivist of a specified library or archive~~[↑] may make a copy of an article of ~~cultural or historical importance or interest~~[↑] and deposit the copy at the library[↑] or archive without infringing any right conferred by this Part in respect of that article if the article is likely to be lost to Hong Kong through sale or export.

(2) Expressions used in this section have the same meaning as in section 53.

[cf. 1988 c. 48 Sch. 2 para. 7 U.K.]

[↑], curators

[↑] librarian, curator or archivist of a specified library, museum or archive

[↑], museum

**246A. Fair dealing for purposes of
public administration**

(1) Fair dealing with a performance or fixation by the Government, the Executive Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe any of the rights conferred by this Part.

(2) In determining whether any dealing with a performance or fixation is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (b) the nature of the performance or fixation;
- (c) the amount and substantiality of the portion dealt with in relation to the performance or fixation as a whole; and
- (d) the effect of the dealing on the potential market for or value of the performance or fixation.

(3) Where a fixation which apart from this section would be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing fixation—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes any of the rights conferred by this Part, for all subsequent purposes.

(4) Expressions used in this section have the same meaning as in section 54A.

(Added 15 of 2007 s. 63)

**246A. Fair dealing for purposes of
public administration**

(1) Fair dealing with a performance or fixation by the Government, the Executive Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe any of the rights conferred by this Part.

(2) In determining whether any dealing with a performance or fixation is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (b) the nature of the performance or fixation;
- (c) the amount and substantiality of the portion dealt with in relation to the performance or fixation as a whole; and
- (d) the effect of the dealing on the potential market for or value of the performance or fixation.

(3) Where a fixation which apart from this section would be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing fixation—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes any of the rights conferred by this Part, for all subsequent purposes.

➤ (4) Expressions used in this section have the same meaning as in section 54A.

(Added 15 of 2007 s. 63)

△ (3A) For the purposes of subsection (3), a fixation is dealt with if it is—

- (a) possessed, shown or played in public or distributed (otherwise than for the purposes mentioned in subsection (1)) for the purpose of or in the course of any trade or business; or
- (b) sold or let for hire, or offered or exposed for sale or hire.

252. Certain copying permitted when performances made available to the public

The rights conferred by this Part in a fixed performance are not infringed by the copying of a fixation which is reasonably required for the viewing or listening of the fixation by a member of the public to whom the fixation is made available (within the meaning of section 205) provided that such act does not conflict with a normal exploitation of the fixation and does not unreasonably prejudice the legitimate interests of the performer or the person who has fixation rights in relation to the performance.

252A. Temporary reproduction by service providers

- (1) The rights conferred by this Part in a fixed performance are not infringed by the making and storage of a copy of a fixation by a service provider if—
- (a) the sole purpose of the making and storage of the copy is to enable more efficient transmission of the fixation by the service provider through a network;
 - (b) the making and storage of the copy forms an automatic and essential part of a technological process, and that process neither modifies the fixation, nor interferes with the lawful use of technology to obtain data on the use of the fixation;
 - (c) the storage of the copy is temporary;
 - (d) the service provider updates the database in which the copy is stored in accordance with reasonable industry practice;
 - (e) the service provider complies with conditions (if any) on access to the fixation; and
 - (f) the service provider acts promptly to remove the copy or disable access to the copy ~~when~~ either of the following facts comes to the service provider's actual knowledge—
 - (i) the fixation has been removed from the original source from which the copy was made; or
 - (ii) access to the fixation at the original source from which the copy was made has been disabled.
- (2) Expressions used in this section have the same meaning as in section 65A.

↑ in the event that