

C008E

Amend the Copyright Ordinance, the Prevention of Copyright Piracy Ordinance and the Patents Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Intellectual Property (Miscellaneous Amendments) Ordinance 2000.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Trade and Industry by notice in the Gazette.

Copyright Ordinance

2. Secondary infringement: possessing or dealing with infringing copy

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

(a) by renumbering it as section 31(1);

(b) in subsection (1)---

(i) by repealing paragraph (a) and substituting---

"(a) possesses for the purpose of, in the course of, or in connection with, any trade or business;"

(ii) by repealing paragraph (c) and substituting---

"(c) exhibits in public or distributes for the purpose of, in the course of, or in connection with, any trade or business; or";

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

(c) by adding---

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

3. Secondary infringement: providing means for making infringing copies

Section 32 is amended---

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

(b) by adding---

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

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

Section 95 is amended---

(a) in subsection (1)---

(i) by repealing paragraph (a) and substituting---

"(a) possesses for the purpose of, in the course of, or in connection with, any trade or business";

(ii) by repealing paragraph (c) and substituting---

"(c) exhibits in public or distributes for the purpose of, in the course of, or in connection with, any trade or business; or";

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

(b) by adding---

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

5. False attribution of work

Section 96 is amended---

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

(b) by adding---

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

(a) works or copies of works in or on which there are false attributions; or

(b) altered works or copies of altered works."

6. Order for delivery up

Section 109 is amended---

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

(b) by adding---

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

7. Criminal liability for making or dealing with infringing articles, etc.

Section 118 is amended---

(a) in subsection (1)---

(i) in paragraphs (d) and (e), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";

(ii) in paragraph (f), by repealing "otherwise than for the purpose of trade or business" and substituting "(otherwise than for the purpose of, in the course of, or in connection with, any trade or business)";

(b) in subsections (4), (5) and (8), by repealing "for the purpose of trade or business" and substituting "for the purpose of, in the course of, or in connection with, any trade or business";

(c) by adding---

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

8. Making infringing copies outside Hong Kong, etc.

Section 120 is amended---

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

(b) by adding---

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

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

Section 207 is amended---

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

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

(i) possesses;

(ii) makes available to the public;

(iii) sells or lets for hire;

(iv) offers or exposes for sale or hire; or

(v) distributes,";

(b) by adding---

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

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

Section 211 is amended---

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

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

business---

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

(b) by adding---

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

11. Order for delivery up

Section 228 is amended---

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

(b) by adding---

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

12. Devices designed to circumvent copy-protection

Section 273 is amended---

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

(b) by adding---

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

Prevention of Copyright Piracy Ordinance

13. Preliminary

The heading before section 1 of the Prevention of Copyright Piracy Ordinance (Cap. 544) is repealed and the following substituted---

"PART I

Preliminary".

14. Interpretation

Section 2(1) is amended by adding---

""building" (建築物) includes any fixed structure, and a part of a building or fixed structure;

"manager" (管理人), in relation to a place of public entertainment, means the person responsible for the control or management of that place at the material time;

"performance" (表演) includes the meanings assigned to it by sections 27(2) and 200(2) of the Copyright Ordinance (Cap. 528);

"place of public entertainment" (公眾娛樂場所) means any building that is---

(a) used primarily as a cinema, theatre or concert hall for the showing or playing of films or the performance of literary, dramatic or musical works; and

(b) required to be licensed under the Places of Public Entertainment Ordinance (Cap. 172),

and includes any building that is used as described in paragraph (a) the management and control of which is vested in the Government, but does not include a foyer;

"video recording equipment" (攝錄器材) means any device that is capable of making a recording, on any medium, from which a moving image may by any means be produced or that may enable such recordings to be made, either in the same place at which it is used, or by electronic or other transmission at another place."

15. Licences to manufacture optical discs

The heading before section 3 is repealed and the following substituted---

"PART II

Manufacturing of Optical Discs

Licence to manufacture".

16. Application for and grant of licence

Section 5 is amended---

(a) in subsection (1), by repealing "this Ordinance" and substituting "this Part";

(b) in subsection (2)(c)---

(i) in subparagraph (iii), by repealing "this Ordinance or the regulations" and substituting "this Part or any regulations made for the purposes of this Part";

(ii) in subparagraph (v), by repealing "this Ordinance" and substituting "this Part".

17. Sections amended

Sections 7(1), 8(2), 10(1)(a) and 13 are amended by repealing "this Ordinance" and substituting "this Part".

18. Power of authorized officers to inspect licensed premises, etc.

Section 17(1) is amended---

(a) by repealing "purposes of this Ordinance" and substituting "purposes of this Part";

(b) in paragraph (c), by repealing "this Ordinance" and substituting "this Part";

(c) by repealing paragraph (g) and substituting---

"(g) to make such examination and inquiry as may be necessary to ascertain whether---

(i) the provisions of this Part or any regulations made for the purposes of this

Part;

(ii) the provisions of the Copyright Ordinance (Cap. 528); or

(iii) the conditions of any licence granted under this Part,

are being, or have been, complied with; and";

(d) in paragraph (h), by repealing "this Ordinance" and substituting "this Part".

19. Sections amended

Sections 18(1), (2) and (3) and 19(1) are amended by repealing "this Ordinance" wherever it appears and substituting "this Part".

20. Seized optical discs, etc., liable to forfeiture

Section 20 is repealed.

21. False and misleading statements

Section 23 is amended by repealing "this Ordinance" where it twice appears and substituting "this Part".

22. Sections repealed

Sections 24 to 29 are repealed.

23. Form of applications, etc.

Section 30 is amended by repealing "this Ordinance" wherever it appears and substituting "this Part".

24. Sections added

The following are added---

"31A. Aids in proof

(1) A certificate purporting to be certified under the hand of the Commissioner and stating whether---

(a) a person named in the certificate has or has not been granted a licence;

(b) a licence granted to a person named in the certificate has or has not expired or has or has not been revoked or cancelled; or

(c) a manufacture's code specified or described in the certificate has or has not been assigned under section 5(2)(a) or 8(3)(b) to a person named in the certificate, shall be evidence of the matters stated therein as at the date of the certificate and shall be received in evidence in any proceedings under this Part without further proof.

(2) A copy of any licence which purports to be certified under the hand of the Commissioner shall be evidence of the licence and of the matters stated therein as at the date of the copy and shall be received in evidence in any proceedings under this Part without further proof.

31B. Disclosure of information, inspection, release of samples, etc.

Sections 126 and 128 of the Copyright Ordinance (Cap. 528) shall apply in respect

of any optical disc, machinery, equipment or other thing seized, removed or detained by an authorized officer under section 18(2) or any machinery, equipment or other thing sealed by an authorized officer under section 18(5), with such modifications as the circumstances require."

25. Part added

The following is added---

"PART III

Possession of Video Recording Equipment
in Places of Public Entertainment

31C. Unauthorized possession of video
recording equipment in place of
public entertainment prohibited

(1) Any person who, without lawful authority, has in his possession in a place of public entertainment any video recording equipment commits an offence and is liable---

(a) on a first conviction, to a fine at level 2; and

(b) on a second or subsequent conviction, to a fine at level 5 and to imprisonment for 3 months.

(2) For the purposes of subsection (1), a person shall be deemed to have video recording equipment in his possession in a place of public entertainment, notwithstanding that it is not in his actual possession, if he knowingly and wilfully has it in the actual custody or possession of some other person in that place, or has it in that place, whether the video recording equipment is in such custody, possession or place for the use of that person or for the use or benefit of another person.

(3) For the purposes of subsection (1), a person has lawful authority to possess video recording equipment in a place of public entertainment if the manager of the place, or any person authorized in that behalf by the manager, expressly consents to that possession.

31D. Refusal of admission, etc.

(1) Notwithstanding any other law, it shall be lawful for the manager of a place of public entertainment, or any person authorized in that behalf by the manager, to refuse to admit to that place, or to require to leave that place, any person who has in his possession any video recording equipment.

(2) Where a person fails to leave a place of public entertainment after being required to do so under subsection (1), the manager, or any person authorized in that behalf by the manager, may remove that person from that place by the use of reasonable force if necessary.

31E. Power of authorized officers to enter and search, etc.

(1) An authorized officer may, with the consent of the manager or any person authorized in that behalf by the manager, and without a warrant and without payment of any admission fee or other charge, enter and search any place of public entertainment.

(2) An authorized officer may enter and search any place of public entertainment without a warrant and without the consent of the manager or any other person, and without payment of any admission fee or other charge, if---

(a) the authorized officer has reason to suspect that any offence under section 31C has been or is being committed; and

(b) the delay necessary to obtain a warrant could result in the loss or destruction of evidence or for any other reason it would not be reasonably practicable to obtain a warrant.

(3) An authorized officer may, in exercising his powers under subsection (1) or (2)---

(a) search any person if he has reason to suspect that the person has in his actual possession any video recording equipment in respect of which an offence has been committed under section 31C; and

(b) seize, remove or detain any video recording equipment or other thing which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under section 31C.

(4) An authorized officer may---

(a) use reasonable force to remove any person or thing obstructing him in the exercise of any power conferred on him by this section;

(b) detain any person found in any place which he is empowered by this section to enter and search if, after inquiry, he has reasonable grounds for believing the person is connected with the subject-matter of the search and he considers it necessary to detain the person in order to be able to adequately perform the search; and

(c) require the manager of the place or any other person who appears to be at the time responsible for the control or management of the place to give information or render assistance that may be necessary to enable the authorized officer to carry out his functions under this section."

26. Part heading added

The following is added after new section 31E---

"PART IV

General".

27. Section added

The following is added---

"33A. Obstruction of authorized officers

(1) Without prejudice to any other Ordinance, any person who---

(a) wilfully obstructs an authorized officer in the exercise of his powers or the performance of his duties under this Ordinance;

(b) wilfully fails to comply with any requirement properly made to him by any such authorized officer;

(c) without reasonable excuse, fails to give such authorized officer any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Ordinance; or

(d) breaks or interferes with a seal affixed by an authorized officer under section 18(5),

commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

(2) Any person who, when required to give information to the Commissioner or an authorized officer in the exercise of his powers or the performance of his duties under this Ordinance, knowingly gives false or misleading information commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

(3) Nothing in this section requires any person to give any information which may incriminate him.

(4) No person commits an offence under subsection (1)(d) if he breaks or interferes with a seal affixed by an authorized officer under section 18(5)---

(a) in the bona fide belief that it is necessary immediately to break or interfere with the seal in order to prevent injury being suffered by any person or damage being incurred to any premises, place, machinery, equipment or other thing; or

(b) in the exercise of his duties as a public officer."

28. Sections substituted

Sections 34 to 36 are repealed and the following substituted---

"34. Seized optical discs, etc.,

liable to forfeiture

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

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

(3) For the purpose of applying sections 131 and 133 of the Copyright Ordinance

(Cap. 528), any reference in those sections to---

(a) an offence under section 118 or 120 of that Ordinance shall be construed as a reference to an offence under this Ordinance;

(b) an article, vessel, aircraft, vehicle or thing seized or detained by an authorized officer under section 122 of that Ordinance shall be construed as a reference to any optical disc, machinery, equipment, video recording equipment or other thing seized, removed, detained or sealed by an authorized officer under this Ordinance; or

(c) section 132 of that Ordinance shall be construed as a reference to section 35 of this Ordinance.

35. Disposal of optical discs, etc.,

where a person is charged

Without prejudice to section 34, where a person is charged with an offence under this Ordinance, the court may, if it is satisfied that---

(a) any optical disc seized, removed or detained by an authorized officer under this Ordinance in connection with the offence has been manufactured in contravention of this Ordinance; or

(b) any machinery, equipment, video recording equipment or other thing seized, removed, detained or sealed by an authorized officer under this Ordinance has been used in connection with any offence under this Ordinance,

order that the optical disc, machinery, equipment, video recording equipment or other thing be---

(i) forfeited to the Government; or

(ii) disposed of in such other way as the court may think fit,

whether or not the person charged is convicted of the offence with which he was charged.

36. Compensation for seizure, etc.

(1) Where any optical disc, machinery, equipment, video recording equipment or other thing is seized, removed, detained or sealed by an authorized officer under this Ordinance, the Government shall, subject to this section, be liable to compensate the owner thereof for any loss suffered by him by reason of the seizure, removal, detention or sealing thereof or by reason that the optical disc, machinery, equipment, video recording equipment or other thing is lost or damaged during the period when it is detained or sealed; but the owner shall not be entitled to compensation for any such loss if---

(a) the optical disc, machinery, equipment, video recording equipment or thing is forfeited under section 34 or 35;

(b) the owner has been convicted of an offence under this Ordinance or the Copyright Ordinance (Cap. 528) committed in relation to the optical disc, machinery, equipment,

video recording equipment or thing; or

(c) an order has been made in respect of the optical disc, machinery, equipment, video recording equipment or thing under section 35.

(2) In any proceedings against the Government in respect of a claim for compensation on any of the grounds referred to in subsection (1), the amount of the compensation recoverable shall be such amount as is just and equitable in all the circumstances of the case, including the conduct and comparative blameworthiness of---

(a) the owner of the optical disc, machinery, equipment, video recording equipment or thing;

(b) the person in charge or control of the optical disc, machinery, equipment, video recording equipment or thing at the time it was seized, removed, detained or sealed;

(c) the agents of the person specified in paragraphs (a) and (b); and

(d) authorized officers, public officers and other persons concerned.

(3) No proceedings shall be maintainable in respect of any claim for compensation on any of the grounds referred to in subsection (1) unless the proceedings are commenced---

(a) in the case of a claim for compensation in respect of any optical disc, machinery, equipment, video recording equipment or thing delivered to its owner by order of a court or magistrate or by any person having authority to deliver the optical disc, machinery, equipment, video recording equipment or thing to him, not later than 6 months after the delivery thereof;

(b) in the case of a claim for compensation on the ground that any optical disc, machinery, equipment, video recording equipment or thing was lost during the period when it was detained or sealed, not later than 6 months after---

(i) the discovery by the owner of the existence of such ground; or

(ii) the date on which the owner could, by the exercise of reasonable diligence, have discovered the existence of such ground, whichever is the earlier.

36A. Offences related to disclosure of information

(1) Subject to subsection (2), any person who discloses to any other person any information obtained by him in pursuance of this Ordinance commits an offence unless the disclosure was made---

(a) for the purpose of the performance by him or any other person of duties or functions under this Ordinance; or

(b) under the direction or order of a court.

(2) A person does not commit an offence under subsection (1) by disclosing information pursuant to section 31B or 37.

(3) Any person who commits an offence under subsection (1) is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

36B. Liability of persons other than principal offender

(1) Where a body corporate commits an offence under this Ordinance in respect of any act which is proved to have been committed with the consent or connivance of, or to be attributable to any act on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he, as well as the body corporate, commits the offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Ordinance committed by a partner in a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any act on the part of, any other partner of the partnership or any person concerned in the management of the partnership, that other partner or the person concerned in the management of the partnership commits the like offence.

36C. Protection of informers

(1) Save where, in the opinion of the court, justice so requires, the name or identity of any informer and the information given by such informer shall not be disclosed in any proceedings for an offence under this Ordinance.

(2) The court may make any order and adopt any procedure necessary to prevent any such disclosure.

36D. Time limit for prosecutions

No prosecution for an offence under this Ordinance shall be commenced after the expiration of 3 years from the date of commission of the offence or 1 year from the date of discovery of the offence by the prosecutor, whichever is the earlier."

29. Saving for other enactments

Section 40(b) is amended by adding "or the operation of places of public entertainment" after "optical disc".

Patents Ordinance

30. Divisional short-term patent application

Section 116 of the Patents Ordinance (Cap. 514) is amended by repealing "publication of the patent has commenced" and substituting "publication of the specification of the patent has been completed".

Explanatory Memorandum

This Bill amends the Copyright Ordinance (Cap. 528), the Prevention of Copyright Piracy Ordinance (Cap. 544) and the Patents Ordinance (Cap. 514) for the purpose of enhancing protection of intellectual property rights.

2. Clauses 2 to 12 amend sections 31, 32, 95, 96, 109, 118, 120, 207, 211, 228 and 273 of the Copyright Ordinance (Cap. 528) by repealing the expression "for the purpose of trade or business" wherever it appears in those sections and substituting the expression "for the purpose of, in the course of, or in connection with, any trade or business".
3. Clauses 2 to 12 also add new subsections to sections 31, 32, 95, 96, 109, 118, 120, 207, 211, 228 and 273 to make clear that it is immaterial whether or not the trade or business consists of dealing in infringing copies of copyright works (in the case of sections 31, 109, 118 and 120), articles specially designed or adapted for making copies of such works (in the case of section 32), infringing articles (in the case of section 95), works or copies of works in or on which there are false attributions or altered works or copies of altered works (in the case of section 96), infringing fixations (in the case of sections 207, 211 and 228), or devices or means specifically designed or adapted to circumvent forms of copy-protection (in the case of section 273).
4. Clauses 13 to 29 amend the Prevention of Copyright Piracy Ordinance (Cap. 544) ("the Ordinance"). The main amendment is found in clause 25 which adds a new Part III to the Ordinance to prohibit the possession of video recording equipment in cinemas and other places of public entertainment.
5. The amendments made by the other clauses are technical. Their main purpose is to reorganize the Ordinance into different parts so as to permit the addition of the new Part III. They also replace various references to "this Ordinance" by references to "this Part".
6. Clauses 13 and 15 add new Part headings before sections 1 and 3, respectively.
7. Clause 14 amends section 2 to add definitions for the purposes of the new Part III.
8. Clauses 16, 17, 18 and 19 replace references to "this Ordinance" in sections 5, 7(1), 8(2), 10(1)(a), 13, 17(1), 18, and 19(1), respectively, by references to "this Part".
9. Clause 20 repeals section 20, which is re-enacted by clause 28 as section 34.
10. Clause 21 replaces references to "this Ordinance" in section 23 by references to "this Part".
11. Clause 22 repeals sections 24 to 29. Section 24 is re-enacted by clause 27 as section 33A, and sections 25, 26, 28 and 29 are re-enacted by clause 28 as sections 36A, 36B, 36C, and 36D, respectively.
12. Clause 23 replaces references to "this Ordinance" in section 30 by references to "this Part".

13. Clause 24 re-enacts the existing sections 35 and 36 as sections 31A and 31B, respectively, and replaces references to "this Ordinance" by references to "this Part".

14. Clause 25 adds a new Part III. The proposed section 31C makes it an offence for any person to possess video recording equipment in a cinema or other place of public entertainment without lawful authority. The proposed section 31D authorizes the manager of a place of public entertainment to refuse admission to persons who possess such equipment. The proposed section 31E confers powers on authorized officer to enter and search places of public entertainment for the purpose of ascertaining whether offences under the proposed section 31C are being committed.

15. Clause 26 adds a new part heading after the proposed section 31E.

16. Clause 27 re-enacts the existing section 24 as section 33A.

17. Clause 28 re-enacts the existing sections 20, 27 and 34 as sections 34, 35 and 36, respectively, and the existing sections 25, 26, 28 and 29 as sections 36A, 36B, 36C, and 36D, respectively, and makes other minor modifications consequential on the addition of the new Part III proposed by clause 25.

18. Clause 29 adds a reference to places of public entertainment to section 40(b) and is consequential on the addition of the new Part III proposed by clause 25.

19. Clause 30 amends section 116 of the Patents Ordinance (Cap. 514) to correct an inconsistency between that section and section 122. Under section 122, no divisional application under section 116 shall be allowed after the date on which preparations for publication of the specification of the earlier short-term application have been completed. Section 116 however refers to the date on which preparations for publication of the patent has commenced. The amendment to section 116 will make it consistent with section 122.