

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 27 OF 2003

L.S.

TUNG Chee-hwa
Chief Executive
10 July 2003

An Ordinance to amend the Copyright Ordinance.

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Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Copyright (Amendment) Ordinance 2003.

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

2. Meaning of “infringing copy”

(1) Section 35(3) of the Copyright Ordinance (Cap. 528) is amended by repealing “A” and substituting “Except as provided in section 35A, a”.

(2) Section 35(4)(a) and (i) and (5)(a) is amended by repealing everything from “某國家” to “該處是” and substituting “製作它的所在國家、地區或地方”.

(3) Section 35(9) is repealed.

3. Section added

The following is added immediately after section 35—

“35A. Copy of a computer program, or of certain other works embodied in the same article as a computer program, not an “infringing copy” for the purposes of section 35(3)

(1) A copy of a work to which this subsection applies is not an infringing copy for the purposes of section 35(3) if it was lawfully made in the country, territory or area where it was made.

(2) Subsection (1) applies to—

(a) a copy of a computer program; or

(b) except as provided in subsection (3) or (4), a copy of a work other than a computer program, which copy is embodied in an article that also embodies a copy of a computer program, that, but for subsection (1), would be an infringing copy for the purposes of section 35(3).

(3) Subsection (1) does not apply to any copy of a work described in subsection (2)(b)—

(a) that is a copy of the whole or substantially the whole of a movie or a television drama; or

(b) that is a copy of a part of a movie or a television drama if—
(i) all those parts of the movie or television drama copies of which are embodied in the article together constitute the whole or substantially the whole of the movie or television drama; or

(ii) the viewing time of all those parts of the movie or television drama copies of which are embodied in the article is, in the case of a movie, more than 15 minutes in aggregate or, in the case of a television drama, more than 10 minutes in aggregate,

and in paragraphs (a) and (b)(i), reference to a television drama, in the case of a television drama comprising one or more episodes, is reference to an episode of the television drama.

(4) Subsection (1) does not apply to any copy of a work described in subsection (2)(b) that is—

(a) a copy of a movie or a television drama (other than a copy to which subsection (3) applies);

(b) a copy of a musical sound recording or a musical visual recording; or

(c) a copy that forms part of an e-book,

(a “specified copy of a work”) if the article in which the specified copy is embodied is likely, in being acquired by a person for his own use, to be acquired for the purpose of acquiring the specified copies of works that are embodied in it more so than for the purpose of acquiring the copies of works other than specified copies that are embodied in it.

(5) For the purposes of subsection (4), in considering the extent to which an article is likely to be acquired for the purpose of acquiring a particular copy of a work that is embodied in it, a copy of those parts of any computer program the function of which is to provide a means of—

- (a) viewing or listening to a specified copy of a work that is embodied in the article (or, where that work is in encrypted form, a means of decrypting it so as to enable such viewing or listening); or
- (b) searching for any specific part of a specified copy of a work that is embodied in the article,

shall be regarded as part of the specified copy of a work.

(6) In this section, “e-book” (電子書) means a combination of copies of works embodied in a single article and comprising—

- (a) one or more copies of each of—
 - (i) a computer program; and
 - (ii) a literary work (other than a computer program), a dramatic work, a musical work or an artistic work (“main work”),

so arranged as to provide for the copy of the main work to be presented in the form of an electronic version of a book, magazine or periodical; and

- (b) where a main work is accompanied for illustrative purposes by any copy or copies of films or sound recordings, that copy or those copies.

(7) For the avoidance of doubt, reference in this section, other than subsection (6), to a copy of a work is reference to a copy of the whole or a substantial part of a work.”.

4. Section added

The following is added immediately after section 118—

“118A. Application of sections 60 and 61 to offences under section 118(1)

For the purpose of any proceedings for an offence under section 118(1)—

- (a) a person is a lawful user of a computer program for the purposes of sections 60 and 61 if he has a contractual right to use the program in any place in or outside Hong Kong, and section 60(2) shall have effect accordingly; and
- (b) sections 60 and 61 apply in relation to a copy of a work other than a computer program to which section 35A(1) applies as they apply in relation to a copy of a computer program and, accordingly, any act that may under section 60 or 61 be done in relation to a copy of a computer program without infringing the copyright in the program may be done in relation to a copy of a work other than a computer program to which section 35A(1) applies without infringing the copyright in the work.”.

5. Minor definitions

- (1) Section 198(1) is amended by adding—
 - ““movie” (電影) means a film of the kind commonly known as a movie;
 - “musical sound recording” (音樂聲音紀錄) means a sound recording the whole or a predominant part of which consists of the whole or any part of a musical work or a musical work and a related literary work;
 - “musical visual recording” (音樂視像紀錄) means a film with an accompanying sound-track, the whole or a predominant part of which sound-track consists of the whole or any part of a musical work or a musical work and a related literary work;
 - “television drama” (電視劇或電視電影) means a film of the kind commonly known as a television drama;”.
- (2) Section 198 is amended by adding—
 - “(3) For the purposes of this Part, “lawfully made” (合法地製作), in relation to a copy of a work, does not include a copy that was made in a country, territory or area where there is no law protecting copyright in the work or where the copyright in the work has expired.”.

6. Index of defined expressions

- Section 199 is amended, in the Table, by adding—
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|--------------------------|------------------|
| “lawfully made | section 198(3) |
| movie | section 198(1) |
| musical sound recording | section 198(1) |
| musical visual recording | section 198(1) |
| television drama | section 198(1)”. |

7. Meaning of “infringing fixation”

Section 229(5)(a) is amended by repealing everything from “在製作” to “地方是” and substituting “是在製作它的所在國家、地區或地方”.

8. Section added

The following is added—

“282. Transitional provisions and savings

Schedule 6 contains transitional provisions and savings in relation to certain amendments made to this Ordinance.”.

9. Schedule 6 added

The following is added—

“SCHEDULE 6

[s. 282]

TRANSITIONAL PROVISIONS AND SAVINGS

Transitional provisions and savings in
relation to amendments effected by
the Copyright (Amendment)
Ordinance 2003
(27 of 2003)

1. Interpretation

(1) In this Schedule, unless the context otherwise requires—
“amendment Ordinance of 2003” (《2003年修訂條例》) means the Copyright (Amendment)
Ordinance 2003 (27 of 2003);

“Suspension Ordinance” (《暫停條例》) means the Copyright (Suspension of Amendments)
Ordinance 2001 (Cap. 568).

(2) In this Schedule, a reference to this Ordinance as it applied immediately before the commencement of the amendment Ordinance of 2003 is a reference to this Ordinance as read together with the Suspension Ordinance, as those Ordinances applied immediately before that commencement.

2. Application of section 35A of this Ordinance to previously imported copies

(1) This section applies to a copy of a work that is an infringing copy for the purposes of section 35(3) of this Ordinance as it applied immediately before the commencement of the amendment Ordinance of 2003, and is such an infringing copy by virtue only of an importation or proposed importation into Hong Kong that occurred before that commencement.

(2) For the purpose of any act done after the commencement of the amendment Ordinance of 2003 in relation to a copy of a work to which this section applies (including any act alleged to constitute an infringement of copyright or an offence under this Ordinance), section 35A of this Ordinance shall have effect as if it had been enacted before the occurrence of the importation or proposed importation referred to in subsection (1) and, accordingly, the copy is not to be regarded as an infringing copy unless, having regard to section 35A of this Ordinance, it would also be an infringing copy for the purposes of section 35(3) of this Ordinance if the importation or proposed importation into Hong Kong had occurred immediately after that commencement.

(3) For the avoidance of doubt, nothing in this section or in the amendment Ordinance of 2003 affects any right of action in relation to an infringement of copyright that occurred before the commencement of the amendment Ordinance of 2003.

**3. Exemption from criminal liability
previously incurred in respect of
“parallel-imported” copies of
works to which section 35A
of this Ordinance applies**

(1) This section applies to a copy of a work that is an infringing copy for the purposes of section 35(3) of this Ordinance as it applied immediately before the commencement of the amendment Ordinance of 2003, and is such an infringing copy by virtue only of an importation or proposed importation into Hong Kong that occurred before that commencement.

(2) As from the commencement of the amendment Ordinance of 2003, a person shall not be liable to conviction for an offence under section 118(1) of this Ordinance, as that section applied immediately before that commencement, in respect of an act done before that commencement in relation to a copy of a work to which this section applies unless, having regard to section 35A of this Ordinance, the copy would also be an infringing copy for the purposes of section 35(3) of this Ordinance if the importation or proposed importation into Hong Kong had occurred immediately after that commencement.

**4. Exemption from criminal liability
previously incurred in respect of
a back-up copy of, or necessary
copying or adapting of, a copy
of a work to which
section 35A of this
Ordinance applies**

(1) This section applies to a copy of a work to which section 35A of this Ordinance applies, where the copy—

- (a) was made before the commencement of the amendment Ordinance of 2003; and
- (b) is an infringing copy by virtue only of the fact that it was made by a person who did not have a contractual right to use the work for the purposes of sections 60 and 61 of this Ordinance.

(2) As from the commencement of the amendment Ordinance of 2003, no person shall be liable to conviction for an offence under section 118(1) of this Ordinance, as that section applied immediately before that commencement, in respect of a copy of a work to which this section applies unless, for the purposes of proceedings for an offence under section 118(1) of this Ordinance, and having regard to section 118A of this Ordinance, the same copy made immediately after that commencement would be a copy made by a person who did not have a contractual right to use the work for the purposes of sections 60 and 61 of this Ordinance.”.