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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 4 OF 2004

L.S.

TUNG Chee-hwa
Chief Executive
1 April 2004

An Ordinance to amend the Copyright Ordinance and for related purposes.

[1 September 2004]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Copyright (Amendment) Ordinance 2004.

(2) This Ordinance shall come into operation on 1 September 2004.

2. Penalties for offences under section 118

Section 119(1) is amended by repealing everything after “定罪，” and substituting “可處監禁 4 年，並可就每份侵犯版權複製品處第 5 級罰款。”

3. Section added

The following is added—

“119A. Offence in relation to possession of infringing copies in a copying service business

- (1) In this section—
“copying service business” (複製服務業務) means a business, conducted for profit, that includes the offering of reprographic copying services to the public and, in the case of a business that includes the offering of reprographic copying services to the public at more than one place, means any part of the business carried on at such a place;
“reward” (報酬) means reward other than reward of a nominal value.
- (2) A person commits an offence if, for the purpose of or in the course of a copying service business, he possesses a reprographic copy of a copyright work as published in a book, magazine or periodical, being a copy that is an infringing copy of the copyright work.
- (3) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that the infringing copy of a copyright work in question was not made for the purpose of and was not made in the course of the copying service business.
- (4) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that the infringing copy of a copyright work in question was not made for profit and was not made for reward.
- (5) In proceedings for an offence under subsection (2), it is a defence for the person charged to prove that he did not know and had no reason to believe that the copy of a copyright work in question was an infringing copy of the copyright work.
- (6) A person who commits an offence under subsection (2) is liable on conviction on indictment to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years.
- (7) Sections 115, 116 and 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under subsection (2).”.

4. Seized articles, etc. liable to forfeiture

Section 131 is amended—

- (a) in subsection (1), by adding “, 119A” after “118”;
(b) in subsection (7), by adding “, 119A” after “118”.

5. Disposal of articles, etc. where a person is charged

Section 132 is amended by adding “, 119A” after “118”.

6. Determination of application for forfeiture

Section 133 is amended—

- (a) in subsection (5), by adding “, 119A” after “118”;
- (b) in subsection (6), by adding “, 119A” after “118”.

Consequential Amendments

Prevention of Copyright Piracy Ordinance

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

Section 34(3)(a) of the Prevention of Copyright Piracy Ordinance (Cap. 544) is amended by adding “, 119A” after “118”.