

## 《2006年版權(修訂)條例草案》委員會 尚待討論的委員會審議階段修正案

### 目的

本文件告知委員當局提出尚待討論的委員會審議階段修正案。該等尚待討論的修正案已納入附件所載的標明修訂文本(只備英文本)。

### 平行進口

2. 平行進口的課題一直備受爭議。版權擁有人與版權作品使用者的權益大相逕庭。一些使用者團體(包括來自教育界和圖書館、商界和代表消費者權益的團體)要求完全免除平行進口正版版權作品的刑事法律責任，理由是專用特許持有人的權益不應藉實施刑事制裁而加以保障。如未能爭取到完全免除刑責，有關團體希望縮短現行刑責期。他們認為完全免除刑責或縮短刑責期後，會有更多版權作品以較低廉的價格供他們選擇。

3. 另一方面，電影、聲音紀錄、書籍出版和漫畫業的版權擁有人一直強烈反對縮短 18 個月的刑責期。他們表示，此舉會導致有關行業極難籌措所需資金，進一步投資於香港的版權作品。這樣會扼殺本地製作，引致失業問題。

4. 香港是全球最自由的市場經濟體系，我們的長遠目標是完全免除有關在香港使用平行進口版權作品的限制。然而，當我們正朝着滿足使用者所提出讓平行進口作品自由流通的訴求這個方向前進，社會整體也不應忽視放寬平行進口限制對版權擁有人的影響。多個創意產業目前的業務運作形式仍然倚重在不同地區市場採取不同訂價策略的做法，藉此收回投資成本並再投資於新作品。考慮到業界的憂慮，我們應謹慎行事，以漸進方式放寬對平行進口的限制。

5. 經進一步考慮，我們現建議提出委員會審議階段修正案，修訂《條例草案》第 7(2)條，把第 35(4)(b)條所訂的刑責期改為 15 個月(而非版權擁有人強烈要求的建議，即保留現行 18 個月刑責期)。我們會對新訂第 35B(5)(a)條作出相應修訂。對於為利便有關平行進口的刑事執法工作而採取的新

措施，我們會留意其成效。我們會在日後適當時候檢討刑責期。

### **賦權條文(用以豁除新訂第 119B(1)條的適用)的適用範圍**

6. 二零零七年四月三日法案委員會會議上，委員要求當局如吳靄儀議員所提議，重新考慮新訂第 119B(14)和(15)條，以期更明確界定賦權條文的適用範圍。我們已應上述要求，修訂相關條文。

7. 現在的新訂第 119B(3)條清楚訂明，新訂第 119B(1)條(有關業務最終使用者複製／分發印刷作品的罪行)不適用於以下情況：(a)侵權程度不超逾根據第(14)款訂立的規例所指明的範圍(即「安全港」條文)；或(b)版權作品的侵權複製品是按根據新訂第(16)款訂立的規例所指明的方式製作或分發。

8. 新訂第(14)款賦權工商及科技局局長為施行新訂第(3)(a)款訂立規例，而新訂第(15)款則訂明工商及科技局局長在制訂「安全港」條文時須參考的準則(例如所製作或分發的侵權複製品的數量)和訂明的其他事宜(例如判定所製作或分發侵權複製品數量的方法)。

9. 新訂第(16)款賦權工商及科技局局長為施行新訂第(3)(b)款訂立規例，並訂明他在指明哪些情況應予豁除時須考慮的因素(經內聯網分發侵權複製品是可能豁除的該類情況之一)。是否有特許計劃可供使用是明文指定的相關因素。我們相信，經修訂的條文有助更清楚界定新訂第 119B 條下賦權條文的適用範圍。

### **為文物保存和保護的作為就業務最終使用者刑責訂立的豁免條文**

10. 文物保護是我們的文化政策中不可或缺的部分，其意義在於為一個地方的歷史作見證，讓市民認識本土歷史和文化特色。為執行這政策，康樂及文化事務署管理的公共圖書館、博物館和香港電影資料館(電影資料館)，長久以來一直發揮重要功能，負責保存和保護具歷史、文化和文物價值的作品。

*(a) 香港電影資料館*

11. 電影資料館的其中一項主要功能，是保存香港的電影文化瑰寶。在工作過程中，電影資料館或會獲捐贈影片拷貝或從不同途徑「搶救」得來電影拷貝(而該等拷貝的版權狀況不明)。由於菲林壽命有限，電影資料館須為部分捐贈和「搶救」回來的影片拷貝進行保存工作，把菲林品質耗損減至最低，並透過把影片內容複製至穩定的媒介，確保高質素的影片拷貝得以保留。然而，要電影資料館在對拷貝作出任何作為以保存其質素之前先尋求版權許可，未必可行。適用於四類作品(即電腦程式、電影、電視劇或電視電影，以及音樂紀錄)的業務最終使用者管有侵權複製品的罪行，對電影資料館現行運作構成潛在困難。我們因此建議，假如電影資料館在向有關版權擁有人取得特許前，為作出任何以保存捐贈影片拷貝或「搶救」回來的影片拷貝為目的之作為而管有侵犯版權複製品，則有關罪行條文並不適用。換言之，只在電影資料館並未獲版權擁有人授權的情況下(除了下文第12段提及的情況之外)使用侵權複製品作保存之用以外的用途，業務最終使用者管有侵權複製品罪行條文才會適用。

12. 電影資料館使用某影片作保存工作以外的用途之前，應先尋求相關版權擁有人的授權。然而，相關版權擁有人的身分和聯絡資料未必能透過合理查詢得以確定。因此，我們建議，就不能透過合理商業條件取得複製品的影片而言，如相關版權擁有人的身分和聯絡資料不能透過合理查詢得以確定，則有關的業務最終使用者管有侵犯版權複製品罪行條文不適用於電影資料館。假如沒有這項豁免條文，電影資料館便可能會在一段長時間內不得使用有關影片，直至它有理由相信有關版權期限已經屆滿。

13. 應該注意的是，上文第11和12段所述為電影資料館而訂定的擬議豁免條文，不會影響版權擁有人(如有的話)就有關侵權複製品採取民事法律行動的權利。下文第15段所載的擬議豁免條文亦然。

*(b) 具有歷史、文化或文物價值的捐贈品*

14. 多年來，政府圖書館、檔案室和博物館收到大量由公眾捐贈的版權作品。捐贈者包括藝術家、作家和學者。部分

捐贈品具有重要的歷史、文化或文物價值(例如著名作家／在某知識領域上著名學者的研究和參考資料)。現時，我們的圖書館、檔案室和博物館向公眾提供主要包含該等捐贈品的藏品，供參考之用，而所有資料均須在圖書館、檔案室和博物館範圍內使用。在特殊情況下，藏品可能外借給其他圖書館、博物館或檔案室，作研究或展覽用途。由於經長年累月，藏品愈見豐富，加上新收捐贈品陸續增加，要確定每項捐贈是否包含侵犯版權複製品，以及確定繼續向公眾提供該等捐贈品供參考之用(即現時的做法)是否干犯新訂的業務最終使用者複製／分發罪行，不但困難重重，而且很可能是完全不可行。有見及此，我們建議就該新訂罪行給予有關機構豁免，以便進行保存具歷史、文化或文物價值作品的工作。

15. 我們已審慎制訂有關豁免條文，以保障版權擁有人的權益。該條文只會適用於康樂及文化事務署(康文署)署長認為具有重要文化、歷史或文物價值的藏品。此外，這些藏品應只為供即場參考或借予其他圖書館、檔案室或博物館作研究和展覽用途而分發。換句話說，若康文署所管理的公共圖書館、檔案室和博物館將有關的藏品向公眾作其他分發用途，上述的豁免條文便不會適用。

16. 我們並無接到其他非牟利圖書館、博物館和檔案室提出類似意見(這些設施如由非牟利教育機構管理，則已獲得豁免，因為新訂罪行將不適用於該等機構)。儘管如此，為確保有關設施的文物保護工作(如適用)不受影響，我們會賦予局長權力，按康文署署長的意見，藉憲報公告訂明其他非牟利圖書館、博物館和檔案室在符合藉規例所訂明的條件(如有的話)之情況下，屬有關豁免條文的適用範圍。

## **規避作為的民事法律責任**

17. 版權擁有人仍然擔心，第 273A(1A)條的免責辯護條文會造成漏洞，讓黑客有機可乘。他們認為，不應把規避作為的法律責任與侵犯版權連繫起來。版權擁有人在最近與我們舉行的會議上，提供了一些新資料，以供考慮。舉例來說，他們透露，音樂紀錄行業現正發展新的電子業務模式，可容許客戶接達網站收聽音樂作品，但不得下載有關作品。業界擔心黑客可能聲稱在這情況下並無侵犯版權，而科技措施一

且遭破解，涉及巨額投資的整個電子業務系統會受到破壞，所有作品都可能成為盜版活動的目標。

18. 部分使用者團體認為，假如版權擁有人把其作品鎖上，並對作品的使用施加限制極大的條款，則使用者使用版權作品的合法權益或會受到不合理的影響。教育界和圖書館業界曾特別向我們反映，圖書館和檔案室的一項重要功能，是保存版權作品，藉以傳播和保留知識。假如破解科技措施的唯一目的是作出《版權條例》允許的存檔及保存等活動，則圖書館和檔案室不應根據新訂第 273A 條負上法律責任。

19. 當局已審慎擬訂擬議的免責辯護條文，以處理黑客活動。我們認為，有關條文不會造成版權擁有人所指稱的漏洞。儘管如此，版權擁有人的關注是可以理解的，因為他們在研發科技措施方面投資龐大，假如破解科技措施的資訊廣泛流傳，業界會蒙受重大損失。另一方面，我們仍然認為，使用者根據允許作為條文使用版權作品的合法權益不應因為反規避條文而受到損害。

20. 在平衡雙方面的意見後，我們建議引入下列委員會審議階段修正案：

- (a) 刪除第 273A 條的免責辯護條文。這樣，規避任何有效科技措施的作為都在法例上須負上民事法律責任；
- (b) 如規避作為由第 46 條所訂明的指明圖書館或檔案室的圖書館館長或檔案室負責人作出，而其唯一目的是進行第 50、51 和 53 條下的任何允許作為(有關供應複製品予其他圖書館、作品的替代複製品，以及為有文化或歷史價值的物品製作複製品)，則第 273A 條不適用；以及
- (c) 假如應用第 273A 條很可能會導致或已經導致使用者的合法權益被不合理地侵犯，而版權擁有人未能採取自願措施以回應使用者的關注，我們會就有關條文訂定例外情況(通過在第 273H 條下訂立附屬法例的方式)。為保障使用者的權益，我們會暫緩第 273A 條的生效日

期，待我們諮詢版權擁有人和使用者的意見而擬訂並通過第一份例外情況的清單後才實施。我們也會對第 273H 條的用詞稍作修訂，以反映原意。

工商及科技局  
工商科  
二零零七年五月

COPYRIGHT (AMENDMENT) BILL 2006

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for Commerce,  
Industry and Technology

COPYRIGHT (AMENDMENT) BILL 2006

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for Commerce,  
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Clause

Amendment Proposed

- 2(2) By deleting paragraph (a) and substituting -
- "(a) section 4(1) (insofar as it relates to the new section 25(1)(c), (d), (e) and (f)), (2) and (4);".
- New By adding immediately after clause 2 -
- "2A. Long title amended**
- The long title to the Copyright Ordinance (Cap. 528) is amended by repealing everything after "An Ordinance to" and substituting "make provisions in respect of copyright and related rights and for connected purposes.
- 2B. Duration of copyright in literary, dramatic, musical or artistic works**
- Section 17(5)(b)(i) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".



3 By deleting "of the Copyright Ordinance (Cap. 528)".

4 By renumbering the clause as clause 4(1).

4 By adding -

"(2) Section 25(3) is amended by repealing "The" and substituting "Subject to subsection (3A), the".

(3) Section 25(3)(b) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(4) Section 25 is amended by adding -

"(3A) The rental of copies of a work referred to in subsection (1)(e) or (f) includes the making available of copies of the work for on-the-spot reference use subject to direct or indirect payment."."

5 By adding -

"(2A) Section 31(1)(c) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列"."

7 By deleting subclause (1) and substituting -

"(1) Section 35(3) is amended by repealing "Except as provided in section 35A," and substituting "Except as otherwise provided in section 35A or 35B,"."

7(2) By deleting "9 months" and substituting "~~[12/13/14/15]~~ months".

7 By adding -

"(2A) Section 35 is amended by adding -

"(6A) Where, in any proceedings, a question arises as to whether a copy of a work that was lawfully made in the country, territory or area where it was made is an infringing copy by virtue only of subsection (3), and it is shown -

- (a) in the case of a copy of a work that is stored in an optical disc, that the optical disc is not marked with a manufacturer's code as required under section 15 of the Prevention of Copyright Piracy Ordinance (Cap. 544);
- (b) that a label or mark on the copy, the article in which the copy is embodied or the packaging or container in which the copy is packaged or contained indicates that the copy was made in a country, territory or area outside Hong Kong; or
- (c) that a label or mark on the copy,

the article in which the copy is embodied or the packaging or container in which the copy is packaged or contained indicates that distribution, sale or supply of the copy is prohibited in Hong Kong or restricted to countries, territories or areas outside Hong Kong, then, unless there is evidence to the contrary, the copy shall be presumed to have been imported into Hong Kong.

(6B) In subsection (6A)(a) -

"manufacturer's code" (製造者代碼) has the meaning assigned to it by section 2(1) of the Prevention of Copyright Piracy Ordinance (Cap. 544);

"marked" (標上) has the meaning assigned to it by section 15(3) of the Prevention of Copyright Piracy Ordinance (Cap. 544);

"optical disc" (光碟) has the meaning assigned to it by section 2(1) of the Prevention of Copyright Piracy Ordinance (Cap. 544).".".

8 By deleting the proposed section 35B(1) and substituting -

"(1) A copy of a work to which this subsection

applies is not -

(a) in relation to the person who imports it into Hong Kong, an infringing copy for the purposes of section 35(3) if -

(i) it was lawfully made in the country, territory or area where it was made; and

(ii) it is not imported with a view to its being dealt in by any person for the purpose of or in the course of any trade or business; or

(b) in relation to the person who possesses it, an infringing copy for the purposes of section 35(3) if -

(i) it was lawfully made in the country, territory or area where it was made; and

(ii) it is not possessed with a view to its being dealt in by any person for the purpose of or in the course of any trade or business.".

8 By deleting the proposed section 35B(5) and substituting -

"(5) Where a copy of a work is not an infringing

copy by virtue of subsection (1) but is subsequently dealt in for the purpose of or in the course of any trade or business -

- (a) if that dealing takes place within the period of ~~{12/13/14/15}~~ months referred to in section 35(4)(b), it is, for the purposes of sections 118 to 133 (criminal provisions), to be treated, in relation to that dealing and the person who deals in it, as an infringing copy; and
- (b) irrespective of the time at which that dealing takes place, it is, for the purposes of any provision of this Ordinance except sections 118 to 133, to be treated, in relation to that dealing and the person who deals in it, as an infringing copy."

11 In the proposed section 40B(1), by adding "by or on behalf of the person" before "for his personal use".

11 In the proposed section 40B(3), by deleting "for the person" and substituting "by or on behalf of the person".

11 In the proposed section 40B(4), by deleting "for a person" and substituting "on behalf of a person".

11 In the proposed section 40C(5), by deleting "name and  
address" and substituting "identity and contact details".

11 In the proposed section 40D(5), by deleting "name and  
address" and substituting "identity and contact details".

12 In the proposed section 41A(1), by deleting "by a teacher or  
pupil" and substituting "by or on behalf of a teacher or by a  
pupil".

12 In the proposed section 41A, by adding -

"(4A) 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

- (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).

(4B) 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).".

13 By deleting subclause (1) and substituting -

"(1) Section 43(1) is amended by repealing "an



audience consisting of teachers and pupils at an educational establishment and other persons" and substituting "an audience consisting wholly or mainly of teachers and pupils at an educational establishment, parents or guardians of pupils at the establishment, and other persons".".

13 By deleting subclause (3) and substituting -  
"(3) Section 43(3) is repealed."

14 By deleting the clause.

15 By deleting subclause (3).

16 In the English text, by deleting the heading and substituting "**Sections added**".

16 In the English text, by deleting "is added" and substituting "are added".

16 In the proposed section 54A(1), by deleting "the Legislative Council,".

16 By adding after the proposed section 54A -

**"54B. Legislative council**

(1) Copyright is not infringed by -

(a) anything done for the purposes of the proceedings of the Legislative Council;

or

(b) anything done by or on behalf of -

(i) the members of the Legislative Council; or

(ii) The Legislative Council Commission,

for the purposes of the exercise and discharge by the Legislative Council of its powers and functions.

(2) Copyright is not infringed by anything done for the purposes of reporting the proceedings of the Legislative Council; but this is not to be construed as authorizing the copying of a work which is itself a published report of the proceedings."

New By adding -

**"16A. Legislative Council and judicial proceedings**

(1) Section 54 is amended by repealing the heading and substituting "**Judicial proceedings**".

(2) Section 54(1) is amended by repealing "the proceedings of the Legislative Council or".

(3) Section 54(2) is amended, in the Chinese text,

by repealing "立法會程序或".

**16B. Use of typeface in ordinary course  
of printing**

Section 62(3) is amended, in the Chinese text, by  
repealing "展覽" and substituting "陳列".

17 By renumbering the clause as clause 17(1).

17 By adding -

"(2) Section 72(2) is amended, in the Chinese text,  
by repealing "展覽" and substituting "陳列".

18 In the proposed section 81A(1), by adding "primarily" after  
"inside a vehicle".

18 By deleting the proposed section 81A(2) and substituting -

"(2) In subsection (1), "vehicle" (車輛) means any  
vehicle constructed or adapted for use on roads."

New By adding -

**"18A. Right to be identified as author  
or director**

(1) Section 89(1) is amended, in the Chinese  
text, by repealing "體現" and substituting "宣示".

(2) Section 89(4)(a) is amended, in the Chinese

text, by repealing "展覽" and substituting "陳列".

(3) Section 89(7)(c) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(4) Section 89(8) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

**18B. Requirement that right be asserted**

(1) Section 90 is amended, in the heading, in the Chinese text, by repealing "體現" and substituting "宣示".

(2) Section 90(1) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(3) Section 90(2) is amended, in the Chinese text, by repealing "體現" where it twice appears and substituting "宣示".

(4) Section 90(2)(a) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(5) Section 90(3) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(6) Section 90(3) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(7) Section 90(3)(b) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(8) Section 90(3)(b) is amended, in the Chinese

text, by repealing "體現" and substituting "宣示".

(9) Section 90(4) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(10) Section 90(4)(a) is amended, in the Chinese text, by repealing "體現" where it twice appears and substituting "宣示".

(11) Section 90(4)(b) is amended, in the Chinese text, by repealing "體現" where it twice appears and substituting "宣示".

(12) Section 90(4)(c) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(13) Section 90(4)(d) is amended, in the Chinese text, by repealing "體現" where it twice appears and substituting "宣示".

(14) Section 90(5) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

**18C. Exceptions to right**

(1) Section 91(4) is amended by adding -

"(ca) section 54B (Legislative Council);".

(2) Section 91(4)(d) is amended by repealing "Legislative Council and".

**18D. Right to object to derogatory treatment of work**

Section 92(4)(a) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

19 By adding -

"(2A) Section 95(1)(c) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

20 By adding before subclause (1) -

"(1A) Section 96(2)(b) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

20 By adding -

"(3) Section 96(7) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

New By adding

**"20A. Application of provisions to joint works**

(1) Section 99(1) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(2) Section 99(2) is amended, in the Chinese text, by repealing "達成" and substituting "體現".

**20B. Transmission of moral rights on death**

(1) Section 106(3)(a) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(2) Section 106(3)(b) is amended, in the Chinese text, by repealing "達成" and substituting "體現".

22(1) In the proposed section 118(1)(f), in the ~~Chinese text~~ heading, by deleting ~~"目的是"~~ "Criminal liability for" and substituting ~~"以期"~~ "Offences in relation to".

22(1) In the proposed section 118(1)(f), in the Chinese text, by deleting "目的是" and substituting "以期".

22(2) In the proposed section 118(1B)(a), in the Chinese text, by deleting ~~"以令"~~ "以令" and substituting ~~"以期令"~~ "以期令".

22(3) In the proposed section 118(2A), ~~in the Chinese text~~, by deleting ~~"以令"~~ "Without prejudice to subsection (1), a" and substituting ~~"以期令"~~ "A".

22(3) In the proposed section 118(2A), in the Chinese text, by deleting "以令" and substituting "以期令".

22(3) By deleting the proposed section 118(2D)(a) and (b) and substituting -

"(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."

22(3) By adding -

"(2DA) 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.

(2DB) 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 (2DA)) 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."

22(3) By deleting the proposed section 118(2E)(a) and substituting -

"(a) the person who possesses an infringing copy does so for the purpose of giving legal advice 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;
- (aa) 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 giving legal advice in relation to the infringing copy;".

22(4) In the proposed section 118(2F), by deleting "he proves" and substituting "there is evidence showing".

22(4) By deleting the proposed section 118(2G) and (2H) and substituting -

"(2G) A defendant charged with an offence under subsection (2A) by virtue of subsection (2F) 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.

(2H) For the purposes of subsection (2G)(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.".

22 By adding -

"(8A) Section 118(6) is amended by repealing "not being excluded under section 35(4)" and substituting "not being excluded under section 35(4) and which was lawfully made in the country, territory or area where it was made".".

24 In the proposed section 119B, in the heading, by deleting "of making for distribution or distributing" and substituting "in relation to making for distribution or distributing on a regular or frequent basis".

24 By deleting the proposed section 119B(1) and substituting -

"(1) ~~Without prejudice to section 118(1), a~~A person commits an offence if he does any of the following acts on a regular or frequent basis for the purpose of or in the course of any trade or business -

(a) without the licence of the copyright owner of a copyright work described in subsection (2), makes an infringing copy of the work for distribution, resulting in a financial loss to the copyright owner; or

(b) without the licence of the copyright owner of a copyright work described in subsection (2), distributes an infringing copy of the work, resulting in a financial loss to the copyright owner."

24 In the proposed section 119B(2), by deleting "Subsection (1) applies to" and substituting "The copyright work referred to in subsection (1)(a) and (b) is".



organized by, a library or  
archive referred to in  
paragraph (a); or

(ii) for loan to other libraries or  
archives for the purpose of  
exhibition or research.

(5B) The Secretary for Commerce, Industry and  
Technology may, having regard to the advice of the  
Director of Leisure and Cultural Services -

(a) by notice published in the Gazette  
designate for the purposes of subsection  
(5A)(a) any library or archive that is  
exempt from tax under section 88 of the  
Inland Revenue Ordinance (Cap. 112); and

(b) by regulations prescribe the conditions  
that a library or archive designated  
under paragraph (a) must comply in order  
to be eligible for the exception under  
subsections (5A) and (5E).

(5C) In subsection (5A), "special collection"  
( ) -

(a) in the case of a library or archive owned  
by the Government, means a collection  
consisting primarily of works or  
articles, or copies of works or articles,  
donated or given by the public that are,

in the opinion of the Director of Leisure and Cultural Services, of cultural, historical or heritage importance or value;

(b) in the case of a library or archive designated under subsection (5B)(a), means a collection consisting primarily of works or articles, or copies of works or articles, donated or given by the public that are, in the opinion of the head or controlling body (by whatever named called) of the library or archive, of cultural, historical or heritage importance or value.

(5D) For the purposes of the exception under subsection (5A), an archive owned by the Government includes a museum owned by the Government.

(5E) Subsection (1) does not apply to the making for distribution, or distribution, by a library or archive referred to in subsection (5A)(a), of a single copy of any item forming the special collection, for the purpose of preserving or replacing the item against loss, deterioration or damage, but the copy may only be distributed for the use referred to in subsection (5A)(b)."



24 In the proposed section 119B(6), by deleting "he proves" and substituting "there is evidence showing".

24 By deleting the proposed section 119B(7) and (8) and substituting -

"(7) A defendant charged with an offence under subsection (1) by virtue of subsection (6) 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.

(8) For the purposes of subsection (7)(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 appropriate licences, in accordance with the needs of the body corporate or

partnership, to make or distribute, or to make and distribute, copies of the copyright work to which the proceedings relate for the use of the body corporate or partnership;

(ii) 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;

(iii) the body corporate or partnership concerned has incurred expenditure for the acquisition of appropriate licences, in accordance with the needs of the body corporate or partnership, to make or

distribute, or to make and  
distribute, copies of the  
copyright work to which the  
proceedings relate for the use  
of the body corporate or  
partnership; or

- (iv) 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 making  
and distribution of infringing  
copies of copyright works by  
the body corporate or

partnership;

- (ii) whether the defendant has taken action to prevent the making or distribution of infringing copies of copyright works by the body corporate or partnership."

24 By deleting the proposed section 119B(9)(b) and (c) and substituting -

- "(b) he has made reasonable efforts but failed to obtain commercially available copies of the copyright work in question and the copyright owner in question has refused to grant him a licence on reasonable commercial terms;
- (c) he did not know and had no reason to believe that the copies made or distributed are infringing copies; or
- (d) he cannot, after making reasonable enquiries, ascertain the identity and contact details of the copyright owner in question."

24 By deleting the proposed section 119B(14) and substituting -

"(14) For the purposes of subsection (3)(a), the Secretary for Commerce, Industry and Technology may, in relation to one or more than one copyright work referred

to in subsection (1), make regulations to prescribe that subsection (1) does not apply in circumstances where the making or distribution of the infringing copies of the copyright work or works does not exceed the extent specified in the regulations."

24

In the proposed section 119B, by adding -

"(15) The Secretary for Commerce, Industry and Technology may, in the regulations made under subsection (14), specify the extent referred to in that subsection by reference to -

(a) the number of infringing copies made or distributed;

(b) the value of those infringing copies;  
and

(c) any other factors that he may consider relevant,

and provide for a method or methods for determining the number of those infringing copies, and a method or methods for determining the value of those infringing copies, having regard to the retail value of the related books, magazines, periodicals or newspaper, and any other factors that he may consider relevant.

(16) For the purposes of subsection (3)(b), the Secretary for Commerce, Industry and Technology may, in relation to one or more than one copyright work referred

to in subsection (1), make regulations to prescribe that subsection (1) does not apply in circumstances where the infringing copies of the copyright work or works are made or distributed in the manner specified in the regulations, after having regard to -

- (a) the availability of any licensing scheme that covers the making or distribution of copies of the copyright work or works in the specified manner; and
- (b) any other factors that he may consider relevant."

27 By deleting subclause (1) and substituting -

"(1) Section 121(1) is amended by repealing "An affidavit which purports to have been made by or on behalf of the owner of a copyright work" and substituting "For the purpose of facilitating the proof of subsistence and ownership of copyright, and without prejudice to the operation of sections 11 to 16 (authorship and ownership of copyright) and sections 17 to 21 (duration of copyright), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work".".

27 By adding -

"(2A) Section 121(1)(c) is amended by repealing

"owner of the work" and substituting "copyright owner".".

27 By deleting subclause (3) and substituting -

"(3) Section 121(2) is amended by repealing "Without prejudice to subsection (1), an affidavit which purports to have been made by or on behalf of the owner of a copyright work" and substituting "For the purpose of facilitating the proof of subsistence and ownership of copyright, and without prejudice to subsection (1) and the operation of sections 11 to 16 (authorship and ownership of copyright) and sections 17 to 21 (duration of copyright), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work".".

27 By adding -

"(3A) Section 121(2)(a)(iii) is amended by repealing "owner of the work" and substituting "copyright owner".".

27(4) By adding before the proposed section 121(2A) -

"(2AA) For the purposes of facilitating the establishment of the matter referred to in section 35(3)(b), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright

work and which -

- (a) states the name of the copyright owner;
- (b) states that a copy of the work exhibited to the affidavit is a true copy of the work;

(c) states -

- (i) that the copy of the work exhibited to the affidavit was made in a place outside Hong Kong by the copyright owner; or
- (ii) that the copy of the work exhibited to the affidavit was made in a place outside Hong Kong by a person who has the licence of the copyright owner to make copies of the work in that place, but does not have the licence of the copyright owner to make copies of the work in Hong Kong; and

(d) states the name and address of the person (if any) referred to in paragraph

(c)(ii),

shall, subject to the conditions contained in subsection (4), be admitted without further proof in any proceedings under this Ordinance."



27(4) By deleting the proposed section 121(2A) and (2B) and substituting -

"(2A) For the purposes of any proceedings instituted under section 118(1), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which -

(a) states the name of the copyright owner;  
and

(b) states that the person named in the affidavit does not have the licence of the copyright owner to do an act referred to in section 118(1)(a), (b), (c), (d), (e), (f) or (g) in respect of the work, shall, subject to the conditions contained in subsection (4), be admitted without further proof in those proceedings.

(2B) For the purposes of any proceedings instituted under section 118(2A), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which -

(a) states the name of the copyright owner;  
and

(b) states that the person named in the affidavit does not have the licence of the copyright owner to do an act referred

to in section 118(2A) in respect of the  
work,

shall, subject to the conditions contained in subsection  
(4), be admitted without further proof in those  
proceedings."

27(5) By deleting the proposed section 121(2C) and substituting -

"(2C) For the purposes of any proceedings  
instituted under section 119B(1), an affidavit which  
purports to have been made by or on behalf of the  
copyright owner of a copyright work and which -

(a) states the name of the copyright owner;  
and

(b) states that the person named in the  
affidavit does not have the licence of  
the copyright owner to do an act referred  
to in section 119B(1) in respect of the  
work,

shall, subject to the conditions contained in subsection  
(4), be admitted without further proof in those  
proceedings."

27(6) By adding "(2AA)," after "(2),".

27(7) By adding "(2AA)," after "(2),".

27(8) By adding "(2AA)," after "(2),".

27 By adding -

"(8A) Section 121(8)(b) is repealed and the following substituted -

"(b) the court may of its own motion or, if the defendant who has served a notice under subsection (5) in relation to an affidavit satisfies the court -

(i) that the ownership or subsistence of the copyright in a work is, insofar as that matter is stated in the affidavit, genuinely in issue;

(ii) that whether a person has the licence of the copyright owner of a copyright work to do a particular act is, insofar as that matter is stated in the affidavit, genuinely in issue; or

(iii) where the affidavit is made under subsection (2AA), that any matter stated in the affidavit, other than those referred to in subparagraphs (i) and (ii), is genuinely in issue,

either before or during the hearing, require the deponent to the affidavit to attend before

the court and give evidence."."

27(9) By adding "(2AA)," after "(2),".

31 By deleting the clause and substituting -

**"31. Licensing schemes to which sections  
155 to 160 apply**

Section 154(b) is amended by repealing "a computer program or sound recording" and substituting "a work referred to in section 25(1)(a), (b), (c), (d), (e) or (f)".".

32 By deleting the clause and substituting -

**"32. Licences to which sections  
162 to 166 apply**

Section 161(b) is amended by repealing "a computer program or sound recording" and substituting "a work referred to in section 25(1)(a), (b), (c), (d), (e) or (f)".".

34 By renumbering the clause as clause 34(2).

34 By adding -

"(1) Section 187 is amended, in the heading, by repealing "**parallel import**" and substituting "**parallel-imported**" copies of works".".

New By adding -

**"34A. Folklore, etc.: anonymous unpublished works**

Section 189 is amended, in the heading, in the Chinese text, by repealing "民間傳說" and substituting "民間文學藝術".

**34B. Meaning of "publication" and "commercial publication"**

Section 196(4)(b)(i) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

**34C. Requirement of signature: application in relation to body corporate**

(1) Section 197(1) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(2) Section 197(1) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(3) Section 197(2) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

35(1) By deleting the proposed definition of "business" and substituting -

"business" (業務) includes -

(a) a trade or profession; and

(b) business conducted otherwise than for

profit;".

35(3) In the proposed definition of "specified course of study", in paragraph (a), by deleting "the Curriculum Development Council" and substituting "a body or authority specified in Schedule 1A".

35 By adding -

"(5) Section 198(3) is repealed and the following substituted -

"(3) In this Part, "lawfully made" (合法地製作), in relation to a copy of a work made in a country, territory or area -

(a) means that the copy was made by -

(i) a person who is entitled to the copyright in the work in the country, territory or area, as the case may be; or

(ii) a person who is authorized by the person referred to in subparagraph (i); but

(b) 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) Section 198 is amended by adding -

"(4) The Secretary for Commerce, Industry and Technology may, by notice published in the Gazette, amend Schedule 1A.".

37 By deleting subclause (2) and substituting -

"(2) Section 200(2) is amended, in the definition of "performance", by adding -

"(ca) a performance of an artistic work;

(cb) an expression of folklore; or"."

44 By adding -

"(3) Section 229(8) is repealed and the following substituted -

"(8) In subsection (5)(a), "lawfully made" (合法地製作), in relation to a fixation of a performance made in a country, territory or area -

(a) means that the fixation was made

by -

(i) the performer;

(ii) a person having fixation rights in relation to the performance in the country, territory or

area, as the case may be;

or

- (iii) a person who is authorized by the performer or the person referred to in subparagraph (ii); but

- (b) does not include a fixation that was made in a country, territory or area where there is no law protecting rights in performances in the performance or where the rights in performances in the performance has expired."."

45 By deleting the proposed section 229A(1) and substituting -

"(1) A fixation of a performance to which this subsection applies is not -

- (a) in relation to the person who imports it into Hong Kong, an infringing fixation for the purposes of section 229(4) if -

- (i) it was lawfully made in the country, territory or area where it was made; and

- (ii) it is not imported with a view to its being dealt in



by any person for the purpose of or in the course of any trade or business; or

(b) in relation to the person who possesses it, an infringing fixation for the purposes of section 229(4) if -

(i) it was lawfully made in the country, territory or area where it was made; and

(ii) it is not possessed with a view to its being dealt in by any person for the purpose of or in the course of any trade or business.".

45 By deleting the proposed section 229A(5) and (6) and substituting -

"(5) Where a fixation of a performance which is not an infringing fixation by virtue of subsection (1) is subsequently dealt in for the purpose of or in the course of any trade or business, it is to be treated, in relation to that dealing and the person who deals in it, as an infringing fixation.

(6) In this section, "lawfully made" (合法地製作), in relation to a fixation of a performance made in a country, territory or area -

(a) means that the fixation was made by -

- (i) the performer;
- (ii) a person having fixation rights in relation to the performance in the country, territory or area, as the case may be; or
- (iii) a person who is authorized by the performer or the person referred to in subparagraph (ii); but

(b) does not include a fixation that was made in a country, territory or area where there is no law protecting rights in performances in the performance or where the rights in performances in the performance has expired."

New By adding -

**"46A. Expressions having same meaning as in copyright provisions**

(1) Section 238(1) is amended by adding -

"artistic work;".

(2) Section 238(1) is amended, in the Chinese text,

by repealing -

"獲授權人員；及  
關長。"

and substituting -

"獲授權人員；  
關長；及".

47 By renumbering the clause as clause 47(2).

47 By adding -

"(1) Section 239 is amended, in the Table, by adding

-

"artistic work section 238(1) (and  
section 5)".

48 In the proposed section 242A(1), by deleting "by a teacher or pupil" and substituting "by or on behalf of a teacher or by a pupil".

48 In the proposed section 242A, by adding -

"(3A) 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

(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).".

49 By deleting subclause (1) and substituting -

"(1) Section 244(1) is amended by repealing "an audience consisting of teachers and pupils at the establishment and other persons" and substituting "an audience consisting wholly or mainly of teachers and pupils at the establishment, parents or guardians of pupils at the establishment, and other persons".".

49 By deleting subclause (2).

50 By deleting the clause.

51 In the English text, by deleting the heading and substituting "**Sections added**".

51 In the English text, by deleting "is added" and substituting "are added".

51 In the proposed section 246A(1), by deleting "the Legislative Council,".

51 By adding after the proposed section 246A -

**"246B. Legislative Council**

(1) The rights conferred by this Part are not

infringed by -

(a) anything done for the purposes of the proceedings of the Legislative Council or for the purposes of reporting such proceedings; or

(b) anything done by or on behalf of -

(i) the members of the Legislative Council; or

(ii) The Legislative Council Commission,

for the purposes of the exercise and discharge by the Legislative Council of its powers and functions.

(2) Expressions used in this section have the same meaning as in section 54B."

New By adding -

**"51A. Legislative Council and judicial proceedings**

(1) Section 247 is amended by repealing the heading and substituting "**Judicial proceedings**".

(2) Section 247(1) is amended by repealing "the proceedings of the Legislative Council or".

52 In the proposed section 258A(1), by adding "primarily" after "inside a vehicle".

53 In the proposed section 272D(4), by adding -  
"(ca) section 246B (Legislative Council);".

53 In the proposed section 272D(4)(d), by deleting "Legislative  
Council and".

53 By deleting the proposed section 272E(2)(a) and  
substituting -

"(a) in relation to a live aural performance, subjects  
the performance, or causes the performance to be  
subjected, to derogatory treatment when the  
performance is caused to be heard in public,  
broadcasted, included in a cable programme service  
or made available to the public live;".

55 By deleting the proposed section 273(1) and substituting -

"(1) In sections 273A to 273H, "circumvent" (規避),  
in relation to an effective technological measure which  
has been applied in relation to a copyright work -

(a) where the use of the work is controlled  
through the measure by the copyright  
owner of the work, means to circumvent  
the measure without the authority of the  
copyright owner;

(b) where the use of the work is controlled



through the measure by an exclusive licensee of the copyright owner of the work, means to circumvent the measure without the authority of the exclusive licensee; or

(c) where the use of the work is controlled through the measure by any other person who, with the licence of the copyright owner of the copyright work -

(i) issues to the public copies of the work;

(ii) makes available to the public copies of the work; or

(iii) broadcasts the work, or includes the work in a cable programme service,

means to circumvent the measure without the authority of that other person."

55 In the proposed section 273(2), by deleting "the copyright owner of the work" and substituting "any person referred to in subsection (1)(a), (b) or (c)".

56 In the proposed section 273A(1), by deleting everything after "to believe" and substituting ", that he is doing an act which circumvents the measure."

56 ~~In the proposed section 273A, by adding~~

~~— "(1A) In an action against the person referred to in subsection (1), it is a defence for that person to prove that the act which circumvents an effective technological measure in relation to a copyright work is done for the sole purpose of the doing (whether by that person or another person) of another act in relation to that work or another copyright work, and that other act does not infringe the copyright in that work or that other copyright work."~~

56 In the proposed section 273A(2)(c), by adding ", with the licence of the copyright owner of the work" after "who".

56 In the proposed section 273B(1), by deleting everything after paragraph (a) and substituting -

- "(b) exhibits in public, possesses or distributes any relevant device for the purpose of or in the course of any trade or business;
- (c) distributes (otherwise than for the purpose of or in the course of any trade or business) any relevant device to such an extent as to affect prejudicially the owner of the copyright; or
- (d) provides any relevant service."

56 In the proposed section 273B(3)(c), by adding ", with the licence of the copyright owner of the work" after "who".

56 In the proposed section 273C~~(1)(f)~~, in the Chinese ~~text~~ heading, by deleting ~~"目的是"~~ "Criminal liability for" and substituting ~~"以期"~~ "Offences in relation to".

56 In the proposed section 273C(1)(f), in the Chinese text, by deleting "目的是" and substituting "以期".

56 In the proposed section 273C(2), by deleting the definition of "circumvention device" and substituting -

"circumvention device" (規避器件) means any device,  
product, component or means -

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures;".

56 In the proposed section 273C(2), in the definition of "relevant device", by deleting paragraph (a) and substituting

-

"(a) subject to paragraph (b), means any device, product, component or means -

- (i) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;
- (ii) which has only a limited commercially significant purpose or use other than to circumvent the measure; or
- (iii) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of the measure;".

56 In the proposed section 273C(2), by deleting the definition of "relevant service" and substituting -

"relevant service" (有關服務), in relation to the effective technological measure referred to in that subsection, means any service -

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;
- (b) which has only a limited commercially

significant purpose or use other than to circumvent the measure; or

- (c) which is performed for the purpose of enabling or facilitating the circumvention of the measure."

56 By deleting the proposed section 273D(1)(c) and (d) and substituting -

- "(c) the act is done for the sole purpose of achieving interoperability of an independently created computer program with the computer program or another computer program;
- (d) the copy of computer program in relation to which the act is done is not an infringing copy; and
- (e) the act of identification or analysis referred to in paragraph (b) does not constitute an infringement of copyright."

56 By deleting the proposed section 273D(3)(a) and (b) and substituting -

- "(a) where the research is conducted by or on behalf of a specified educational establishment, or for the purposes of giving or receiving instruction in a specified course of study in the field of cryptography provided by a specified educational establishment -

- (i) the research does not constitute an infringement of copyright;
  - (ii) it is necessary for the act to be done in order to conduct the research; and
  - (iii) the information derived from the research is not disseminated to the public except in a specified manner; or
- (b) in any other case -
- (i) the research does not constitute an infringement of copyright;
  - (ii) it is necessary for the act to be done in order to conduct the research; and
  - (iii) the act or the dissemination to the public of information derived from the research does not affect prejudicially the copyright owner."

56 In the proposed section 273D(4), by deleting the definition of "specified educational establishment" and substituting -  
"specified educational establishment" (指明教育機構) means

-

- (a) an educational establishment specified in section 4, 6, 7, 8, 9, 12, 14 or 15 of Schedule 1; or
- (b) Hong Kong Shue Yan University registered under the Post Secondary Colleges

Ordinance (Cap. 320);".

56 In the proposed section 273D(4), in the Chinese text, in the definition of "指明方式", by deleting paragraph (b) and substituting -

"(b) 包括在期刊或會議中發布該等資料，而該等期刊或會議的目標讀者或聽眾，屬主要是從事密碼學範疇或有關科技範疇的工作的人或正在修讀密碼學範疇或有關科技範疇的課程的人；".

56 In the proposed section 273D(7), by deleting everything after "technological measure" and before paragraph (d) and substituting -

"if -

(a) the measure has been applied in relation to a copyright work of any description issued to the public in a physical article;

(b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis;

(c) the act is done for the sole purpose of

overcoming the regional coding,  
technology, device, component or means,  
as the case may be, contained in the  
measure so as to gain access to the work;  
and".

56 In the proposed section 273D, by adding -

"(7A) Section 273A does not apply to an act which  
circumvents an effective technological measure if -

(a) the measure has been applied in relation  
to a copy of any description mentioned in  
section 50(1), 51(1) or 53;

(b) the act of circumvention is done by the  
librarian or archivist of a specified  
library or archive; and

(c) the act is done for the sole purpose of  
carrying out any of the acts permitted  
under sections 50, 51 and 53."

56 In the proposed section 273E, by adding -

"(10A) Section 273B does not apply to a relevant  
device or relevant service if -

(a) an effective technological measure has  
been applied in relation to a copyright  
work issued to the public in a physical  
article;



(b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis; and

(c) the sole purpose of the relevant device or relevant service, as the case may be, is to overcome the regional coding, technology, device, component or means, as the case may be, contained in the measure."

56 In the proposed section 273F(1), by deleting the definition of "relevant device" and substituting -

"relevant device" (有關器件) means any device, product, component or means -

(a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;

(b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or

(c) which is primarily designed, produced or

adapted for the purpose of enabling or facilitating the circumvention of effective technological measures;".

56 In the proposed section 273F(1), by deleting the definition of "relevant service" and substituting -

"relevant service" (有關服務) means any service -

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is performed for the purpose of enabling or facilitating the circumvention of effective technological measures."

56 In the proposed section 273F(2)(b)(iii), in the Chinese text, by deleting ~~“目的是”~~ “目的是” and substituting ~~“以期”~~ “以期”.

~~56 In the proposed section 273F(4)(b)(iii), in the Chinese text, by deleting “目的是” and substituting “以期”.~~

56 In the proposed section 273F(~~64~~)(b)(iii), in the Chinese text, by deleting "~~目的是~~""目的是" and substituting "~~以期~~""以期".

56 In the proposed section 273F(6)(b)(iii), in the Chinese text, by deleting "目的是" and substituting "以期".

56 By deleting the proposed section 273F(11) and substituting -

"(11) Section 273C does not apply to a relevant device or relevant service if -

- (a) an effective technological measure has been applied in relation to a copyright work issued to the public in a physical article;
- (b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis; and
- (c) the sole purpose of the relevant device or relevant service, as the case may be, is to overcome the regional coding, technology, device, component or means,

as the case may be, contained in the  
measure."

56 By deleting the proposed section 273F(12).

56 In the proposed section 273H(b), by adding ", or is likely to  
be," after "has been".

57 By deleting the proposed section 274(2B) and substituting -

"(2B) If the copyright owner of a work to which  
rights management information is attached, or the  
copyright owner's exclusive licensee, is not the person  
who provides the rights management information, the  
copyright owner or the exclusive licensee, as the case  
may be, has the same rights and remedies as the person  
who provides the rights management information has  
against the person referred to in subsection (2)."

New By adding -

**"60A. Schedule 1A added**

The following is added -

"SCHEDULE 1A [s. 198]

BODIES AND AUTHORITIES SPECIFIED FOR  
PURPOSES OF DEFINITION OF "SPECIFIED  
COURSE OF STUDY"

1. Curriculum Development Council the members of

which are appointed by the Chief  
Executive."."

61 In the proposed Schedule 7, in section 2, by deleting "14,  
15, 16, 18, 48, 49, 50," and substituting "15, 16, 18, 48,  
49,".

61 In the proposed Schedule 7, in section 16(3), by deleting  
"affects any right of action" and substituting "relieves any  
person from liability to civil action".

61 In the proposed Schedule 7, in section 19, in the heading, by  
deleting "**section 118(2E)**" and substituting "**section  
118(2DA), (2DB), (2E)**".

61 In the proposed Schedule 7, in section 19(1), by deleting  
"Section 118(2E)" and substituting "Section 118(2DA), (2DB),  
(2E)".

61 In the proposed Schedule 7, in section 20(3), by deleting  
"affects any right of action" and substituting "relieves any  
person from liability to civil action".