

Proposed Committee Stage Amendments to  
Copyright (Amendment) Bill 2006  
(Clauses 54 to 64 - revised 1/2/2007)

**54. Cross-heading substituted**

The cross-heading before section 273 is repealed and the following substituted -

"**Circumvention of effective technological measures**".

**55. Section substituted**

Section 273 is repealed and the following substituted -

**"273. Interpretation of sections 273  
to 273H**

(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, ~~means to circumvent the measure without the authority of the copyright owner of the copyright work in relation to which the measure has been applied.~~ -

- (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 authority 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.

(2) For the purposes of this section and sections 273A to 273H, where a technological measure has been applied in relation to a copyright work, the measure is referred to as an effective technological measure if the use of the work is controlled by ~~the copyright owner of the work~~ any person referred to in subsection (1)(a), (b) or (c) through -

- (a) an access control or protection process (including the encryption, scrambling and any other transformation of the work) which achieves the intended protection of the work in the normal course of its operation; or
- (b) a copy control mechanism which achieves the

intended protection of the work in the normal course of its operation.

(3) In subsection (2) -

(a) "technological measure" (科技措施) means any technology, device, component or means which is designed, in the normal course of its operation, to protect any description of copyright work;

(b) the reference to protection of a copyright work is to the prevention or restriction of acts which are done without the licence of the copyright owner of the work and are restricted by the copyright in the work;

(c) the reference to use of a copyright work does not extend to any use of the work which is outside the scope of the acts restricted by the copyright in the work."

## 56. Sections added

The following are added immediately after section 273 -

### **"273A. Rights and remedies in respect of circumvention of effective technological measures**

(1) Subject to sections 273D and 273H, this section applies where an effective technological measure has been applied in relation to a copyright work, and a person does any act which circumvents the measure, knowing, or having

reason to believe, -that he is doing an act which circumvents the measure.

~~(a) that he is doing an act which circumvents the measure; and~~

~~(b) that the act will induce, enable, facilitate or conceal an infringement of the copyright in the work.~~

(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.

(2) The following persons have the same rights and remedies against the person referred to in subsection (1) as a copyright owner has in respect of an infringement of copyright -

- (a) the copyright owner of the work;
- (b) an exclusive licensee of the copyright owner of the work; and
- (c) any other person who, with the authority of the copyright owner of the 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.

(3) The rights and remedies conferred by subsection (2) on the copyright owner, the exclusive licensee and the person referred to in subsection (2)(c) are concurrent.

(4) Sections 112(3) and 113(1), (4), (5) and (6) apply, with the necessary modifications, in proceedings in relation to the copyright owner, the exclusive licensee and the person referred to in subsection (2)(c), as they apply in proceedings in relation to a copyright owner and an exclusive licensee with concurrent rights and remedies.

(5) Sections 115, 116 and 117 (presumptions as to certain matters relating to copyright) apply, with the necessary modifications, in proceedings instituted under this section, as they apply in proceedings instituted under Part II (copyright).

**273B. Rights and remedies in respect of devices and services designed to circumvent effective technological measures**

(1) Subject to sections 273E and 273H, this section applies where an effective technological measure has been applied in relation to a copyright work, and a person -

(a) makes, imports, exports, sells or lets for hire, offers or exposes for sale or hire, or

advertises for sale or hire, any relevant device;

(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

(ed) provides any relevant service.7

~~knowing or having reason to believe that the relevant device or the relevant service, as the case may be, will be used to circumvent the measure to induce, enable, facilitate or conceal an infringement of the copyright in the work.~~

(2) In subsection (1) -

"relevant device" (有關器件), in relation to the effective technological measure referred to in that subsection, means any device, product, component or means -

(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 primarily designed, produced or adapted for the purpose of enabling or

facilitating the circumvention of the measure;  
"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.

(3) The following persons have the same rights and  
remedies against the person referred to in subsection (1) as  
a copyright owner has in respect of an infringement of  
copyright -

- (a) the copyright owner of the work;
- (b) an exclusive licensee of the copyright owner  
of the work; and
- (c) any other person who, with the authority of  
the copyright owner of the 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.

(4) The rights and remedies conferred by subsection (3) on the copyright owner, the exclusive licensee and the person referred to in subsection (3)(c) are concurrent.

(5) Sections 112(3) and 113(1), (4), (5) and (6) apply, with the necessary modifications, in proceedings in relation to the copyright owner, the exclusive licensee and the person referred to in subsection (3)(c), as they apply in proceedings in relation to a copyright owner and an exclusive licensee with concurrent rights and remedies.

(6) The copyright owner, the exclusive licensee and the person referred to in subsection (3)(c) have the same rights and remedies under section 109 (order for delivery up) in relation to any device, product, component or means which a person has in his possession, custody or control with the intention that it is to be used to circumvent effective technological measures, as a copyright owner has in relation to an infringing copy.

(7) The rights and remedies conferred by subsection (6) on the copyright owner, the exclusive licensee and the person referred to in subsection (3)(c) are concurrent.

(8) Section 113(7) (order as to exercise of rights by copyright owner where exclusive licensee has concurrent rights) applies, with the necessary modifications, in respect of anything done under section 109 by virtue of subsection



(6), in relation to the copyright owner, the exclusive licensee and the person referred to in subsection (3)(c), as it applies, in respect of anything done under section 109, in relation to a copyright owner and an exclusive licensee with concurrent rights and remedies.

(9) Section 111 (order as to disposal of infringing copy or other article) applies, with the necessary modifications, in relation to the disposal of anything delivered up under section 109 by virtue of subsection (6).

(10) Sections 115, 116 and 117 (presumptions as to certain matters relating to copyright) apply, with the necessary modifications, in proceedings instituted under this section, as they apply in proceedings instituted under Part II (copyright).

**273C. Criminal liability for circumvention  
of effective technological measures**

(1) Subject to sections 273F and 273H, where an effective technological measure has been applied in relation to a copyright work, a person commits an offence if he -

- (a) makes for sale or hire any relevant device;
- (b) imports into Hong Kong for sale or hire any relevant device;
- (c) exports from Hong Kong for sale or hire any relevant device;
- (d) sells, lets for hire, or offers or exposes for sale or hire any relevant device for the

purpose of or in the course of any trade or business;

(e) exhibits in public or distributes any relevant device for the purpose of or in the course of any trade or business which consists of dealing in circumvention devices;

(f) possesses any relevant device with a view to -

(i) its being sold or let for hire by any person for the purpose of or in the course of any trade or business; or

(ii) its being exhibited in public or distributed by any person for the purpose of or in the course of any trade or business which consists of dealing in circumvention devices; or

(g) provides any relevant service for the purpose of or in the course of a circumvention business.

(2) In subsection (1) -

"circumvention business" (規避業務) means a business, conducted for profit, which includes the offering to the public of services which enable or facilitate the circumvention of effective technological measures;

~~"circumvention device" (規避器件) means any device, product, component or means which is primarily designed, produced, or adapted for the purpose of enabling or~~

~~facilitating the circumvention of effective  
technological measures;~~

"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;

"dealing in" (經銷) means selling, letting for hire, or  
distributing for profit or reward;

"relevant device" (有關器件), in relation to the effective  
technological measure referred to in that subsection -

(a) subject to paragraph (b), means any device,  
product, component or means ~~which is primarily  
designed, produced, or adapted for the purpose  
of enabling or facilitating the circumvention  
of the measure;~~

(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;

(b) does not include any unauthorized decoder referred to in section 6, or any decoder referred to in section 7, of the Broadcasting Ordinance (Cap. 562);

"relevant service" (有關服務), in relation to the effective technological measure referred to in that subsection, means any service ~~which is performed for the purpose of enabling or facilitating the circumvention of the measure.~~

(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.

(3) A person who commits an offence under subsection (1) is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 4 years.

(4) It is a defence for the person charged with an offence in respect of an effective technological measure under subsection (1) to prove that he did not know and had no reason to believe that the relevant device or relevant service which is the subject of the offence enabled or facilitated the circumvention of the measure.

**273D. Exceptions to section 273A**

(1) 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 computer program;
- (b) the act is done with respect to the identification or analysis of particular elements of the computer program that are not readily available to the person who does the act;
- (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; ~~and~~
- (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.

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

- (a) the act is done by or under the authority of the owner or operator of a computer, computer system or computer network; and
- (b) the act is done for the sole purpose of testing, investigating or correcting a security flaw or vulnerability of the computer, computer system or computer network, as the case may be.

(3) Section 273A does not apply to an act which circumvents an effective technological measure if the act is done for the sole purpose of research into cryptography and -

- ~~(a) where the research is conducted~~
    - ~~(i) by or on behalf of a specified educational establishment; or~~
    - ~~(ii) 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,~~
- ~~the information derived from the research is~~

~~not disseminated to the public except in a specified manner; or~~

~~(b) in any other case, the act or the dissemination to the public of information derived from the research does not affect prejudicially the copyright owner.~~

(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.

(4) In subsection (3) -

"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);

"specified manner" (指明方式), in relation to the dissemination to the public of information derived from a research into cryptography -

(a) means a manner which is reasonably calculated to advance the state of knowledge or development of cryptography or related technology; and

(b) includes dissemination of the information in a journal or at a conference the target readers or audiences of which are primarily persons engaged in, or pursuing a course of study in, the field of cryptography or related technology.



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

- (a) the measure, or the copyright work in relation to which the measure has been applied, has the capability to collect or disseminate personally identifying information which tracks and records the manner of a person's use of a computer network without providing conspicuous notice of such collection or dissemination to the person;
- (b) the act is done for the sole purpose of identifying or disabling the function of the measure or work, as the case may be, in collecting or disseminating personally identifying information; and
- (c) the act does not affect the ability of any person to gain access to any work.

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

- (a) a person does the act when using a technology, product or device; and
- (b) the sole purpose of the technology, product or device, as the case may be, is to prevent access of minors to harmful materials on the Internet.

(7) 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 copyright work of any description issued to the public in a physical article;
- (b) the measure contains regional coding or ~~otherwise 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 restriction which controls market segmentation~~ 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
- (d) the copy of the work in relation to which the act is done -
  - (i) is not an infringing copy; or
  - (ii) if it is an infringing copy, is an infringing copy by virtue only of section 35(3) and was lawfully made in the country, territory or area where it was made.

(8) Section 273A does not apply to an act which circumvents an effective technological measure if the act is

done by, or on behalf of, law enforcement agencies for the purpose of the prevention, detection or investigation of an offence, or the conduct of a prosecution.

**273E. Exceptions to section 273B**

(1) In this section -

"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;

"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.

(2) Section 273B does not apply if -

(a) a person works collaboratively with another person to identify or analyse particular elements of a computer program for the sole purpose of achieving interoperability of an independently created computer program with the computer program or another computer program; and

(b) that person, for the purpose of enabling that other person to do any relevant act -

(i) makes or imports any relevant device for that other person;

(ii) sells, lets for hire, exports or distributes any relevant device to that other person;

(iii) possesses any relevant device; or

(iv) provides any relevant service to that other person.

(3) In subsection (2), "relevant act" (有關作為) means -

(a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section

273D(1); or

(b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).

(4) Section 273B does not apply if -

(a) a person works collaboratively with another person to test, investigate or correct a security flaw or vulnerability of a computer, computer system or computer network under the authority of the owner or operator of the computer, computer system or computer network, as the case may be; and

(b) that person, for the purpose of enabling that other person to do any relevant act -

(i) makes or imports any relevant device for that other person;

(ii) sells, lets for hire, exports or distributes any relevant device to that other person;

(iii) possesses any relevant device; or

(iv) provides any relevant service to that other person.

(5) In subsection (4), "relevant act" (有關作為) means -

(a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section

273D(2); or

(b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).

(6) Section 273B does not apply if -

(a) a person works collaboratively with another person to conduct research into cryptography; and

(b) that person, for the purpose of enabling that other person to do any relevant act -

(i) makes or imports any relevant device for that other person;

(ii) sells, lets for hire, exports or distributes any relevant device to that other person;

(iii) possesses any relevant device; or

(iv) provides any relevant service to that other person.

(7) In subsection (6), "relevant act" (有關作為) means -

(a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(3); or

(b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).

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

- (a) an effective technological measure, or a copyright work in relation to which an effective technological measure has been applied, has a function in collecting or disseminating personally identifying information which tracks and records the manner of a person's use of a computer network; and
- (b) the sole purpose of the device or service, as the case may be, is to identify or disable that function of the measure or work, as the case may be.

(9) Section 273B does not apply to a relevant device if -

- (a) the relevant device is incorporated, or is intended to be incorporated, into a technology, product or device; and
- (b) the sole purpose of the technology, product or device, as the case may be, is to prevent access of minors to harmful materials on the Internet.

(10) Section 273B does not apply to a relevant service if the sole purpose of the service is to prevent access of minors to harmful materials on the Internet.

(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.

(11) Section 273B does not apply to an act done by, or on behalf of, law enforcement agencies for the purpose of the prevention, detection or investigation of an offence, or the conduct of a prosecution.

**273F. Exceptions to section 273C**

(1) In this section -  
"relevant device" (有關器件) means any device, product, component or means ~~which is primarily designed, produced, or adapted for the purpose of enabling or~~



~~facilitating the circumvention of effective technological measures; --~~

(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;

"relevant service" (有關服務) means any service ~~which is~~

~~performed for the purpose of enabling or facilitating the circumvention of effective technological measures. --~~

(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.

(2) Section 273C does not apply if -

(a) a person works collaboratively with another person to identify or analyse particular elements of a computer program for the sole purpose of achieving interoperability of an independently created computer program with the computer program or another computer program; and

(b) that person, for the purpose of enabling that other person to do any relevant act -

(i) makes or imports any relevant device for that other person;

(ii) sells, lets for hire, exports or distributes any relevant device to that other person;

(iii) possesses any relevant device with a view to selling, letting for hire or distributing the device to that other person; or

(iv) provides any relevant service to that other person.

(3) In subsection (2), "relevant act" (有關作為) means -

(a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(1); or

(b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).

(4) Section 273C does not apply if -

(a) a person works collaboratively with another person to test, investigate or correct a security flaw or vulnerability of a computer, computer system or computer network under the authority of the owner or operator of the computer, computer system or computer network, as the case may be; and

(b) that person, for the purpose of enabling that other person to do any relevant act -

(i) makes or imports any relevant device for that other person;

(ii) sells, lets for hire, exports or distributes any relevant device to that other person;

(iii) possesses any relevant device with a view to selling, letting for hire or distributing the device to that other person; or

(iv) provides any relevant service to that other person.

(5) In subsection (4), "relevant act" (有關作為) means -

(a) an act which circumvents an effective

technological measure and to which section 273A does not apply by virtue of section 273D(2); or

(b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).

(6) Section 273C does not apply if -

(a) a person works collaboratively with another person to conduct research into cryptography; and

(b) that person, for the purpose of enabling that other person to do any relevant act -

(i) makes or imports any relevant device for that other person;

(ii) sells, lets for hire, exports or distributes any relevant device to that other person;

(iii) possesses any relevant device with a view to selling, letting for hire or distributing the device to that other person; or

(iv) provides any relevant service to that other person.

(7) In subsection (6), "relevant act" (有關作為) means -

(a) an act which circumvents an effective technological measure and to which section

273A does not apply by virtue of section 273D(3); or

- (b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).

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

- (a) an effective technological measure, or a copyright work in relation to which an effective technological measure has been applied, has a function in collecting or disseminating personally identifying information which tracks and records the manner of a person's use of a computer network; and
- (b) the sole purpose of the device or service, as the case may be, is to identify or disable that function of the measure or work, as the case may be.

(9) Section 273C does not apply to a relevant device if -

- (a) the relevant device is incorporated, or is intended to be incorporated, into a technology, product or device; and
- (b) the sole purpose of the technology, product or device, as the case may be, is to prevent

access of minors to harmful materials on the Internet.

(10) Section 273C does not apply to a relevant service if the sole purpose of the service is to prevent access of minors to harmful materials on the Internet.

~~(11) Section 273C does not apply to an effective technological measure—~~

~~(a) which has been applied in relation to a copyright work issued to the public in a physical article; and~~

~~(b) which contains regional coding or otherwise has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation.~~

(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.

(12) ~~Section~~ Subject to subsection (12A), section 273C does not apply to an effective technological measure -

(a) which prohibits the making of ~~a~~ any recording of a broadcast or a cable programme upon its reception; or

(b) which prohibits in all circumstances the subsequent viewing or listening of a recording of a broadcast or cable programme made upon its reception.

(12A) Subsection (12) does not apply if the effective technological measure referred to in that subsection has been applied solely in relation to a broadcast or a cable programme the reception of which takes place in response to requests made by the audience and at a time individually chosen by the audience.

(13) Section 273C does not apply to an act done by, or on behalf of, law enforcement agencies for the purpose of the prevention, detection or investigation of an offence, or the conduct of a prosecution.

**273G. Application of sections 273, 273A, 273B, 273D and 273E to performances**

Sections 273, 273A(1), (2), (3) and (4), 273B(1), (2), (3), (4), (5), (6), (7), (8) and (9), 273D and 273E apply, with the necessary modifications, in relation to -

- (a) an unfixed performance or a fixation of a performance;
- (b) a performer or a person having fixation rights in relation to a performance; and
- (c) the rights conferred by Part III on a performer or a person having fixation rights in relation to a performance.

**273H. Exceptions to sections 273A, 273B, 273C and 273G**

The Secretary for Commerce, Industry and Technology may, by notice published in the Gazette, exclude from the application of any provisions of sections 273A, 273B, 273C and 273G any work or performance, class of works or performances or class of devices, products, components, means or services if he is satisfied -

- (a) that any use of or dealing with the work or performance, class of works or performances or class of devices, products, components, means or services, as the case may be, does not constitute or lead to an infringement of copyright or the rights conferred by Part III (rights in performances); and
- (b) that any such use or dealing has been



adversely impaired or affected as a result of the application of the provisions."

**57. Rights and remedies in respect of unlawful acts to interfere with rights management information**

Section 274 is amended by adding -

"(2A) The person who provides rights management information does not have the rights and remedies against the person referred to in subsection (2) unless the second-mentioned person, when doing an act referred to in subsection (2)(a) or (b), knows or has reason to believe that by doing the act he is inducing, enabling, facilitating or concealing an infringement of copyright or an infringement of rights conferred by Part III (rights in performances).

(2B) The copyright owner or his exclusive licensee, if he is not the person who provides rights management information, also has the same rights and remedies against the person referred to in subsection (2) as he has in respect of an infringement of copyright.

(2C) The rights and remedies conferred by subsection (1) on the person who provides rights management information and the rights and remedies conferred by subsection (2B) on the copyright owner and his exclusive licensee are concurrent.

(2D) Sections 112(3) and 113(1), (4), (5) and (6) apply, with the necessary modifications, in proceedings in relation

to the person who provides rights management information, the copyright owner and the exclusive licensee, as they apply in proceedings in relation to a copyright owner and an exclusive licensee with concurrent rights and remedies.

(2E) Sections 115, 116 and 117 (presumptions as to certain matters relating to copyright) apply, with the necessary modifications, in proceedings instituted under this section, as they apply in proceedings instituted under Part II (copyright).

(2F) This section, except subsection (2E), applies, with the necessary modifications, in relation to -

- (a) a fixation of a performance;
- (b) a performer or a person having fixation rights in relation to a performance; and
- (c) the rights conferred by Part III on a performer or a person having fixation rights in relation to a performance."

#### **58. Transitional provisions and savings**

(1) Section 282 is amended, in the heading, by adding "**in relation to amendments effected by the Copyright (Amendment) Ordinance 2003**" after "**savings**".

(2) Section 282 is amended by adding "by the Copyright (Amendment) Ordinance 2003 (27 of 2003)" after "this Ordinance".

#### **59. Section added**

The following is added -

**"283. Transitional provisions and savings  
in relation to amendments effected  
by the Copyright (Amendment)  
Ordinance 2006**

(1) In this section, "2006 Amendment Ordinance" (《2006年修訂條例》) means the Copyright (Amendment) Ordinance 2006 ( of 2006).

(2) Schedule 7 contains transitional provisions and savings in relation to certain amendments made to this Ordinance by the 2006 Amendment Ordinance.

(3) The Chief Executive in Council may make regulations containing transitional provisions and savings consequent on the enactment of the 2006 Amendment Ordinance.

(4) Without prejudice to the generality of subsection (3), the regulations may in particular provide for -

(a) the application of provisions of this Ordinance as amended by the 2006 Amendment Ordinance; or

(b) the continued application of provisions of this Ordinance as in force immediately before the commencement of any provisions of the 2006 Amendment Ordinance,

in connection with any matter specified in the regulations.

(5) Regulations made under this section may, if they so provide, be deemed to have come into operation on a date earlier than the date on which they are published in the

Gazette but not earlier than the date on which the 2006 Amendment Ordinance is published in the Gazette.

(6) To the extent that any regulations come into operation on a date earlier than the date on which they are published in the Gazette, those regulations shall be construed so as not to -

(a) affect, in a manner prejudicial to any person, the rights of that person existing before the date on which the regulations are published in the Gazette; or

(b) impose liabilities on any person in respect of anything done, or omitted to be done, before that date.

(7) In the event of an inconsistency between any regulations made under this section and the provisions of Schedule 7, Schedule 7 shall prevail to the extent of the inconsistency."

#### **60. Educational establishments**

(1) Schedule 1 is amended, within the square brackets, by repealing "s. 195" and substituting "ss. 40A, 119B, 195 & 273D".

(2) Schedule 1 is amended by repealing section 15 and substituting -

"15. The Open University of Hong Kong established by The Open University of Hong Kong Ordinance (Cap. 1145)."

**61. Schedule 7 added**

The following is added -

"SCHEDULE 7 [s. 283]

TRANSITIONAL PROVISIONS AND SAVINGS  
IN RELATION TO AMENDMENTS EFFECTED  
BY THE COPYRIGHT (AMENDMENT)  
ORDINANCE 2006  
( of 2006)

PART 1

INTRODUCTORY

**1. Interpretation**

(1) In this Schedule -

"2006 Amendment Ordinance" (《2006年修訂條例》) means the

Copyright (Amendment) Ordinance 2006 ( of 2006);

"Suspension Ordinance" (《暫停條例》) means the Copyright

(Suspension of Amendments) Ordinance 2001 (Cap. 568).

(2) Expressions used in this Schedule which are defined for the purposes of Part II (copyright) and Part IIIA (performers' moral rights) of this Ordinance have the same meaning as in those Parts.

PART 2

ACTS PERMITTED IN RELATION TO COPYRIGHT  
WORKS AND PERFORMANCES

**2. Savings for certain existing**

**agreements**

Nothing in section 11, 12, 13, 14, 15, 16, 18, 48, 49, 50, 51 or 52 of the 2006 Amendment Ordinance affects a licence or agreement made before the commencement date of that section.

PART 3

RENTAL RIGHT OF COPYRIGHT OWNERS AND PERFORMERS

**Division 1 - Transitional provisions and savings  
in relation to amendments effected by section 4  
of the 2006 Amendment Ordinance (insofar as  
it relates to section 25(1)(c), (e)  
and (f) of this Ordinance)**

**3. General provisions**

(1) Subject to sections 4 and 5 of this Schedule, section 4 of the 2006 Amendment Ordinance (insofar as it relates to section 25(1)(c), (e) and (f) of this Ordinance) applies to copyright works made before, on or after the commencement date of that section.

(2) No act done before the commencement date of section 4 of the 2006 Amendment Ordinance (insofar as it relates to section 25(1)(c), (e) and (f) of this Ordinance) shall be regarded as an infringement of any new right arising by virtue of that section.

**4. New rental right: effect of pre-commencement authorization of copying**

Where -

- (a) the owner or prospective owner of copyright in any work has, before the commencement date of section 4 of the 2006 Amendment Ordinance (insofar as it relates to section 25(1)(c), (e) and (f) of this Ordinance), authorized a person to make a copy of the work; and
- (b) a new right arises by virtue of that section in relation to that copy,

the new right shall vest on the commencement date of that section in the person so authorized, subject to any agreement to the contrary.

**5. Savings for existing stocks**

(1) Any new right arising by virtue of section 4 of the 2006 Amendment Ordinance (insofar as it relates to section 25(1)(c) of this Ordinance) does not apply to a copy of a film acquired by a person before the commencement date of that section for the purpose of renting it to the public.

(2) Any new right arising by virtue of section 4 of the 2006 Amendment Ordinance (insofar as it relates to section 25(1)(e) and (f) of this Ordinance) does not apply to a copy of a comic book acquired by a person before the commencement date of that section for the purpose of renting it to the

public.

**Division 2 - Transitional provisions and savings  
in relation to amendments effected by section 4  
of the 2006 Amendment Ordinance (insofar as  
it relates to section 25(1)(d) of  
this Ordinance)**

**6. General provisions**

(1) Subject to sections 7 and 8 of this Schedule, section 4 of the 2006 Amendment Ordinance (insofar as it relates to section 25(1)(d) of this Ordinance) applies to copyright works made before, on or after the commencement date of that section.

(2) No act done before the commencement date of section 4 of the 2006 Amendment Ordinance (insofar as it relates to section 25(1)(d) of this Ordinance) shall be regarded as an infringement of any new right arising by virtue of that section.

**7. New rental right: effect  
of pre-commencement  
authorization of  
copying**

Where -

- (a) the owner or prospective owner of copyright in any work has, before the commencement date of section 4 of the 2006 Amendment Ordinance (insofar as it relates to section 25(1)(d) of this Ordinance), authorized a person to make a



copy of the work; and

- (b) a new right arises by virtue of that section in relation to that copy,

the new right shall vest on the commencement date of that section in the person so authorized, subject to any agreement to the contrary.

#### **8. Savings for existing stocks**

Any new right arising by virtue of section 4 of the 2006 Amendment Ordinance (insofar as it relates to section 25(1)(d) of this Ordinance) does not apply to a copy of a sound recording acquired by a person before the commencement date of that section for the purpose of renting it to the public.

### **Division 3 - Transitional provisions and savings in relation to amendments effected by section 39 of the 2006 Amendment Ordinance**

#### **9. General provisions**

(1) Subject to sections 10 and 11 of this Schedule, section 39 of the 2006 Amendment Ordinance applies to qualifying performances that take place before, on or after the commencement date of that section.

(2) No act done before the commencement date of section 39 of the 2006 Amendment Ordinance shall be regarded as an infringement of any new right arising by virtue of that

section.

10. **New rental right: effect of pre-commencement authorization of copying**

Where -

- (a) the owner or prospective owner of a performer's rights in a qualifying performance has, before the commencement date of section 39 of the 2006 Amendment Ordinance, authorized a person to make a copy of a recording of the performance; and
- (b) a new right arises by virtue of that section in relation to that copy,

the new right shall vest on the commencement date of that section in the person so authorized, subject to any agreement to the contrary.

11. **Savings for existing stocks**

Any new right arising by virtue of section 39 of the 2006 Amendment Ordinance does not apply to a copy of a sound recording of a qualifying performance acquired by a person before the commencement date of that section for the purpose of renting it to the public.

**Transitional provisions and savings in relation  
to amendments effected by section 53 of the  
2006 Amendment Ordinance**

**12. General provisions**

No act done before the commencement date of section 53 of the 2006 Amendment Ordinance shall be regarded as an infringement of any new rights of performers arising by virtue of that section.

**13. Savings for certain existing agreements**

(1) Except as otherwise expressly provided, nothing in section 53 of the 2006 Amendment Ordinance affects an agreement made before the commencement date of that section.

(2) No act done in pursuance of an agreement referred to in subsection (1) on or after the commencement date of section 53 of the 2006 Amendment Ordinance shall be regarded as an infringement of any new rights of performers arising by virtue of that section.

**14. New moral rights of performers of live aural performances**

(1) Any new rights of performers arising by virtue of section 53 of the 2006 Amendment Ordinance in respect of a live aural performance only subsist in a live aural performance that takes place on or after the commencement date of that section.

(2) Any new rights of performers arising by virtue of section 53 of the 2006 Amendment Ordinance in respect of a performance fixed in a sound recording only subsist if the performance concerned takes place on or after the commencement date of that section.

PART 5

INFRINGEMENT OF COPYRIGHT IN WORKS AND RIGHTS  
IN PERFORMANCES

**Division 1 - Transitional provisions and savings  
in relation to amendments effected by section  
7(2) of the 2006 Amendment Ordinance**

**15. Exemption from criminal liability  
incurred in respect of copies of  
works imported before commencement  
of section 7(2) of the 2006  
Amendment Ordinance**

(1) As from the commencement date of section 7(2) of the 2006 Amendment Ordinance, a person shall not be liable to conviction for an offence under section 118 of this Ordinance in respect of an act done before, on or after that commencement date in relation to a copy of a work to which this subsection applies.

(2) Subsection (1) applies to a copy of a work imported into Hong Kong before the commencement date of section 7(2) of the 2006 Amendment Ordinance -

(a) which is an infringing copy by virtue only of section 35(3) of this Ordinance as in force

- immediately before that commencement date;
- (b) which was lawfully made in the country, territory or area where it was made; and
  - (c) which, if imported into Hong Kong on or after that commencement date, would, by virtue of section 35(4) of this Ordinance as amended by section 7(2) of the 2006 Amendment Ordinance, not be an infringing copy for the purposes of sections 118 to 133 (criminal provisions) of this Ordinance.

**Division 2 - Transitional provisions and savings  
in relation to amendments effected by section 8  
of the 2006 Amendment Ordinance**

**16. Application of section 35B of this  
Ordinance to previously imported  
copies**

(1) For the purpose of any act done on or after the commencement date of section 8 of the 2006 Amendment Ordinance in relation to a copy of a work to which this subsection applies (including any act alleged to constitute an infringement of copyright or an offence under this Ordinance) -

- (a) section 35B of this Ordinance shall have effect as if it had been enacted before the copy is imported into Hong Kong or acquired; and

(b) the copy is, by virtue of paragraph (a), not an infringing copy for the purposes of section 35(3) of this Ordinance unless, having regard to section 35B of this Ordinance, it would also be an infringing copy for the purposes of section 35(3) of this Ordinance if it were imported into Hong Kong or acquired on or after that commencement date.

(2) Subsection (1) applies to a copy of a work imported into Hong Kong before the commencement date of section 8 of the 2006 Amendment Ordinance -

- (a) which is an infringing copy by virtue only of section 35(3) of this Ordinance as in force immediately before that commencement date; and
- (b) which was lawfully made in the country, territory or area where it was made.

(3) For the avoidance of doubt, nothing in this section or in the 2006 Amendment Ordinance affects any right of action in relation to an infringement of copyright which occurred before the commencement date of section 8 of the 2006 Amendment Ordinance.

17. **Exemption from criminal liability previously incurred in respect of "parallel-imported" copies of works to which section 35B of this Ordinance applies**

(1) As from the commencement date of section 8 of the

2006 Amendment Ordinance, a person shall not be liable to conviction for an offence under section 118(1) of this Ordinance as in force immediately before that commencement date and read together with the Suspension Ordinance, in respect of an act done before that commencement date in relation to a copy of a work to which this subsection applies unless, having regard to section 35B of this Ordinance, the copy would also be an infringing copy for the purposes of section 35(3) of this Ordinance if it were imported into Hong Kong or acquired on or after that commencement date.

(2) Subsection (1) applies to a copy of a work imported into Hong Kong before the commencement date of section 8 of the 2006 Amendment Ordinance -

- (a) which is an infringing copy by virtue only of section 35(3) of this Ordinance as in force immediately before that commencement date; and
- (b) which was lawfully made in the country, territory or area where it was made.

**Division 3 - Transitional provisions and savings  
in relation to amendments effected by section 22  
of the 2006 Amendment Ordinance**

**18. Application of section 118(2F)  
of this Ordinance**

For the avoidance of doubt, section 118(2F) of this Ordinance does not apply in relation to any act referred to in section 118(2A) of this Ordinance and done by a body

corporate or a partnership before the commencement date of section 22(3) of the 2006 Amendment Ordinance.

**19. Retrospective application of the exemption and defence provided by section 118(2E), (3A) and (3B) of this Ordinance**

(1) Section 118(2E), (3A) and (3B) of this Ordinance applies in proceedings to which this subsection applies, in the same manner as it applies in proceedings for an offence under section 118(2A) of this Ordinance.

(2) Subsection (1) applies to proceedings for an offence under section 118(1)(d) of this Ordinance as in force immediately before the commencement date of section 22(3) of the 2006 Amendment Ordinance and read together with the Suspension Ordinance, in a case where the infringing copy to which the charge relates is an infringing copy of the kind described in section 2(2), (3), (4) or (5) of the Suspension Ordinance.

(3) Subsection (1) does not apply to proceedings for an offence committed before 1 April 2001.

**Division 4 - Transitional provisions and savings  
in relation to amendments effected by section 45  
of the 2006 Amendment Ordinance**

**20. Application of section 229A of this Ordinance to previously imported fixations**

(1) For the purpose of any act done on or after the



commencement date of section 45 of the 2006 Amendment Ordinance in relation to a fixation of a performance to which this subsection applies (including any act alleged to constitute an infringement of any of the rights conferred by Part III of this Ordinance) -

- (a) section 229A of this Ordinance shall have effect as if it had been enacted before the fixation is imported into Hong Kong or acquired; and
- (b) the fixation is, by virtue of paragraph (a), not an infringing fixation for the purposes of section 229(4) of this Ordinance unless, having regard to section 229A of this Ordinance, it would also be an infringing fixation for the purposes of section 229(4) of this Ordinance if it were imported into Hong Kong or acquired on or after that commencement date.

(2) Subsection (1) applies to a fixation of a performance imported into Hong Kong before the commencement date of section 45 of the 2006 Amendment Ordinance -

- (a) which is an infringing fixation by virtue only of section 229(4) of this Ordinance as in force immediately before that commencement date; and
- (b) which was lawfully made in the country,

territory or area where it was made.

(3) For the avoidance of doubt, nothing in this section or in the 2006 Amendment Ordinance affects any right of action in relation to an infringement of any of the rights conferred by Part III of this Ordinance which occurred before the commencement date of section 45 of the 2006 Amendment Ordinance."

PART 3

MISCELLANEOUS

**Copyright (Suspension of Amendments)  
Ordinance 2001**

**62. Repeal**

The Copyright (Suspension of Amendments) Ordinance 2001 (Cap. 568) is repealed.

**Organized and Serious Crimes Ordinance**

**63. Offences relevant to definitions of  
"organized crime" and "specified  
offence"**

Schedule 1 to the Organized and Serious Crimes Ordinance (Cap. 455) is amended, in paragraph 18, by adding "and which was lawfully made in the country, territory or area where it was made" after "section 35(3) of that Ordinance" where it twice appears.

**Prevention of Copyright Piracy Ordinance**

**64. Time limit for prosecutions**

Section 36D of the Prevention of Copyright Piracy Ordinance (Cap. 544) is amended by repealing everything after "commission of the offence" and substituting a full stop.