

**立法會**  
**Legislative Council**

LC Paper No. CB(1)604/17-18(06)

Ref. : CB1/PL/CI

**Panel on Commerce and Industry**

**Meeting on 27 February 2018**

**Updated background brief on copyright exceptions for people  
with a print disability**

**Purpose**

This paper provides updated background information on the copyright exceptions for persons with a print disability ("PPDs")<sup>1</sup> in the existing copyright regime in Hong Kong and under the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled ("Marrakesh Treaty"). This paper also provides a summary of the views and concerns expressed by members on the relevant subjects in previous discussions.

**Background**

2. The Marrakesh Treaty came into force in September 2016. Being an international agreement concluded under the auspices of the World Intellectual Property Organization,<sup>2</sup> the main goal of the Marrakesh Treaty is to facilitate and enhance access to copyright works in accessible forms for PPDs.

3. In gist, the Marrakesh Treaty requires contracting parties to provide for

---

<sup>1</sup> Section 40A of the Copyright Ordinance (Cap. 528) gives the definition of a person with print disability:

- (a) blindness;
- (b) an impairment of his visual function which cannot be improved by the use of corrective lens to a level that would normally be acceptable for reading without a special level or kind of light;
- (c) inability, through physical disability, to hold or manipulate a book; or
- (d) inability, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.

<sup>2</sup> Established in 1967, World Intellectual Property Organization ("WIPO") is the global forum for intellectual property ("IP") services, policy, information and cooperation. It is a self-funding agency of the United Nations, with 189 member states, including China. WIPO's mission is to lead the development of a balanced and effective international IP system that enables innovation and creativity for the benefit of all.

limitations or exceptions in their domestic laws such that: (a) PPDs and certain organizations may perform a range of acts in relation to certain types of copyright works for the benefit of those beneficiaries without infringing copyright if certain conditions are met; and (b) exchange of accessible format copies of works produced as provided under the Marrakesh Treaty is allowed across international borders.

4. As at April 2017, 27 countries have ratified or acceded to the Marrakesh Treaty. China signed the Marrakesh Treaty on 28 June 2013. With the Marrakesh Treaty coming into force, there has been an increasing demand from the local community for an enhanced copyright regime in line with the Marrakesh Treaty.

#### Consultation exercise on copyright exceptions for persons with a print disability

5. The existing Copyright Ordinance (Cap. 528) ("CO") has set out a series of copyright exceptions to serve the needs of PPDs, and the existing exceptions largely conform to the requirements under the Marrakesh Treaty. Enacted in 2007, sections 40A to 40F of CO contain specific exceptions that allow for the production of specially adapted copies of copyright works for their use. Sections 40A to 40F of CO are in **Appendix I**.

6. To ensure that the existing copyright exceptions for PPDs under CO comply with the latest international standards under the Marrakesh Treaty, the Administration launched a three-month consultation exercise in May 2017 to gauge views on areas in the relevant provisions in CO which might need to be amended to align with the Marrakesh Treaty to facilitate access to published works for PPDs.

7. To tie in with the consultation exercise, the Administration issued a consultation paper in May 2017, seeking public views on a number of issues, as listed below, which require further review:

- (i) the scope of "beneficiary person";
- (ii) the scope of "specified body";
- (iii) the types of copyright works covered by the print disability-related exceptions;
- (iv) the acts which could be performed by PPDs and/or specified bodies;
- (v) the conditions to be met under the existing provisions;
- (vi) the application of anti-circumvention of technological measures provisions; and
- (vii) cross-border exchange of accessible copies.<sup>3</sup>

---

<sup>3</sup> The Marrakesh Treaty adopted the defined term "accessible format copy", whereas the existing CO adopted the defined term "accessible copy". According to the Administration, they basically encompass the same meaning.

8. The Administration advised that it had reached out to key stakeholders including users' groups and copyright owners to gauge views during the consultation period. The Administration would carefully consider comments received before taking a policy decision on whether and how it should amend the CO to align it with the Marrakesh Treaty.

### **Previous discussions**

9. The Administration briefed the Panel on Commerce and Industry ("the Panel") on the copyright exceptions for PPDs under the Marrakesh Treaty and the consultation exercise at its meeting on 16 May 2017. Members' views and concerns are summarized in the ensuing paragraphs.

### Consultation exercise

10. In response to members' enquiry on whether the Administration would engage publishers of copyright works in the consultation exercise, the Administration replied that it had initially reached out to different stakeholders, including publisher associations and organizations providing services to PPDs to gauge their views. Moreover, the areas set out in the consultation paper had covered all relevant provisions of the Marrakesh Treaty.

### Legislative timetable

11. Some members urged the Administration to amend CO to bring the copyright exceptions for PPDs in line with the Marrakesh Treaty as soon as practicable, and enquired about the legislative timetable.

12. The Administration responded that it would carefully consider comments to be received during the consultation exercise before making a policy decision on whether and how it should amend CO to align the copyright exceptions with the Marrakesh Treaty. Subject to the extent and complexity of the amendments required, the Administration aimed to put forward the relevant legislative proposals in about one year after a decision had been made on the way forward.

### Other issues

13. Noting that under the Marrakesh Treaty, the meaning of a "beneficiary person" included, inter alia, a person who was unable, through physical disability, to hold or manipulate a book to the extent that would be normally acceptable for reading, some members sought clarification on whether the scope of copyright exceptions for PPDs under the existing CO covered the above meaning of a "beneficiary person" under the Marrakesh Treaty.

14. The Administration advised that the existing scope of "print disability" under section 40A of CO was largely comparable to the scope of "beneficiary

person" under the Marrakesh Treaty. Yet, since the definition of "beneficiary persons" under the Marrakesh Treaty further extended to persons with a perceptual or reading disability, which might cover dyslexia, the Administration would seek public views on whether the scope of the beneficiaries under CO should be expanded by including "persons with a perceptual or reading disability" to align with the Marrakesh Treaty.

15. On the issue of imports of accessible format copies, some members sought clarification for the requirement that a specified body should take appropriate measures to satisfy itself that the accessible copies could not be obtained at a reasonable commercial price in the case of cross-border exchanges. The Administration explained that the existing print disability-related exceptions under CO already required a specified body to make reasonable enquiries of whether accessible copies could be purchased at a reasonable price before it might make the accessible copies. The requirement sought to maintain a fair balance between copyright protection and use of copyright work. Similar conditions could be considered if cross-border exchanges of accessible copies were to be allowed in future.

### **Latest position**

16. The Administration will brief the Panel on 27 February 2018 on the outcome of the consultation exercise and the proposed way forward.

### **Relevant papers**

17. A list of relevant papers is in **Appendix II**.

## Copyright Ordinance (Cap. 528)

\* \* \* \* \*

**Persons with a print disability**

**40A. Definitions for sections 40A to 40F**

In this section and in sections 40B to 40F—

“accessible copy” (便於閱讀文本), in relation to a copyright work, means a version which provides improved access to the work for a person with a print disability;

“lend” (借出), in relation to a copy, means to make it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will be returned;

“print disability” (閱讀殘障), in relation to a person, means—

- (a) blindness;
- (b) an impairment of his visual function which cannot be improved by the use of corrective lenses to a level that would normally be acceptable for reading without a special level or kind of light;
- (c) inability, through physical disability, to hold or manipulate a book;  
or
- (d) inability, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading;

“specified body” (指明團體) means a body of any of the following descriptions—

- (a) an educational establishment specified in section 1 of Schedule 1;
- (b) an educational establishment exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112);
- (c) an educational establishment receiving direct recurrent subvention from the Government; or
- (d) an organization which is not established or conducted for profit and whose main objects are charitable or are otherwise concerned with the advancement of welfare for persons with a print disability.

*(Added 15 of 2007 s. 13)*

#### **40B. Making a single accessible copy for a person with a print disability**

- (1) If—
  - (a) a person with a print disability possesses a copy of the whole or part of a literary, dramatic, musical or artistic work (referred to in this section as “master copy”); and
  - (b) the master copy is not accessible to him because of the disability,

it is not an infringement of copyright in the work or, in the case of a published edition, in the typographical arrangement, for one accessible copy of the master copy to be made by or on behalf of the person for his personal use.
- (2) Subsection (1) does not apply—
  - (a) if the master copy is an infringing copy;
  - (b) if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
  - (c) if the master copy is of a dramatic work or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the work or part of the work.
- (3) Subsection (1) does not apply unless, at the time when the accessible copy is made by or on behalf of the person with a print disability, the maker of the copy is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to the person cannot be obtained at a reasonable commercial price.
- (4) If a person makes an accessible copy on behalf of a person with a print disability under this section and charges for it, the sum charged must not exceed the cost incurred in making and supplying the copy.
- (5) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
  - (a) for the purpose of that dealing; and
  - (b) if that dealing infringes copyright, for all subsequent purposes.
- (6) In subsection (5), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

*(Added 15 of 2007 s. 13)*

**40C. Making multiple accessible copies by specified bodies for persons with a print disability**

- (1) If—
  - (a) a specified body possesses a copy of the whole or part of a commercial publication of a literary, dramatic, musical or artistic work (referred to in this section as “master copy”); and
  - (b) the master copy is not accessible to persons with a print disability,
 

it is not an infringement of copyright in the work or, in the case of a published edition, in the typographical arrangement, for the specified body to make for those persons or supply to those persons accessible copies of the master copy for their personal use.
- (2) Subsection (1) does not apply—
  - (a) if the master copy is an infringing copy;
  - (b) if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
  - (c) if the master copy is of a dramatic work or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the work or part of the work.
- (3) Subsection (1) does not apply unless, at the time when the accessible copies are made, the specified body is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to a person with a print disability cannot be obtained at a reasonable commercial price.
- (4) The specified body must—
  - (a) within a reasonable time before making or supplying the accessible copies, notify the relevant copyright owner of its intention to make or supply the accessible copies; or
  - (b) within a reasonable time after making or supplying the accessible copies, notify the relevant copyright owner of the fact that it has made or supplied the accessible copies.
- (5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.
- (6) If the specified body charges for making and supplying an accessible copy under this section, the sum charged must not exceed the cost incurred in making and supplying the copy.

- (7) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
- (a) for the purpose of that dealing; and
  - (b) if that dealing infringes copyright, for all subsequent purposes.
- (8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

*(Added 15 of 2007 s. 13)*

#### **40D. Intermediate copies**

- (1) A specified body entitled to make accessible copies of a master copy under section 40C may possess an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but—
- (a) the specified body may possess the intermediate copy only for the purpose of the production of further accessible copies; and
  - (b) the specified body must destroy the intermediate copy within 3 months after it is no longer required for that purpose.
- (2) An intermediate copy possessed otherwise than in accordance with subsection (1) is to be treated as an infringing copy.
- (3) A specified body may lend or transfer an intermediate copy possessed under subsection (1) to another specified body which is also entitled to make accessible copies of the relevant copyright work under section 40C.
- (4) The specified body must—
- (a) within a reasonable time before lending or transferring the intermediate copy, notify the relevant copyright owner of its intention to lend or transfer the intermediate copy; or
  - (b) within a reasonable time after lending or transferring the intermediate copy, notify the relevant copyright owner of the fact that it has lent or transferred the intermediate copy.
- (5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.

- (6) If the specified body charges for lending or transferring an intermediate copy under this section, the sum charged must not exceed the cost incurred in lending or transferring the copy.
- (7) Where an intermediate copy which apart from this section would be an infringing copy is possessed, lent or transferred in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—
  - (a) for the purpose of that dealing; and
  - (b) if that dealing infringes copyright, for all subsequent purposes.
- (8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

*(Added 15 of 2007 s. 13)*

#### **40E. Records to be kept by specified bodies**

- (1) A specified body must make a record of any accessible copy made or supplied under section 40C as soon as practicable after it is made or supplied.
- (2) The record referred to in subsection (1) must include—
  - (a) the date on which the accessible copy is made or supplied;
  - (b) the form of the accessible copy;
  - (c) the title, publisher and edition of the relevant master copy;
  - (d) where the accessible copy is made for or supplied to a body or a class of persons, the name of the body or a description of the class of persons; and
  - (e) where more than one copy of the accessible copy is made or supplied, the total number of such copies.
- (3) A specified body must make a record of any intermediate copy lent or transferred under section 40D as soon as practicable after it is lent or transferred.
- (4) The record referred to in subsection (3) must include—
  - (a) the name of the specified body to which and the date on which the intermediate copy is lent or transferred;

- (b) the form of the intermediate copy; and
  - (c) the title, publisher and edition of the relevant master copy.
- (5) A specified body must—
- (a) retain any record made under subsection (1) or (3) for a period of at least 3 years after it is made; and
  - (b) allow the relevant copyright owner or a person acting for him, on giving reasonable notice, to inspect and make copies of the record at any reasonable time.

*(Added 15 of 2007 s. 13)*

**40F. Supplementary provisions for sections 40A to 40E**

- (1) This section supplements sections 40A to 40E.
- (2) A copy (other than an accessible copy made under section 40B or 40C) of a copyright work is taken to be accessible to a person with a print disability only if it is as accessible to him as it would be if he were not suffering from the disability.
- (3) An accessible copy of a copyright work may be in the form of—
  - (a) a sound recording of the work;
  - (b) a Braille, large-print or electronic version of the work; or
  - (c) any other specialized format of the work.
- (4) An accessible copy of a copyright work may include facilities for navigating around the version of the work but must not include—
  - (a) changes which are not necessary to overcome problems caused by a print disability; or
  - (b) changes which infringe the moral right of the author of the work conferred by section 92 not to have the work subjected to derogatory treatment.

*(Added 15 of 2007 s. 13)*

\* \* \* \* \*

## List of relevant papers

Date of meeting	Meeting	Paper
16/5/2017	Panel on Commerce and Industry	<p>Administration's paper on "Copyright Exceptions for People with a Print Disability under the 'Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled'" (<a href="#">LC Paper No. CB(1)916/16-17(05)</a>)</p> <p>Background brief on copyright exceptions for people with a print disability prepared by the Legislative Council Secretariat (<a href="#">LC Paper No. CB(1)916/16-17(06)</a>)</p> <p>Minutes of meeting (<a href="#">LC Paper No. CB(1)1294/16-17</a>)</p>
17/10/2017	Panel on Commerce and Industry	Minutes of meeting ( <a href="#">LC Paper No. CB(1)341/17-18</a> )