

Copyright (Amendment) Bill 2019

Contents

Clause		Page
1.	Short title.....	C1113
2.	Copyright Ordinance amended.....	C1113
3.	Section 35 amended (meaning of <i>infringing copy</i>)	C1113
4.	Section 40A amended (definitions for sections 40A to 40F)	C1115
5.	Section 40B amended (making a single accessible copy for a person with a print disability)	C1121
6.	Section 40C amended (making multiple accessible copies by specified bodies for persons with a print disability)	C1125
7.	Sections 40CA, 40CB and 40CC added.....	C1131
	40CA. Export or supply of accessible copies by specified bodies to authorized entities.....	C1133
	40CB. Import or obtainment of accessible copies by specified bodies from authorized entities	C1139
	40CC. Provisions relating to master copy	C1143
8.	Section 40D amended (intermediate copies).....	C1145
9.	Section 40E amended (records to be kept by specified bodies)	C1147
10.	Section 40F amended (supplementary provisions for sections 40A to 40E).....	C1153

A BILL

To

Amend the Copyright Ordinance to enhance copyright exceptions relating to persons with a print disability, in order to bring those exceptions into line with the standards set out in the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Copyright (Amendment) Ordinance 2019.

2. Copyright Ordinance amended

The Copyright Ordinance (Cap. 528) is amended as set out in sections 3 to 10.

3. Section 35 amended (meaning of *infringing copy*)

(1) Section 35(7)(b), Chinese text—

Repeal

“文本”

Substitute

“格式版”.

- (2) Section 35(7)(c), Chinese text—

Repeal

“文本”

Substitute

“格式版”.

- (3) After section 35(7)(c)—

Add

- “(ca) section 40CA(11) (accessible copies made by specified bodies for export or supply);
 (cb) section 40CB(7) (accessible copies imported or obtained by specified bodies);”.

4. Section 40A amended (definitions for sections 40A to 40F)

- (1) Section 40A—

Renumber the section as section 40A(1).

- (2) Section 40A(1), definition of *accessible copy*—

Repeal

“文本)”

Substitute

“格式版”.

- (3) Section 40A(1), definition of *print disability*, paragraph (c)—

Repeal

“; or”

Substitute a semicolon.

- (4) Section 40A(1), definition of *print disability*, paragraph (d), after the semicolon—

Add

“or”.

- (5) Section 40A(1), definition of *print disability*, after paragraph (d)—

Add

“(e) a perceptual or reading disability (including dyslexia) which cannot be improved to give the person (*relevant person*) visual function substantially equivalent to that of a person who has no such disability, such that the relevant person is unable to read to substantially the same degree as a person who has no such disability;”.

- (6) Section 40A(1), definition of *specified body*—

Repeal paragraph (d)

Substitute

“(d) an organization that—

- (i) is not established or conducted for profit; and
- (ii) has a main object or main function that is charitable or otherwise concerned with the advancement of welfare for persons with a print disability;”.

- (7) Section 40A(1)—

Add in alphabetical order

“*authorized entity* (獲授權實體) means a body—

- (a) that is in a jurisdiction outside Hong Kong that—

- (i) is a member of the World Trade Organization; or
 - (ii) is a contracting party to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled adopted at Marrakesh in 2013, as revised or amended from time to time; and
- (b) that—
- (i) is not established or conducted for profit; and
 - (ii) has a main object or main function that is charitable or otherwise concerned with the advancement of welfare for persons with a print disability;

copy (文本)—see subsection (2);

supply (供應), in relation to an accessible copy, includes—

- (a) make the copy available, by wire or wireless means, in such a way that the person to whom the copy is made available may access it from a place and at a time chosen by the person (for example, make the copy available through the Internet); and
- (b) distribute the copy.”.

(8) After section 40A(1)—

Add

- “(2) A reference in section 40B, 40C, 40CA or 40CB to a copy of the whole or part of a work includes a copy of the whole or part of the work in audio form, such as an audiobook.”.

5. Section 40B amended (making a single accessible copy for a person with a print disability)

(1) Section 40B, Chinese text, heading—

Repeal

“文本”

Substitute

“格式版”.

(2) Section 40B—

Repeal subsection (1)

Substitute

“(1) Subject to section 40CC, if a person with a print disability possesses, or otherwise has lawful access to, a copy of the whole or part of a literary, dramatic, musical or artistic work (*master copy*), and the master copy is not accessible to the person because of the disability, making an accessible copy of the master copy by or on behalf of the person for the person’s personal use is not an infringement of copyright in the work or—

(a) for a published edition of the work—in the typographical arrangement of the published edition; or

(b) for an audio form of the work—in the sound recording of the work.”.

(3) Section 40B—

Repeal subsection (2).

(4) Section 40B—

Repeal subsection (3)

Substitute

“(3) Subsection (1) does not apply unless, at the time when the accessible copy is made, the maker of the copy is satisfied, after making reasonable enquiries, that no copy of the relevant copyright work in a form that is accessible to the person with a print disability can be obtained at a reasonable commercial price.”.

(5) Section 40B(4), Chinese text—

Repeal

everything before “而招致”

Substitute

“(4) 如任何人根據本條，代閱讀殘障人士製作便於閱讀格式版，並就此收取費用，該費用不得超逾為製作和供應該格式版”。

(6) Section 40B(5), Chinese text—

Repeal

“文本(若非因本條即屬侵犯版權複製品者)按照本條製作或供應，但其後該文本”

Substitute

“格式版(若非因本條即屬侵犯版權複製品者)按照本條製作或供應，但其後該格式版”。

(7) Section 40B(5)(a), Chinese text—

Repeal

“文本”

Substitute

“格式版”。

(8) Section 40B(5)(b), Chinese text—

Repeal

“文本”

Substitute

“格式版”.

6. Section 40C amended (making multiple accessible copies by specified bodies for persons with a print disability)

- (1) Section 40C, Chinese text, heading—

Repeal

“文本”

Substitute

“格式版”.

- (2) Section 40C—

Repeal subsection (1)**Substitute**

- “(1) Subject to section 40CC, if a specified body possesses, or otherwise has lawful access to, a copy of the whole or part of a literary, dramatic, musical or artistic work that has been published or otherwise made publicly available in any media (*master copy*), and the master copy is not accessible to persons with a print disability, the doing of an act specified in subsection (1A) by the body is not an infringement of copyright in the work or—
- (a) for a published edition of the work—in the typographical arrangement of the published edition; or
 - (b) for an audio form of the work—in the sound recording of the work.
- (1A) The following acts are specified for the purposes of subsection (1)—

- (a) making accessible copies of the master copy for persons with a print disability for their personal use;
 - (b) supplying the accessible copies to those persons for their personal use.
- (1B) If a specified body has made an accessible copy of a master copy under subsection (1), the doing of an act specified in subsection (1C) by the body is also not an infringement of copyright in the work or—
- (a) for a published edition of the work—in the typographical arrangement of the published edition; or
 - (b) for an audio form of the work—in the sound recording of the work.
- (1C) The following acts are specified for the purposes of subsection (1B)—
- (a) making further accessible copies from the accessible copy concerned for persons with a print disability for their personal use;
 - (b) supplying the accessible copies so made to those persons for their personal use.”.
- (3) Section 40C—
- Repeal subsection (2).**
- (4) Section 40C—
- Repeal subsection (3)**

Substitute

- “(3) Subsections (1) and (1A) do not apply unless, at the time when the accessible copies are made, the specified body is satisfied, after making reasonable enquiries, that no copy of the relevant copyright

work in a form that is accessible to a person with a print disability can be obtained at a reasonable commercial price.

- (3A) Subsections (1B) and (1C) do not apply unless, at the time when the further accessible copies are made, the specified body is satisfied, after making reasonable enquiries, that no copy of the relevant copyright work in a form that is accessible to a person with a print disability can be obtained at a reasonable commercial price.”.

- (5) Section 40C(4)(a), Chinese text—

Repeal

“文本之前的一段合理時間內，將其製作或供應該等便於閱讀文本”

Substitute

“格式版之前的一段合理時間內，將其製作或供應該等格式版”.

- (6) Section 40C(4)(b), Chinese text—

Repeal

“文本之後的一段合理時間內，將它已製作或供應該等便於閱讀文本”

Substitute

“格式版之後的一段合理時間內，將它已製作或供應該等格式版”.

- (7) Section 40C(5)—

Repeal

“The requirement under subsection”

Substitute

“Subsection”.

- (8) Section 40C(6), Chinese text—

Repeal

everything before “而招致”

Substitute

“(6) 如指明團體根據本條，製作和供應便於閱讀格式版，並就此收取費用，該費用不得超逾為製作和應該格式版”。

- (9) Section 40C(7), Chinese text—

Repeal

“文本（若非因本條即屬侵犯版權複製品者）按照本條製作或供應，但其後該文本”

Substitute

“格式版（若非因本條即屬侵犯版權複製品者）按照本條製作或供應，但其後該格式版”。

- (10) Section 40C(7)(a), Chinese text—

Repeal

“文本”

Substitute

“格式版”。

- (11) Section 40C(7)(b), Chinese text—

Repeal

“文本”

Substitute

“格式版”。

7. Sections 40CA, 40CB and 40CC added

After section 40C—

Add

“40CA. Export or supply of accessible copies by specified bodies to authorized entities

- (1) Subject to section 40CC, if a specified body possesses, or otherwise has lawful access to, a copy of the whole or part of a literary, dramatic, musical or artistic work that has been published or otherwise made publicly available in any media (*master copy*), and the master copy is not accessible to persons with a print disability, the doing of an act specified in subsection (2) by the body is not an infringement of copyright in the work or—
 - (a) for a published edition of the work—in the typographical arrangement of the published edition; or
 - (b) for an audio form of the work—in the sound recording of the work.
- (2) The following acts are specified for the purposes of subsection (1)—
 - (a) making an accessible copy of the master copy for the purpose of export or supply to an authorized entity;
 - (b) exporting or supplying the accessible copy to the entity.
- (3) Subsections (1) and (2) do not apply unless both of the following conditions are met by the specified body before exporting or supplying an accessible copy to an authorized entity—
 - (a) the body has obtained the entity’s confirmation that no copy of the relevant copyright work in a form that is accessible to persons with a print disability can be obtained at a reasonable

- commercial price in the jurisdiction the entity is in;
- (b) the body does not know, and does not have reasonable grounds for believing, that the accessible copy would be used otherwise than by persons with a print disability for their personal use.
- (4) If a specified body has made an accessible copy of a master copy under section 40C, the doing of an act specified in subsection (5) by the body is also not an infringement of copyright in the work or—
- (a) for a published edition of the work—in the typographical arrangement of the published edition; or
 - (b) for an audio form of the work—in the sound recording of the work.
- (5) The following acts are specified for the purposes of subsection (4)—
- (a) making another accessible copy from the accessible copy concerned for the purpose of export or supply to an authorized entity;
 - (b) exporting or supplying that other accessible copy to the entity.
- (6) Subsections (4) and (5) do not apply unless both of the following conditions are met by the specified body before exporting or supplying an accessible copy to an authorized entity—
- (a) the body has obtained the entity's confirmation that no copy of the relevant copyright work in a form that is accessible to persons with a print disability can be obtained at a reasonable

- commercial price in the jurisdiction the entity is in;
- (b) the body does not know, and does not have reasonable grounds for believing, that the accessible copy would be used otherwise than by persons with a print disability for their personal use.
- (7) In determining whether a specified body does not know, or does not have reasonable grounds for believing, that an accessible copy would be used otherwise than by persons with a print disability for their personal use, the court may have regard to all the circumstances including whether the body has obtained a confirmation from the authorized entity that the copy would only be provided to persons with a print disability for their personal use.
- (8) The specified body must—
- (a) within a reasonable time before making, exporting or supplying the accessible copy, notify the relevant copyright owner of its intention to make, export or supply the copy; or
 - (b) within a reasonable time after making, exporting or supplying the accessible copy, notify the relevant copyright owner that it has made, exported or supplied the copy.
- (9) Subsection (8) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.

- (10) If the specified body charges for making, exporting or supplying an accessible copy under this section, the sum charged must not exceed the cost incurred in making, exporting or supplying the copy.
- (11) Where an accessible copy which apart from this section would be an infringing copy is made, exported 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.
- (12) In subsection (11)—
- dealt with* (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

40CB. Import or obtainment of accessible copies by specified bodies from authorized entities

- (1) The doing of an act specified in subsection (2) by a specified body for the purpose of supplying accessible copies of the whole or part of a literary, dramatic, musical or artistic work to persons with a print disability for their personal use is not an infringement of copyright in the work or—
- (a) for a published edition of the work—in the typographical arrangement of the published edition; or
 - (b) for an audio form of the work—in the sound recording of the work.

-
- (2) The following acts are specified for the purposes of subsection (1)—
- (a) importing or obtaining an accessible copy of the work from an authorized entity;
 - (b) possessing the accessible copy so imported or obtained;
 - (c) making further accessible copies from the accessible copy so imported or obtained;
 - (d) supplying the accessible copies so imported, obtained or made.
- (3) Subsections (1) and (2) do not apply if—
- (a) the accessible copy records, or the making of the accessible copy would involve recording, a performance of the whole or part of a musical work; or
 - (b) the accessible copy records, or the making of the accessible copy would involve recording, a performance of the whole or part of a dramatic work.
- (4) Also, subsections (1) and (2) do not apply unless, at the relevant time, the specified body is satisfied, after making reasonable enquiries, that no copy of the relevant copyright work in a form that is accessible to persons with a print disability can be obtained at a reasonable commercial price.
- (5) In subsection (4)—
- relevant time* (有關時間) means—
- (a) in relation to importing or obtaining an accessible copy of a work from an authorized entity—the time when the copy is imported or obtained; and

- (b) in relation to making a further accessible copy from an accessible copy of a work—the time when the further accessible copy is made.
- (6) If the specified body charges for importing, obtaining, making or supplying an accessible copy under this section, the sum charged must not exceed the cost incurred in importing, obtaining, making or supplying the copy.
- (7) Where an accessible copy which apart from this section would be an infringing copy is imported, obtained, possessed, 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.

40CC. Provisions relating to master copy

- (1) Sections 40B(1), 40C(1) and 40CA(1) do not apply if—
 - (a) the relevant master copy is an infringing copy;
 - (b) the relevant master copy is a copy of a sound recording that comprises only of the performance of—
 - (i) the whole or part of a musical work;
 - (ii) music in which words are spoken, or are sung, incidentally to or in association with the music;

- (iii) the whole or part of a dramatic work; or
 - (iv) any combination of the items described in subparagraphs (i), (ii) and (iii);
 - (c) the relevant master copy is of the whole or part of a musical work, and the making of an accessible copy would involve recording a performance of the whole or part of the work; or
 - (d) the relevant master copy is of the whole or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the whole or part of the work.
- (2) In this section—
- relevant master copy* (有關原版文本), in relation to section 40B(1), 40C(1) or 40CA(1), means a master copy as defined by that section.”.

8. Section 40D amended (intermediate copies)

- (1) Section 40D(1), Chinese text—

Repeal

“文本的指明團體，可管有任何在製作該便於閱讀文本”

Substitute

“格式版的指明團體，可管有任何在製作該便於閱讀格式版”.

- (2) Section 40D(1)(a), Chinese text—

Repeal

“文本”

Substitute

“格式版”.

- (3) Section 40D(3), Chinese text—

Repeal

“文本”

Substitute

“格式版”.

- (4) Section 40D(5)—

Repeal

“The requirement under subsection”

Substitute

“Subsection”.

9. Section 40E amended (records to be kept by specified bodies)

- (1) Section 40E(1), Chinese text—

Repeal

“必須在根據第 40C 條製作或供應任何便於閱讀文本之後，在切實可行範圍內，盡快就該便於閱讀文本”

Substitute

“須在根據第 40C 條製作或供應任何便於閱讀格式版之後，在切實可行範圍內，盡快就該便於閱讀格式版”.

- (2) Section 40E(2)(a), Chinese text—

Repeal

“文本”

Substitute

“格式版”.

- (3) Section 40E(2)(b), Chinese text—

Repeal

“文本”

Substitute

“格式版”。

- (4) Section 40E(2)(c), after “copy”—

Add

“or, if the title, publisher or edition is not known, a description of the relevant master copy”.

- (5) Section 40E(2)(d)—

Repeal

“where the accessible copy is made for or supplied to a body or a class of persons,”

Substitute

“if the accessible copy is made for or supplied to a body or a class of persons—”.

- (6) Section 40E(2)(e)—

Repeal

“where more than one copy of the accessible copy is made or supplied,”

Substitute

“if more than one copy of the accessible copy is made or supplied—”.

- (7) After section 40E(2)—

Add

“(2A) A specified body must make a record of any accessible copy exported or supplied under section 40CA as soon as practicable after it is exported or supplied.

-
- (2B) The record referred to in subsection (2A) must include—
- (a) the date on which the specified body sent the accessible copy to the authorized entity;
 - (b) the form of the accessible copy;
 - (c) the title, publisher and edition of the relevant master copy or, if the title, publisher or edition is not known, a description of the relevant master copy; and
 - (d) the name of the authorized entity to which the accessible copy is exported or supplied.
- (2C) A specified body must make a record of any accessible copy imported or obtained under section 40CB as soon as practicable after it is imported or obtained.
- (2D) The record referred to in subsection (2C) must include—
- (a) the date on which the accessible copy is received by the specified body;
 - (b) the form of the accessible copy;
 - (c) the title, publisher and edition of the relevant copyright work or, if the title, publisher or edition is not known, a description of the relevant copyright work;
 - (d) the name of the authorized entity from which the accessible copy is imported or obtained;
 - (e) the name or description of the person or persons to whom the accessible copy is supplied under section 40CB; and

(f) if more than one copy of the accessible copy is so supplied—the total number of such copies.”.

(8) Section 40E(4)(c), after “copy”—

Add

“or, if the title, publisher or edition is not known, a description of the relevant master copy”.

(9) Section 40E(5)(a)—

Repeal

“(1)”

Substitute

“(1), (2A), (2C)”.

10. Section 40F amended (supplementary provisions for sections 40A to 40E)

(1) Section 40F(2)—

Repeal

everything after “section 40B”

Substitute

“, 40C, 40CA or 40CB) of a copyright work is taken to be accessible to a person with a print disability only if it is accessible to the person as it would be if the person were not suffering from the disability.”.

(2) Section 40F(3), Chinese text—

Repeal

“文本”

Substitute

“格式版”.

(3) Section 40F(4), Chinese text—

Repeal

“文本”

Substitute

“格式版”.

Explanatory Memorandum

The main purposes of this Bill are to amend the Copyright Ordinance (Cap. 528) (*Ordinance*) to enhance copyright exceptions relating to persons with a print disability, in order to bring those exceptions into line with the standards set out in the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.

2. Clause 1 sets out the short title.
3. Clause 4 amends section 40A of the Ordinance to amend and add terms used in sections 40A to 40F of the Ordinance. In particular, the scope of *print disability* is widened, and the new definitions of *authorized entity* and *supply* are added.
4. Clause 5 amends section 40B of the Ordinance so that a print-disabled person or another person acting on the person's behalf with lawful access to a copy of the whole or part of a literary, dramatic, musical or artistic work (*section 40B master copy*) may make an accessible copy of a section 40B master copy for the print-disabled person's personal use without infringing relevant copyrights. The scope of a section 40B master copy is also clarified to include a section 40B master copy in audio form.
5. Clause 6 amends section 40C of the Ordinance so that a specified body (as defined by section 40A(1) of the Ordinance) (*specified body*) that possesses, or has lawful access to, a copy of the whole or part of a literary, dramatic, musical or artistic work that has been published or otherwise made publicly available in any media (*section 40C master copy*) may make

accessible copies (including further accessible copies) of a section 40C master copy and supply such accessible copies to print-disabled persons for their personal use without infringing relevant copyrights. The scope of a section 40C master copy is also clarified to include a section 40C master copy in audio form.

6. Clause 7 adds the new sections 40CA, 40CB and 40CC to the Ordinance.
7. Section 40CA effectively provides that a specified body that possesses, or has lawful access to, a copy of the whole or part of a literary, dramatic, musical or artistic work that has been published or otherwise made publicly available in any media (*section 40CA master copy*) may make an accessible copy from a section 40CA master copy, or another accessible copy of an accessible copy, and export or supply such an accessible copy to an authorized entity without infringing relevant copyrights. It also provides for conditions that must be met by a specified body before an accessible copy can be exported or supplied to an authorized entity, and notification and other requirements.
8. Section 40CB effectively provides that a specified body may import or obtain from an authorized entity an accessible copy, possess an accessible copy so imported or obtained, make further accessible copies, and supply accessible copies so imported, obtained or made to print-disabled persons for their personal use without infringing relevant copyrights. It also provides for conditions that must be met by a specified body before an accessible copy can be imported, obtained or made, and other requirements.
9. Section 40CC excludes certain types of master copies from the scopes of sections 40B(1), 40C(1) and 40CA(1).

10. Clause 9 amends section 40E of the Ordinance to provide for record requirements in relation to accessible copies exported or supplied under section 40CA and accessible copies imported or obtained under section 40CB.