

立法會
Legislative Council

LC Paper No. LS18/19-20

**Legal Service Division Report on
Copyright (Amendment) Bill 2019**

I. SUMMARY

- 1. The Bill**

The Bill seeks to amend the Copyright Ordinance (Cap. 528) 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 ("Marrakesh Treaty").
- 2. Public Consultation**

The Administration conducted a public consultation exercise from May to August 2017 on the possible areas in the relevant provisions of Cap. 528 which would require enhancement. According to the Administration, the respondents in general supported the Administration's initiative to amend the relevant provisions in Cap. 528 with a view to aligning them with the Marrakesh Treaty. Key stakeholders including the Hong Kong Blind Union, the Hong Kong Society for the Blind and the local publishing industry were engaged when formulating the detailed legislative proposals and they supported the proposals.
- 3. Consultation with LegCo Panel**

The Panel on Commerce and Industry ("Panel") was briefed on the outcome of the public consultation and the proposed amendments to Cap. 528 on 27 February 2018. Members supported in principle the legislative proposals and discussed various concerns.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the concerns expressed by members of the Panel, Members may consider whether a Bills Committee should be formed to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 27 November 2019. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: CITB CR 07/09/25) issued by the Commerce and Economic Development Bureau on 30 October 2019 for further details.

Object of the Bill

2. The Bill seeks to amend the Copyright Ordinance (Cap. 528) to enhance copyright exceptions relating to persons with a print disability ("PPDs"), 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 ("Marrakesh Treaty").

Background

3. The Marrakesh Treaty, which forms part of the body of international copyright treaties administered by the World Intellectual Property Organization ("WIPO"), was adopted by Member States of WIPO on 27 June 2013 in Marrakesh and came into force on 30 September 2016. It requires contracting parties to introduce a standard set of limitations and exceptions to copyright rules in order to permit reproduction, distribution and making available of published works in formats designed to be accessible to the blind, visually impaired and otherwise print disabled persons (collectively referred to as "beneficiary persons"), and to permit exchange of these works across borders by organizations that serve the beneficiary persons.¹ The People's Republic of China is a signatory to the Marrakesh Treaty but has yet to ratify it. The Central People's Government may apply the Marrakesh Treaty to Hong Kong in accordance with Article 153 of the Basic Law upon ratification.

4. Sections 40A to 40F of Cap. 528 contain a series of copyright exceptions or permitted acts relating to PPDs. According to paragraph 6 of the LegCo Brief, these exceptions have met most of the requirements under the Marrakesh Treaty in respect of the making of accessible copies and the types of copyright works which are covered by the exceptions. Although Hong Kong is under no obligation to comply with the Marrakesh Treaty at present, the Administration considers that there are merits in reviewing and enhancing as appropriate the existing copyright exceptions in order to meet the international standards set out in the Marrakesh Treaty.²

¹ See the *Summary of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (MVT) (2013)*, which is available at https://www.wipo.int/treaties/en/ip/marrakesh/summary_marrakesh.html.

² See paragraph 5 of the LegCo Brief.

Provisions of the Bill

5. The key provisions of the Bill are summarized in the following paragraphs.

Proposed amendments to the existing copyright exceptions relating to making a single accessible copy or multiple accessible copies of copyright work for PPD

6. Under section 40B of Cap. 528, if a PPD possesses a copy of the whole or part of a literary, dramatic, musical or artistic work which is not an infringing copy (collectively referred to as "section 40B master copy"), and the section 40B 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 copy³ of the section 40B master copy to be made by or on behalf of the PPD for his personal use.

7. Similarly, under section 40C of Cap. 528, if a specified body⁴ possesses a copy of the whole or part of a commercial publication of a literary, dramatic, musical or artistic work which is not an infringing copy (collectively referred to as "section 40C master copy"), and the section 40C master copy is not accessible to PPDs, 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 PPDs or supply to those PPDs accessible copies of the section 40C master copy for their personal use.

8. Clauses 5 and 6 of the Bill seek to amend sections 40B and 40C of Cap. 528 respectively to allow a PPD or a specified body to make accessible copies from the relevant master copy if the PPD or specified body either possesses the master copy concerned or otherwise has lawful access to it. Further, clauses 5 and 6 make it clear that the exceptions under sections 40B and 40C of Cap. 528 would apply to the making of accessible copy of a published edition as well as an audio form of the master copy concerned.

9. Clause 6 of the Bill also proposes to amend section 40C of Cap. 528 to expand the scope of application of the exception in section 40C of Cap. 528 to allow the making of accessible copies of the section 40C master copy that are published or otherwise made publicly available in any media.

10. Clause 7 of the Bill seeks to add a new section 40CC to provide that, insofar as it relates to sections 40B and 40C, master copy of a work from which accessible copies may be made does not include certain sound recordings that comprise only of the performance of a musical work or a dramatic work.

³ Under section 40A of Cap. 528, "accessible copy", in relation to a copyright work, means a version which provides improved access to the work for a person with a print disability.

⁴ Under section 40A of Cap. 528, "specified body" includes an educational establishment receiving direct recurrent subvention from the Government and a non-profit making organization whose main objects are charitable or are otherwise concerned with the advancement of welfare for persons with a print disability.

New proposed exceptions relating to import or export of accessible copies of copyright works for use by PPDs

11. The existing exceptions related to print disability under Cap. 528 only cater for the making and supplying of accessible copies to PPDs for personal use. Clause 7 of the Bill seeks to introduce new sections 40CA and 40CB to allow the export or supply of accessible copies by specified bodies to, and the import or obtainment of accessible copies by specified bodies from, authorized entities in other jurisdictions subject to certain conditions. Under the proposed section 40A(1), an authorized entity is a body outside Hong Kong that (a) is a member of the World Trade Organization or is a contracting party to the Marrakesh Treaty; and (b) is not established or conducted for profit and has a main object or main function that is charitable or otherwise concerned with the advancement of welfare for PPDs.

12. Under the proposed new section 40CA, a specified body in Hong Kong may export or supply an accessible copy of the master copy concerned to an authorized entity outside Hong Kong without infringing relevant copyright if two conditions are satisfied. First, the specified body in Hong Kong must have obtained the entity's confirmation that no copy of the relevant copyright work in a form that is accessible to PPDs can be obtained at a reasonable commercial price in the jurisdiction the entity is in. Second, the specified body does not know, and does not have reasonable grounds for believing, that the accessible copy would be used otherwise than by PPDs for their personal use. The proposed new section 40CC provides that the exception proposed in the new section 40CA would not apply if the master copy of a work from which accessible copies may be made is an infringing copy or a copy of certain sound recordings that comprise only of the performance of a musical work or a dramatic work.

13. Under the proposed new section 40CB, in order for a specified body in Hong Kong to import or obtain an accessible copy from an authorized entity outside Hong Kong and to perform other permitted acts specified in the proposed new section 40CB(2) without infringing relevant copyright, the specified body in Hong Kong must be satisfied, after making reasonable enquiries, that no copy of the relevant copyright work in a form that is accessible to PPDs can be obtained at a reasonable commercial price. The proposed exception would not apply if the accessible copy records, or the making of the accessible copy would involve recording, a performance of a musical work or a dramatic work.

Proposed definitions of terms

14. Clause 4 of the Bill seeks to amend section 40A of Cap. 528 to provide for the definitions of various terms for the purposes of the copyright exceptions for PPDs.

Expanding the scope of "print disability"

15. Under section 40A of Cap. 528, print disability, 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. The existing scope of "print disability" under section 40A of Cap. 528 is largely comparable with the scope of "beneficiary person" under Article 3 of the Marrakesh Treaty.

16. The Bill proposes to amend the definition of "print disability" to expand its scope to cover "perceptual or reading disability (including dyslexia)" to align with the requirements under the Marrakesh Treaty. The effect is that the relevant copyright exceptions applicable to PPDs would apply for the benefit of persons with a perceptual or reading disability (including dyslexia).

Clarification of the scope of "works"

17. Under the existing sections 40B and 40C of Cap. 528, copyright works to which the exceptions for PPDs apply cover literary, dramatic, musical or artistic work. It is not specified that work in audio form is included. The proposed new section 40A(2) seeks to clarify that, for the purposes of the existing sections 40B, 40C and the proposed new sections 40CA and 40CB, a copy of a work from which accessible copies may be made includes a copy of such work in audio form, such as an audiobook.

New definition of "supply"

18. The proposed new definition of "supply" seeks to clarify that "supply", in relation to an accessible copy, includes making 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, making the copy available through the Internet) and distributing the copy. The new definition would apply to the copyright exceptions in relation to the supply of accessible copies to PPDs under the proposed amendments to sections 40B and 40C and the proposed new sections 40CA and 40CB of Cap. 528.

Other amendments

19. Clause 9 of the Bill seeks to amend section 40E of Cap. 528 to add the record requirements in relation to accessible copies exported or supplied under the proposed new section 40CA and accessible copies imported or obtained under the proposed new section 40CB.

20. The Bill also proposes to amend the Chinese text of "copy" in the context of "accessible copy" in sections 35, 40A, 40B, 40C, 40D, 40E and 40F of Cap. 528 from "文本" to "格式版". Upon LSD's enquiry, the Administration has explained that as the proposed new section 40A(2) in clause 4 of the Bill seeks to clarify that copyright works include works in audio form, it would be more appropriate to use "格式版" as the Chinese text for "copy" in the context of "accessible copy" in the relevant provisions.

Commencement

21. The Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance.

Public Consultation

22. According to paragraphs 7 and 12 of the LegCo Brief, the Administration conducted a three-month public consultation from May to August 2017 on possible areas in the relevant provisions of Cap. 528 which would require enhancement. A total of 12 written submissions from various respondents including user groups and copyright owners were received. The respondents in general supported the Administration's initiative to amend the relevant provisions in Cap. 528 with a view to aligning them with the Marrakesh Treaty. Key stakeholders including the Hong Kong Blind Union, the Hong Kong Society for the Blind and the local publishing industry were engaged when formulating the detailed legislative proposals and they supported the present proposals.

Consultation with LegCo Panel

23. As advised by the Clerk to the Panel on Commerce and Industry ("Panel"), the Panel was briefed on 27 February 2018 on the proposed amendments to Cap. 528 to bring the copyright exceptions for PPDs in line with the Marrakesh Treaty. Members raised concerns on various issues, including whether there would be sufficient manpower and resources to cope with the increased demand for accessible copies following the implementation of the legislative proposals; provision of soft copies or easily convertible formats of copyright works by publishers to facilitate specified bodies in making accessible copies; and measures to facilitate cross-border exchange of accessible copies.

Conclusion

24. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the concerns expressed by members of the Panel, Members may consider whether a Bills Committee should be formed to study the Bill in detail.

Prepared by

Rachel DAI
Assistant Legal Adviser
Legislative Council Secretariat
28 November 2019