

LEGISLATIVE COUNCIL BRIEF

Copyright Ordinance (Chapter 528)

COPYRIGHT (DESIGNATION OF LIBRARIES, MUSEUMS AND ARCHIVES FOR PURPOSES OF SECTION 118(2FA)(b)) NOTICE

INTRODUCTION

Pursuant to the empowering provision under section 118(2FB) of the Copyright Ordinance (Cap. 528) (“CO”), the Secretary for Commerce and Economic Development (“SCED”) has, by publishing in the Gazette the Copyright (Designation of Libraries, Museums and Archives for Purposes of Section 118(2FA)(b)) Notice (“the Notice”)¹ at the **Annex**, designated certain libraries, museums and archives (collectively referred to as “designated libraries, museums and archives”) for exemption from the criminal liability of the business end-user possession offence imposed by section 118(2A) and (2B) of the CO, subject to compliance with certain statutory conditions provided in section 118(2E) or (2F) of the CO.

JUSTIFICATIONS

2. Under section 118(2A) and (2B) of the CO, a person commits the business end-user possession offence if he, without the licence of the relevant copyright owner, possesses an infringing copy of any of the following five categories of copyright works for the purpose of or in the course of any trade or business with a view to its being used by any person for the purpose of or in the course of that trade or business:

¹ The Notice is a piece of subsidiary legislation. According to section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), subsidiary legislation includes any regulation, order, notice or other instrument made under or by virtue of any Ordinance and having legislative effect.

- (a) a computer program;
- (b) a movie;
- (c) a television drama;
- (d) a musical sound recording; or
- (e) a musical visual recording.

3. Having regard to the important roles and functions of certain libraries, museums and archives in preserving, conserving and showing certain copyright works, particularly those of historical, cultural or heritage value, and after balancing the legitimate interests of copyright owners and public interest, section 118(2E) and (2F) of the CO provides that the business end-user possession offence does not apply to the possession of an infringing copy of four of the aforesaid five categories of copyright works, namely a movie, a television drama, a musical sound recording or a musical visual recording, by designated libraries, museums and archives under the following circumstances:²

- (a) For the **purpose of heritage conservation** if—
 - (i) the infringing copy was donated or given to such libraries, museums or archives by the public; or
 - (ii) the infringing copy was made by such libraries, museums or archives to preserve or replace the infringing copy referred to in paragraph (i) against loss, deterioration or damage;
- (b) For **other purposes** if—
 - (i) the infringing copy was—
 - (1) an infringing copy donated or given to such libraries, museums or archives by the public; or
 - (2) made by such libraries, museums or archives to preserve or replace the infringing copy referred to in

² Specific examples of this conditional statutory exemption include the following scenarios—

- (a) In the course of conducting businesses, libraries, museums and archives for the purpose of heritage conservation possess copies of the relevant copyright works (such as films) donated by third parties, or for the same purpose with genuine needs duplicate such copies to stable materials to keep deterioration to the minimum and ensure that a copy of the work of quality continues to exist.
- (b) Before libraries, museums and archives make use of donated copies of works (such as films) which are out of print or not commercially available in the market for purposes other than preservation, such as for showing or making them available for public access, it may not always be possible for them to ascertain the identity and contact details of the copyright owners concerned by reasonable enquiry.

subparagraph (1) against loss, deterioration or damage;

- (ii) it is not possible by reasonable enquiry to ascertain the identity and contact details of the copyright owner of the work in question; and
- (iii) a copy (other than an infringing copy) of the work in question cannot be obtained on reasonable commercial terms.

4. Such statutory exemption does not:

- (a) apply to unauthorised possession of an infringing copy of a computer program by designated libraries, museums or archives for use in business; and
- (b) affect the rights of any copyright owner to take civil action against such libraries, museums or archives for their unauthorised possession of an infringing copy of any of the aforesaid five categories of copyright works for use in business.

5. In accordance with section 118(2FA) of the CO, a designated library, museum or archive refers to—

- (a) a library, museum or archive owned by the Government³; or
- (b) a library, museum or archive designated by the SCED under section 118(2FB).

6. Regarding paragraph 5(b) above, section 118(2FB) of the CO empowers the SCED to, having regard to the advice of the Director of Leisure and Cultural Services (“DLCS”), by notice published in the Gazette, designate any eligible library, museum or archive. A designated library, museum or archive must be owned by:

- (a) a charitable institution or trust of a public character that is exempt from tax under section 88 of the Inland Revenue Ordinance (“IRO”) (Cap. 112); or

³ Libraries, museums or archives owned by the Government include public libraries, museums and the Hong Kong Film Archive managed by the Leisure and Cultural Services Department, libraries managed by other government bureaux and departments, as well as the Public Records Office, etc.

- (b) a statutory body that is exempt from tax under an Ordinance other than the IRO, or a subsidiary of such a statutory body.

LEGISLATIVE PROPOSAL

7. For the purpose of exercising the statutory power conferred on the SCED under section 118(2FB) of the CO, we accepted applications for designation from eligible libraries, museums and archives between 2 May and 2 July 2024. The Intellectual Property Department also held a briefing session on 10 May 2024 to explain the application criteria and procedure to stakeholders.

8. When considering the relevant applications, the SCED sought the advice of the DLCS and took into account a number of relevant factors, including but not limited to whether the applicant's owner meets the eligibility criteria as set out in paragraph 6 above, whether the applicant in its normal course of operation accepts or will accept copies of movies, television dramas, musical sound recordings and/or musical visual recordings donated or given by the public, and whether the applicant keeps such copies in its own collection for legitimate purposes such as for public access or in furtherance of its day-to-day functions, operations and missions, e.g. for heritage preservation and conservation. Accordingly, the SCED is exercising the power conferred by section 118(2FB) of the CO to designate 25 eligible libraries, museums and archives.

THE NOTICE

9. The Notice is made for the purpose of designating the 25 eligible libraries, museums and archives for the statutory exemption from the criminal liability of the business end-user possession offence as set out in paragraph 3 above under the conditions prescribed in section 118(2E) or (2F) of the CO.

LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows -

| | |
|--|--------------|
| Publication in the Gazette | 23 May 2025 |
| Tabling at the Legislative Council (for negative vetting) | 28 May 2025 |
| Commencement | 18 July 2025 |

IMPLICATIONS OF THE PROPOSAL

11. The Notice is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the current binding effect of the CO, and has no financial, civil service, economic, productivity, environmental, sustainability, family or gender implications.

PUBLIC CONSULTATION

12. The Notice is technical in nature. No consultation is therefore considered necessary. We submitted an information paper to the Legislative Council Panel on Commerce, Industry, Innovation and Technology in March 2025 to elaborate on the legislative proposal. Members did not raise any objection.

PUBLICITY

13. A spokesperson will be available to answer media enquiries.

ENQUIRIES

14. Enquiries on this brief may be addressed to Ms Joanna CHEUNG, Principal Assistant Secretary for Commerce and Economic Development at telephone number 2810 2862.

Commerce and Economic Development Bureau
21 May 2025

Copyright (Designation of Libraries, Museums and Archives for Purposes of Section 118(2FA)(b)) Notice

(Made by the Secretary for Commerce and Economic Development under section 118(2FB) of the Copyright Ordinance (Cap. 528) having regard to the advice of the Director of Leisure and Cultural Services)

- 1. Commencement**
This Notice comes into operation on 18 July 2025.
- 2. Designation of libraries**
The libraries designated for the purposes of section 118(2FA)(b) of the Ordinance are set out in Schedule 1.
- 3. Designation of museums**
The museums designated for the purposes of section 118(2FA)(b) of the Ordinance are set out in Schedule 2.
- 4. Designation of archives**
The archives designated for the purposes of section 118(2FA)(b) of the Ordinance are set out in Schedule 3.

Schedule 1

[s. 2]

Designated Libraries

| Column 1 Item | Column 2 Library |
|------------------|--|
| 1. | Gratia Christian College Library owned by the Gratia Christian College Limited |
| 2. | Hong Kong Baptist University Library owned by the Hong Kong Baptist University |
| 3. | Hong Kong Metropolitan University Library owned by the Hong Kong Metropolitan University |
| 4. | Hong Kong Shue Yan University Library owned by the Hong Kong Shue Yan University Limited |
| 5. | Library & Archives, Hong Kong Chronicles Institute owned by the Hong Kong Chronicles Institute Limited |
| 6. | Lingnan University Library owned by the Lingnan University |
| 7. | Run Run Shaw Library, City University of Hong Kong owned by the City University of Hong Kong |

| Column 1 Item | Column 2 Library |
|------------------|---|
| 8. | Saint Francis University Library owned by the Saint Francis University Limited |
| 9. | The Chinese University of Hong Kong Library owned by The Chinese University of Hong Kong |
| 10. | The Education University of Hong Kong Library owned by The Education University of Hong Kong |
| 11. | The Hang Seng University of Hong Kong Library owned by The Hang Seng University of Hong Kong |
| 12. | The Hong Kong Academy for Performing Arts Libraries owned by The Hong Kong Academy for Performing Arts |
| 13. | The Hong Kong Polytechnic University Library owned by The Hong Kong Polytechnic University |
| 14. | The Hong Kong University of Science and Technology Lee Shau Kee Library owned by The Hong Kong University of Science and Technology |
| 15. | The University of Hong Kong Libraries owned by The University of Hong Kong |
| 16. | Vocational Training Council Library owned by the Vocational Training Council |

Schedule 2

[s. 3]

Designated Museums

| Column 1 Item | Column 2 Museum |
|------------------|--|
| 1. | Hong Kong Maritime Museum owned by the Hong Kong Maritime Museum Limited |
| 2. | Hong Kong Museum of Education owned by The Education University of Hong Kong |
| 3. | M Plus Museum owned by the M Plus Museum Limited |

Schedule 3

[s. 4]

Designated Archives

| Column 1 Item | Column 2 Archive |
|------------------|---|
| 1. | Chung Ying Theatre Archives owned by the Chung Ying Theatre Company (HK) Limited |
| 2. | Hong Kong Scout Archives owned by the Scout Association of Hong Kong |
| 3. | Hong Kong Shue Yan University Archives owned by the Hong Kong Shue Yan University Limited |
| 4. | Library & Archives, Hong Kong Chronicles Institute owned by the Hong Kong Chronicles Institute Limited |
| 5. | The Arts Information Centre of the Hong Kong Arts Development Council owned by the Hong Kong Arts Development Council |
| 6. | The Education University of Hong Kong Archives owned by The Education University of Hong Kong |
| 7. | University Archives of The University of Hong Kong owned by The University of Hong Kong |



Secretary for Commerce and
Economic Development

19 May

2025

Explanatory Note

Section 118(2A) of the Copyright Ordinance (Cap. 528) (*Ordinance*) prohibits the possession of an infringing copy of certain copyright works for the purpose of or in the course of any trade or business with a view to its being used by any person for the purpose of or in the course of that trade or business. Section 118(2E) and (2F) of the Ordinance provides that the prohibition does not apply to the possession of an infringing copy of a movie, television drama, musical sound recording or musical visual recording, under certain circumstances, by—

- (a) a library, museum or archive owned by the Government;
or
- (b) a library, museum or archive designated by the Secretary for Commerce and Economic Development under section 118(2FB) of the Ordinance (see section 118(2FA)(b) of the Ordinance).

2. This Notice designates libraries, museums and archives for the purposes of section 118(2FA)(b) of the Ordinance.