

Annex VIII

WEAPONS OF MASS DESTRUCTION (CONTROL OF
PROVISION OF SERVICES) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Trade and Industry

<u>Clause</u>	<u>Amendment Proposed</u>
1	(a) In the heading, by deleting " and commencement ". (b) By deleting subclause (2).
2(1)	By deleting the definition of "domestic premises".
3	By adding "employed in the Customs and Excise Department in the Trade Controls Officer Grade" after "public officer".
5(1)	(a) By deleting paragraph (a). (b) In paragraph (h), by adding after "Hong Kong" - "; but no person shall be searched except by a person of the same sex, or be searched in a public place if he objects to being so searched".
5	By deleting subclause (2).

ClauseAmendment Proposed

6 and 7 By deleting the clauses and substituting -

**"6. Entry and search of premises;
detention and search of
vessels, etc.**

(1) A magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any premises or place any article which may be seized under section 7, issue a warrant authorizing a member of the Customs and Excise Service or an authorized officer to enter and search the premises or place.

(2) If the Commissioner reasonably suspects -

(a) that -

(i) there is in any premises or place any article which may be seized under section 7(1);
or

(ii) there is in, or accessible from any premises or place a computer containing any information of a kind specified in section 7(2), or there is in any premises or place any device which contains any such information in a form in which it is capable of being retrieved on a computer; and

ClauseAmendment Proposed

- (b) that unless the premises or place are entered and searched immediately, the article is likely to be removed from the premises or place or the information is likely to be destroyed or rendered incapable of being retrieved on a computer,

he may authorized in writing a member of the Customs and Excise Service or an authorized officer to enter and search the premises or place.

(3) Subject to subsection (4), any member of the Customs and Excise Service and any authorized officer may, if he reasonably suspects that there is in or on any vessel, aircraft or vehicle any article which may be seized under section 7, stop, board, remove, detain and search the vessel, aircraft or vehicle.

(4) Subsection (3) does not authorize -

- (a) the detention for more than 12 hours without the consent of the Chief Secretary of any vessel which has a tonnage exceeding 250 gross tons; or
- (b) the detention for more than 6 hours without the consent of the Chief Secretary of any aircraft,

and the Chief Secretary may, by order in writing under his hand, detain such a vessel for further periods of not more than 12 hours each or detain an aircraft for further periods of not more than 6 hours each, and any such order made by the Chief Secretary shall state the times from which and for which the

order shall be effective.

Clause

Amendment Proposed

**7. Power to seize articles or require
production of information**

(1) Any member of the Customs and Excise Service and any authorized officer may seize any article in respect of which he reasonably suspects that an offence has been committed under this Ordinance, or which he reasonably suspects to be, or to contain, evidence of the commission of such an offence.

(2) Where any member of the Customs and Excise Service or an authorized officer reasonably suspects, as regards any information that is contained in a computer in, on or accessible from any premises, place, vessel, aircraft or vehicle entered or boarded under section 6, that the information relates to an offence which has been, or may have been, committed under this Ordinance, the member or officer

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(a) may require the information to be produced on a computer in or on the premises, place, vessel, aircraft or vehicle in a visible and legible form, and may examine the information;

(b) may require the information to be produced in a form in which it can be taken away and in which it is either visible and legible or capable of being retrieved on a computer, and may take away the copy so produced.

(3) In subsection (2), a reference to information contained in a computer in or on any premises, place, vessel,

aircraft or vehicle entered or boarded under section 6 includes a reference to information which is contained in any device found in or on such premises, place, vessel, aircraft or vehicle and which is capable of being retrieved on a computer.

Clause

Amendment Proposed

(4) The owner of any article or other document seized by a member of the Customs and Excise Service or an authorized officer under this section may, on application to the Commissioner and subject to such conditions as the Commissioner may impose, photograph or make any other form of copy of the seized article or document."

8(1) By deleting the passage beginning "Any member" and ending "warrant" and substituting -

"Subject to subsection (2), any member of the Customs and Excise Service or any authorized officer may, without warrant, arrest, or detain for such period as is reasonably necessary for further inquiries to be carried out,".

9(1)(d) By deleting "6(2)(a)" and "6(2)(b)" and substituting "7(1)" and "7(2)
(i) and (3)" respectively.

9(1)(f) By adding after "Ordinance" -

"; but no person shall be searched except by a person of the same sex, or be searched in a public place if he objects to being so searched".

9 By deleting subclause (2) and substituting -

"(2) A member of the Customs and Excise Service or an authorized officer who is authorized -

- (a) under section 5(1)(b), to search any vessel, aircraft or vehicle;

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- (b) under section 5(1)(d) or (e), to examine any document or information;
- (c) under section 6, to enter and search any premises or place or to search any vessel, aircraft or vehicle;
- (d) under section 7, to examine any information,

may, if he reasonably considers it necessary or desirable for the proper and effective performance of those duties, call upon any person to assist him in carrying out that entry, search or examination."

12(1) and (2) By deleting "desirable" and substituting "in the interests of justice".

COPYRIGHT BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Trade and Industry

<u>Clause</u>	<u>Amendment Proposed</u>
82(1)(c)	By deleting "《Telecommunication Regulations》" and substituting "《電訊規例》".
193	(a) In the definition of "electronic", by deleting "(以電子形式)" and substituting "(電子形式)". (b) In the definition of "翻印程序", by deleting "電子方式" and substituting "電子形式".
194	By deleting "生效日期" and substituting "生效".
198(3)	By deleting "電子形式" and substituting "電子方法".
254(1)(c)	By deleting "《Telecommunication Regulations》" and substituting "《電訊規例》".

Schedule 4 In the Chinese text, in section 2 -

(a) by deleting the heading and substituting -

"根據《版權條例》第 172 條作出的案件呈述";

ClauseAmendment Proposed

(b) by deleting paragraphs (a) and (b) and substituting -

“(a) 在第(1)款中，廢除"演藝權利審裁處"及"《1956年版權法令》(1956 c. 74 U.K.)(已藉1972年及1979年的《版權(香港)命令》(S.I. 1972/1724 U.K.; S.I. 1979/910 U.K.)而擴及香港)第30條"而分別代以"版權審裁處"及"《版權條例》(1997年第 號)第172條";

(b) 在第(3)款中，廢除"演藝權利審裁處"而代以"版權審裁處"。".

FAMILY STATUS DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Home Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
2	(a) In subclause (1) by deleting the definition of "estate agent" and substituting - ""estate agent" (地產代理) has the same meaning as in the Estate Agents Ordinance (48 of 1997);". (b) In subclause (5)(b)(i) by adding "and" at the end.
4	By deleting the heading and substituting " Act done for 2 or more reasons ".
8	By deleting subclause (5).
16	(a) In subclause (2)(b) by adding "or continue to do" after "do". (b) In subclause (3) by adding "is" after "principal" where it first appears.
20	In the heading by deleting " and " and substituting " or ".
21(2)(c)	By adding "as" after "construed".

ClauseAmendment Proposed

Schedule
1, item 11

- (a) By deleting column 1 and substituting -

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

- (b) In column 2 by deleting "or the Academic Board, within the meaning of section 2 of The Open Learning Institute of Hong Kong Ordinance" and substituting ", the Court or the Senate, within the meaning of section 2 of The Open University of Hong Kong Ordinance".

FAMILY STATUS DISCRIMINATION BILL

COMMITTEE STAGEAmendments to be moved by the Secretary for Home AffairsClauseAmendment Proposed

21(4) In the definition of "處置" by deleting "經" and substituting "構成".

Schedule 1 In item 1, by deleting "評" and substituting "畢業生".

FAMILY STATUS DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Hon. LAU Chin-shekClauseAmendment Proposed

8 By deleting subclause (3), (7) and (9).

New By adding -

"30A. Requests for information

If, because of another provision of Part III or IV, it would be unlawful, in particular circumstances, for a person to discriminate against another person, in doing a particular act, it is unlawful for the first-mentioned person to request or require that other person to provide, in connection with or for the purposes of the doing of the act, information (whether by completing a form or otherwise) that persons who do not have family status would not, in circumstances that are the same or not materially different, be requested or required to provide."

50(2)(b) By deleting "sections 31" and substituting "section 30A, 31".
(iii)

55(1)(c) By adding "30A," after "section".

60 (a) In the heading, by adding "**30A**," after "**sections**".

(b) In subclauses (1) and (4)(a), by adding "30A," after "section".

FAMILY STATUS DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Hon. Christine LOH Kung-wai

<u>Clause</u>	<u>Amendment Proposed</u>
54	<p>(a) by repealing subsection (4) and substituting -</p> <p>"(3A) Without limiting the generality of the power conferred by subsection (3), the District Court may -</p> <ul style="list-style-type: none">(a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and order that the respondent shall not repeat or continue such unlawful conduct or act;(b) order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;(c) order that the respondent shall employ or re-employ the claimant;(d) order that the respondent shall promote the claimant;(e) order that the respondent pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;(f) order that the respondent shall pay to the claimant punitive or exemplary damages; or

ClauseAmendment Proposed

- (g) make an order declaring void in whole or part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.

(4) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance."

- (b) by repealing subsections (7) and (8).

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By adding -

"(2A) For the purposes of determining the period under subsection (1) within which proceedings may be brought, where an act to which the claim relates was the subject of a complaint lodged under section 62(1), then the period that elapsed between the date when the complaint was lodged and the date when conciliation under section 62 was concluded, as certified in writing by the Commission, shall be disregarded."

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COMMITTEE STAGE

Amendments to be moved by the Secretary for Trade and Industry

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>By deleting subclause (2) and substituting -</p> <p>"(2) The following provisions shall come into operation on a day to be appointed by the Secretary for Trade and Industry by notice in the Gazette -</p> <p>(a) sections 82(4) and 254(4A);</p> <p>(b) the definitions of "register", "Registrar" and "registration" in section 141(4);</p> <p>(c) sections 142 to 149;</p> <p>(d) section 5 of Schedule 4."</p>
3(2)	<p>By deleting ", director or commissioner" and substituting "or director".</p>
6(2)	<p>By deleting "or film".</p>
7	<p>By deleting subclause (5).</p>
8(1) and 9(2)(b)	<p>By deleting "(such as the service commonly known as the INTERNET service)".</p>

<u>Clause</u>	<u>Amendment Proposed</u>
14(2)	By deleting "Where" and substituting "Subject to any agreement to the contrary, where".
15	(a) In the heading, by deleting " work " and substituting " works ". (b) In subclause (2), by deleting "section 13" and substituting "sections 13 and 100".
19	In the heading, by deleting " to " and substituting " in ".
26(2)	By adding after "chosen by them" - "(such as the making available of copies of works through the service commonly known as the INTERNET)".
33(1)	By deleting "literary, dramatic or musical".
35	(a) In subclause (3), by adding "other than a copy of an accessory work" after "copy of a work". (b) By deleting subclause (4) and substituting - "(4) For the purposes of sections 115 to 129 (criminal provisions) "infringing copy" (侵犯版權複製品) does not include a copy of a work - (a) that was lawfully made in the country, territory or area where it was made;

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- (b) that has been or is proposed to be imported into Hong Kong at any time after the expiration of 18 months beginning on the first day of publication of the work in Hong Kong or elsewhere; and
- (c) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work,

or a copy of an accessory work -

- (i) that was lawfully made in the country, territory or area where it was made;
- (ii) that has been or is proposed to be imported into Hong Kong; and
- (iii) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work."

- (c) By adding -

"(4A) For the purposes of Division VII (proceedings relating to importation of infringing articles), "infringing copy" (侵犯版權複製品) does not include a copy of a work or a copy of an accessory work -

ClauseAmendment Proposed

- (a) that was lawfully made in the country, territory or area where it was made;
 - (b) that has been or is proposed to be imported into Hong Kong; and
 - (c) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work."
- (d) By adding -

"(6A) For the purpose of subsections (3), (4) and (4A), "accessory work" (附屬作品) means a work incorporated in or consisting of -

- (a) a label affixed to, or displayed on, an article;
- (b) the packaging or container in which an article is packaged or contained;
- (c) a label affixed to, or displayed on, the packaging or container in which an article is packaged or contained;
- (d) a written instruction, warranty or other information incidental to an article and provided with the article on its sale; or
- (e) an instructional sound recording or film incidental to an article and provided with the article on its sale,

ClauseAmendment Proposed

and the economic value of the article (inclusive of the label, packaging, container, instruction, warranty, other information, sound recording or film, as the case may be) is not predominantly attributable to the economic value of the work."

(e) In subclause (7) -

(i) by deleting "subsection (4)(a)" and substituting "subsections (4) and (4A)";

(ii) by adding after "copyright in the work" -

"or where the copyright in the work has expired".

New

By adding before DIVISION III -

"Defences

**35A. Defence for the purposes of
sections 30 and 31**

(1) For the purposes of sections 30 and 31 and for the avoidance of doubt, it is declared that if in an action for infringement of copyright under section 30 or 31 in respect of a copy of a work which is an infringing copy by virtue only of section 35(3), the defendant proves that -

(a) he had made reasonable enquiries sufficient to satisfy himself that the copy of the work imported or proposed to be imported into Hong Kong was not an infringing copy of the work;

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- (b) he had reasonable grounds to be satisfied in the circumstances of the case that the copy was not an infringing copy; and
- (c) there were no other circumstances which would have led him reasonably to suspect that the copy was an infringing copy,

he has proved that he did not have reason to believe that the copy was an infringing copy.

(2) In determining whether a defendant has proved under subsection (1) that he did not have reason to believe that the copy was an infringing copy of the work, the court may have regard to, including but not limited to, the following

-

- (a) whether he had made enquiries with a relevant trade body in respect of that category of work;
- (b) whether he had given any notice drawing attention of the copyright owner or exclusive licensee to his interest to import and to sell the copy of the work;
- (c) whether he had complied with any code of practice that may exist in respect of the supply of that category of work;
- (d) whether the response, if any, to those enquiries made by the defendant was reasonable and timely.

(3) In an action against a person for infringement of copyright under section 30 or 31, it is a defence for that person to prove that -

ClauseAmendment Proposed

- (a) he had placed an order with the copyright owner or exclusive licensee, as the case may be, for the supply of copies of the work;
- (b) the person with whom he placed the order had acted unconscionably by either withholding supply on unreasonable grounds or by agreeing to supply on unreasonable terms; and
- (c) the import took place after that unconscionable act by the copyright owner or exclusive licensee and after the expiration of the period specified in section 35(4)(b).

(4) In determining whether the copyright owner or exclusive licensee had acted unconscionably, the court shall take into consideration the established practices of the copyright owner or exclusive licensee for the orderly distribution of copies of that category of work and, in particular, whether the order, if fulfilled, would conflict with a normal exploitation of the work by the copyright owner or exclusive licensee, or would unreasonably prejudice the legitimate interests of the copyright owner or exclusive licensee."

"(2A) In determining whether an act specified in this Division may be done in relation to a copyright work notwithstanding the subsistence of copyright, the primary consideration is that the act does not conflict with a normal exploitation of the work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner."

ClauseAmendment Proposed

- 37 By deleting subclause (3) and substituting -
- "(3) In determining whether any dealing with a work of any description is fair dealing, the factors to be considered include -
- (a) the purpose and nature of the dealing;
- (b) the nature of the work; and
- (c) the amount and substantiality of the portion dealt with in relation to the work as a whole."
- 38(1) By adding "or, in the case of a published edition, in the typographical arrangement" after "copyright in the work".
- 49(1) By deleting everything after "text of the article" and substituting -
- ", in the work, in any illustration accompanying it, in the typographical arrangement, or in the sound recording or film, as the case may be."
- 51(2)(a) By deleting "the document" and substituting "it".
- 59(2) By deleting "sections 60 and 61" and substituting "section 61".
- 60 By deleting the clause.
- 61(3) By deleting "or 60".

<u>Clause</u>	<u>Amendment Proposed</u>
65	<p>(a) By deleting "a copy which is reasonably required" and substituting "a transient and incidental copy which is technically required".</p> <p>(b) By deleting everything after "made available" and substituting a full stop.</p>
68(2)	By deleting "or a reading" and substituting "of a reading".
76	<p>(a) In the heading, by deleting "Playing of sound recordings" and substituting "Performance, showing or playing of works".</p> <p>(b) In subclause (1), by deleting "sound recording to play" and substituting "work (other than a broadcast or a cable programme) to perform, show or play".</p> <p>(c) In subclause (2)(b), by deleting "recording is to be heard" and substituting "work is to be performed, shown or played".</p>
82	<p>(a) By adding -</p> <p style="padding-left: 40px;">"(1A) The copyright in a television broadcast which is not encrypted or in a sound broadcast which is not encrypted is not infringed by any person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided -</p> <p style="padding-left: 80px;">(a) by a system licensed under a satellite master antenna television licence issued under the Telecommunication Regulations (Cap. 106 sub. leg.); or</p>

ClauseAmendment Proposed

- (b) by an interconnection between a system licensed under a satellite master antenna television licence issued under the Telecommunication Regulations (Cap. 106 sub. leg.) and a subscription television network licensed under the Television Ordinance (Cap. 52) and where the re-transmission is for the reception of the users of the satellite master antenna television system,

until the expiration of 6 months beginning on the day of publication of the notice in accordance with subsection (4).".

- (b) In subclause (2) -

- (i) by adding "or elsewhere" after "Hong Kong";

- (ii) by adding "or (1A)" after "subsection (1)".

- (c) By deleting subclause (3) and substituting -

"(3) Where a television broadcast or a sound broadcast is not encrypted, the person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or interconnection specified in subsection (1A) is deemed to have been granted an implied licence by the maker of the broadcast to receive and re-transmit the broadcast using the system which is only revocable by notice given in accordance with subsection (4).

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(4) The maker of a broadcast in respect of which a licence is deemed to have been granted under subsection (3) may revoke the licence by publishing a notice of revocation in -

(a) 1 Chinese language newspaper circulating in Hong Kong; and

(b) 1 English language newspaper circulating in Hong Kong."

New By adding before DIVISION IV -

"Designs

85A. Corresponding design

In sections 85B and 85C, a "corresponding design" (相應外觀設計), in relation to an artistic work, means a design within the meaning of the Registered Designs Ordinance (64 of 1997) which if applied to an article would produce something which would be treated for the purposes of this Part as a copy of the artistic work.

[cf. 1988 c. 48 s. 53 (2) U.K.]

**85B. Effect of exploitation of design
derived from artistic work**

(1) This section applies where an artistic work has been exploited, by or with the licence of the copyright owner, by -

ClauseAmendment Proposed

- (a) making by an industrial process articles falling to be treated for the purposes of this Part as copies of the work; and
- (b) marketing such articles, in Hong Kong or elsewhere.

(2) After the end of the period of 25 years from the end of the calendar year in which such articles incorporating a registered corresponding design are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.

(3) After the end of the period of 15 years from the end of the calendar year in which such articles incorporating an unregistered corresponding design are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.

(4) Where only part of an artistic work is exploited as mentioned in subsection (1), subsection (2) or (3) applies only in relation to that part.

(5) In this section -

- (a) "registered corresponding design" (經註冊的相應外觀設計) means a corresponding design which has been registered under the Registered Designs Ordinance (64 of 1997);

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- (b) "unregistered corresponding design" (未經註冊的相應外觀設計) means a corresponding design which has not been registered under the Registered Designs Ordinance (64 of 1997), and includes a corresponding design which is not registrable under that Ordinance;
- (c) references to articles do not include films;
- (d) references to the marketing of an article are to its being sold or let for hire or offered or exposed for sale or hire.

[cf. 1988 c. 48 s. 52 U.K.]

**85C. Things done in reliance on
registration of design**

The copyright in an artistic work is not infringed by anything done-

- (a) in pursuance of an assignment or licence made or granted by a person registered under the Registered Designs Ordinance (64 of 1997) as the registered owner of a corresponding design; and
- (b) in good faith in reliance on the registration and without notice of any proceedings for the cancellation of the registration or for rectifying the relevant entry in the register of designs,

and this is so notwithstanding that the person registered as the registered owner was not the owner of the design for the purposes of that Ordinance.

[cf. 1988 c. 48 s. 53(1) U.K.]".

ClauseAmendment Proposed

- 105(2) (a) By deleting paragraph (a) and substituting -
- "(a) the flagrancy of the infringement;"
- (b) In paragraph (b), by deleting the comma at the end and substituting "; and".
- (c) By adding -
- "(c) the completeness, accuracy and reliability of the defendant's business accounts and records,"
- (d) By deleting "my" and substituting "may".
- 110 (a) In subclause (1), by deleting "Where" and substituting "Subject to subsection (1A), where".
- (b) By adding -
- "(1A) Where an action for infringement of copyright brought by an exclusive licensee relates (wholly or partly) to an infringement in respect of an infringing copy within the meaning of section 35(3), the exclusive licensee may not, without the leave of the court, proceed with the action unless the copyright owner is joined as a plaintiff.
- (1B) In an application for leave under subsection (1A) to proceed without joining the copyright owner as plaintiff, the court shall not grant leave unless there are exceptional circumstances, other than costs considerations, beyond the control of the copyright owner or exclusive licensee."

<u>Clause</u>	<u>Amendment Proposed</u>
113	In the heading, by deleting " and film " and substituting " , films and computer programs ".
115	<p>(a) In subclause (1), by deleting "an article which is".</p> <p>(b) By deleting subclause (2) and substituting -</p> <p style="padding-left: 40px;">"(2) Subsections (1) (b) and (c) and (4) (b) and (c) do not apply to an article in transit."</p> <p>(c) In subclause (3), by deleting "the article" and substituting "the copy in question".</p> <p>(d) By adding -</p> <p style="padding-left: 40px;">"(5A) For the purpose of subsections (1)(b) and (3), where a person is charged with an offence under subsection (1) in respect of a copy of a copyright work which is an infringing copy by virtue only of section 35(3) and not being excluded under section 35(4), if he proves that -</p> <p style="padding-left: 80px;">(a) he had made reasonable enquiries sufficient to satisfy himself that the copy in question was not an infringing copy of the work;</p> <p style="padding-left: 80px;">(b) he had reasonable grounds to be satisfied in the circumstances of the case that the copy was not an infringing copy; and</p> <p style="padding-left: 80px;">(c) there were no other circumstances which would have led him reasonably to suspect that the copy</p>

Clause

was an infringing copy,

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he has proved that he had no reason to believe that the copy in question was an infringing copy of the copyright work.

(5B) In determining whether the person charged has proved under subsection (5A) that he had no reason to believe that the copy in question was an infringing copy of the work, the court may have regard to, including but not limited to, the following -

- (a) whether he had made enquiries with a relevant trade body in respect of that category of work;
- (b) whether he had given any notice drawing attention of the copyright owner or exclusive licensee to his interest to import and to sell the copy of the work;
- (c) whether he had complied with any code of practice that may exist in respect of the supply of that category of work;
- (d) whether the response, if any, to those enquiries made by him was reasonable and timely."

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- (a) In subclause (1) (e), by deleting "an authorized copy" and substituting "a true copy".
- (b) By deleting subclause (4) (a) (i) and (ii) and substituting -

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- "(i) before a solicitor or a commissioner as defined in the Oaths and Declarations Ordinance (Cap. 11), if it is made in Hong Kong; or
 - (ii) before a notary public, if it is made outside Hong Kong;"
- (c) In subclause (4) (b), by deleting "notary public or consular officer" and substituting "solicitor, commissioner or notary public".
- (d) In subclause (5), by deleting "A" and substituting -
 - "Notwithstanding that an affidavit is admissible as evidence by virtue of this section, a".
- (e) In subclause (7) (b), by deleting "(5)" and substituting "(4)(d)".
- (f) In subclause (8), by deleting "Notwithstanding that an affidavit is admissible as evidence by virtue of this section" and substituting "Without prejudice to subsection (5)".
- (g) By adding -
 - "(8A) Without prejudice to subsection (8) (a), a deponent of an affidavit which is admissible under this section shall attend before the court and give evidence if, and only if, the court so requires under subsection (8) (b)."
- (h) In subclause (12) (b), by deleting "objecting to the affidavit being tendered as evidence".
- (i) In subclause (12)(c), by adding "or found liable for the infringement, as the case may be" after "relevant offence".

ClauseAmendment Proposed

(j) In subclause (13), by deleting "Crown" and substituting "prosecution or plaintiff".

(k) By adding -

"(13A) For the purpose of subsection (1) (e), where the work is a computer program, whether in source codes or object codes, a copy of the program only in the form of object codes is also regarded as a true copy of the program."

119(1)(a) By deleting everything after subparagraph (iii) and substituting -

"in which he reasonably suspects that there is -

(A) an article which is an infringing copy of a copyright work;

(B) an article specifically designed or adapted for making copies of a particular copyright work which article is used or intended to be used for making infringing copies of any such work; or

(C) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Part; and".

New

By adding -

"123A. Protection of informers in criminal proceedings

(1) Save where, in the opinion of the court, justice so requires, the name or identity of any informer and the information given by such informer shall not be disclosed in any criminal proceedings under this Part.

ClauseAmendment Proposed

(2) The court may make any order and adopt any procedure necessary to prevent any such disclosure."

129 (1) By adding after "is satisfied" -

", within a reasonable period after the receipt of the notice of claim,".

160(1) By adding "158 or" before "159".

New By adding after the heading "**Other miscellaneous provisions**" -

"182A. Groundless threat of proceedings in relation to parallel import

(1) Where a person threatens another person with proceedings for infringement of copyright under section 30 and 31 in respect of a copy of a work which is alleged to be an infringing copy by virtue only of section 35(3), the person aggrieved by the threats may apply to the court for any one or more of the following reliefs -

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an injunction against the continuance of the threats;
- (c) damages in respect of any loss which he had sustained by the threats.

ClauseAmendment Proposed

(2) If the person proves that the threats were made and that he is a person aggrieved by them, he is entitled to the relief claimed unless the defendant shows that the acts in respect of which proceedings were threatened did constitute, or if done would have constituted, an infringement of copyright under that section.

(3) The mere notification of the existence of a copyright does not constitute a threat of proceedings for the purposes of this section.

(4) Nothing in this section makes a barrister or solicitor liable to an action under this section in respect of an act done by him in his professional capacity on behalf of his client.

(5) The defendant in an action under this section may apply, by way of counterclaim, for relief to which he would be entitled in a separate action in respect of an infringement by the plaintiff of the copyright to which the threats relate and, in any such case, the provisions of this Ordinance with respect to an action for infringement of copyright are, mutatis mutandis, applicable in relation to the action.

[cf. 1988 c. 48 s. 253 U.K.]."

193 In the definition of "reprographic process", in paragraph (b), by adding "an" before "appliance".

196 By adding "a" after "A performance is".

<u>Clause</u>	<u>Amendment Proposed</u>
200(2)	By adding after "chosen by them" - "(such as the making available of copies of works through the service commonly known as the INTERNET)".
215(1) and (2)	By adding "or of any right conferred by this Part on a person having fixation rights" after "economic rights".
216	(a) In subclauses (1) and (2), by adding "or of any right conferred by this Part on a person having fixation rights" after "economic rights". (b) By deleting subclause (2) (a) and substituting - "(a) the flagrancy of the infringement;". (c) In subclause (2) (b), by deleting the comma at the end and substituting "; and". (d) In subclause (2), by adding - "(c) the completeness, accuracy and reliability of the defendant's business accounts and records,".
222	By deleting the clause and substituting - "222. Infringement actionable An infringement of a performer's non-economic rights is actionable as a breach of statutory duty owed to the person entitled to the rights."

ClauseAmendment Proposed

- 224(8) By adding after "in the performance" -
- "or where the rights in performance in the performance has expired".
- 235 By adding -
- "(1A) In determining whether an act specified in this Division may be done in relation to a performance or fixation notwithstanding the rights conferred by this Part, the primary consideration is that the act does not conflict with a normal exploitation of the performance or fixation by the rights owner of the rights conferred by this Part and does not unreasonably prejudice the legitimate interests of the rights owner of those rights."
- 250 (a) In the heading, by deleting "**Playing of sound recordings**" and substituting "**Performance, showing or playing of works**".
- (b) In subclause (1), by deleting "to play a sound recording" and substituting "to perform, show or play a work (other than a broadcast or a cable programme)".
- (c) In subclause (2)(b), by deleting "recording is to be heard" and substituting "work is to be performed, shown or played".
- 254 (a) In subclause (1), by deleting "that is made or uplinked from a place in Hong Kong and".
- (b) By adding -

ClauseAmendment Proposed

"(1A) The rights conferred by this Part are not infringed by the inclusion of a performance or fixation in a television broadcast or sound broadcast that is not encrypted and that is, by reception and immediate re-transmission without any alteration, included in a service provided -

- (a) by a system licensed under a satellite master antenna television licence issued under the Telecommunication Regulations (Cap. 106 sub. leg.); or
- (b) by an interconnection between a system licensed under a satellite master antenna television licence issued under the Telecommunication Regulations (Cap. 106 sub. leg.) and a subscription television network licensed under the Television Ordinance (Cap. 52) and where the re-transmission is for the reception of the users of the satellite master antenna television system,

until the expiration of 6 months beginning on the day of publication of the notice in accordance with subsection (4A).".

- (c) In subclause (2) -

- (i) by adding "or elsewhere" after "Hong Kong";
- (ii) by adding "or (1A)" after "subsection (1)".

- (d) In subclause (3), by deleting "subsection (1)" and substituting "subsections (1) and (1A)".

ClauseAmendment Proposed

- (e) By deleting subclause (4) and substituting -

"(4) Where a television broadcast or a sound broadcast is not encrypted, the person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or interconnection specified in subsection (1A) is deemed to have been granted an implied licence by the maker of the broadcast to receive and re-transmit the broadcast using the system which is only revocable by notice given in accordance with subsection (4A).

(4A) The maker of a broadcast in respect of which a licence is deemed to have been granted under subsection (4) may revoke the licence by publishing a notice of revocation in

-

- (a) 1 Chinese language newspaper circulating in Hong Kong; and

- (b) 1 English language newspaper circulating in Hong Kong."

- 268 (a) In subclause (2)(a), by deleting "or advertises for sale or hire" and substituting -

"advertises for sale or hire, or possesses for the purpose of trade or business".

- (b) by deleting subclause (3).

- Schedule 2 (a) In paragraph 1(2), by deleting "the new copyright provisions come" and substituting "this Ordinance (other than the provisions specified in section 1(2) of this Ordinance, comes".

ClauseAmendment Proposed

(b) In the heading before paragraph 7, by deleting "**film sound-tracks**".

(c) By adding after paragraph 10 -

"Employee works

10A. Section 14(2) of this Ordinance does not apply to an existing work.

Commissioned works

10B. Section 15 of this Ordinance does not apply to an existing work."

(d) By adding after paragraph 16 -

**"Enforcement of copyright
in registrable design**

16A. (1) Where section 10 of the 1956 Act (effect of industrial application of design corresponding to artistic work) applied in relation to an artistic work at any time before 1 August 1989, section 85B (3) of this Ordinance applies and the period of 15 years mentioned there is to be calculated from the end of the calendar year in which the articles were first marketed.

(2) Where section 10 of the 1956 Act (effect of industrial application of design corresponding to artistic work) applied in relation to an artistic work at any time on or after 1 August 1989 and before commencement, section 85B (3) of this Ordinance applies with the substitution for the period of 15 years mentioned there of the period of 25 years and the

period of 25 years is to be calculated from the end of the calendar year in which the articles were first marketed.

Clause

Amendment Proposed

(3) Except as provided in subparagraphs (1) and (2), section 85B of this Ordinance applies only where articles are marketed as mentioned in section 85B (1) (b) of this Ordinance after commencement.

[cf. 1988 c. 48 Sch. 1 para. 20 U.K.]".

Schedule 4 By adding

"Registered Designs Ordinance

6. Interpretation

Section 2(1) of the Registered Designs Ordinance (64 of 1997) is amended in the definition of "artistic work" by repealing "Part I of the Copyright, Designs and Patents Act 1988 (1988 c. 48 U.K.)" and substituting "Part II of the Copyright Ordinance (of 1997)".

COPYRIGHT BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary
for Trade and Industry

<u>Clause</u>	<u>Amendment Proposed</u>
29(3)(a)(ii)	By deleting "戲劇作品的版本(視屬何情況而定)" and substituting "非戲劇作品的版本(視屬何情況而定)".
42(3)	By deleting "直接與該機構的活動有關" and substituting "與該機構的活動有直接關連".
87(3)(a) and (b)	By deleting "第一版權" and substituting "版權第一".
108(7)	By deleting "該等" and substituting "該".
110(3)	By deleting "上述條文" and substituting "本條的條文".
115(1)	By deleting "物品" wherever it appears and substituting "複製品".
127(1)	By deleting "可按照以下條文沒收" and substituting "可按照以下條文予以沒收".
147(6)	By deleting "名字" and substituting "名稱".

<u>Clause</u>	<u>Amendment Proposed</u>
164(1)(a)	By deleting "; 或 " and substituting "; 及 ".
166(4)	By deleting "該法律程序" and substituting "該等法律程序".
193	By deleting "(authorized)" and substituting "(unauthorized)".
195(1)(a)	By deleting "對他的表演".
195(2)	(a) By deleting "誦讀" and substituting "誦讀、". (b) In the definition of "表演者", by deleting "任何其他人" and substituting "人". (c) In the definition of "錄製品"、"錄製", by deleting paragraphs (a), (b) and (c) and substituting - "(a) 自某項非錄製表演直接製作的影片或聲音紀錄； (b) 自該項表演的廣播製作的影片或聲音紀錄，或自包括該項表演的有線傳播節目製作的影片或聲音紀錄；或 (c) 自該項表演的另一錄製品直接或間接製作的影片或聲音紀錄。".
195(3)(b)	By deleting "規定".
197(2)	By adding "任何人" at the beginning.

<u>Clause</u>	<u>Amendment Proposed</u>
198(2)	By deleting "問題".
199(2)	By deleting "從未" and substituting "未曾".
200(2)	By deleting "使公眾人士" and substituting "使在香港或其他地方的公眾人士".
200(3)	By deleting "向公眾".
201(1)	By deleting "亦知道" and substituting "知道".
202(2)	(a) By deleting "證明侵犯權利" and substituting "證明該侵犯權利". (b) By deleting "判給" where it twice appears.
203(1)	By deleting "並可摒除" and substituting "並摒除".
203(3)(a)	By deleting "以製作" and substituting "而製作".
205(1)	By adding "下，" after "具有錄製權的人的同意".
205(2)	By deleting "亦知道" and substituting "知道".
206(1)	By deleting "亦知道" and substituting "知道".

<u>Clause</u>	<u>Amendment Proposed</u>
208(5)	By deleting "表演者" and substituting "該具有複製權的人".
209(1)	By deleting "在本部賦予的權利的期限規限下" and substituting "就本部賦予的權利的期限".
209	By deleting subclause (2) and substituting - "(2) 本部就某項表演而賦予的權利於下述期間完結時屆滿 — (a) 如該項表演於某公曆年作出，則該權利在自該年年終起計的 50 年期間完結時屆滿；或 (b) 如該項表演的錄製品於該段期間中另一公曆年發行，則該權利在自該年年終起計的 50 年期間完結時屆滿， 但須受以下條文規限。 ".
209(3)	By deleting "公開放映、播放" and substituting "公開播放、放映".
210(1)	By deleting "以下權利是本部賦予表演者的產權" and substituting "本部賦予表演者的以下權利是產權".
210(3)	By adding "享有" after "一項表演".
211(2)(a)	By deleting "方可作出" where it twice appears.

<u>Clause</u>	<u>Amendment Proposed</u>
212(2)	By deleting "藉承讓人提出" and substituting "在承讓人之下".
214	(a) In the heading, by deleting "藉遺囑" and substituting "根據遺囑". (b) By deleting "該未發表表演的".
216(2)(b)	By deleting "的行為".
218(4)	(a) By deleting "不論是現在" and substituting "是現在". (b) By deleting "所關乎的侵犯該等權利" and substituting "所關乎的侵犯權利".
219	(a) In the heading before the clause, by deleting "表演者的". (b) By deleting "將表演者的非經濟權利賦予表演者" and substituting "賦予表演者的權利不得轉讓或轉傳". (c) By adding "的" after "藉使用在未獲同意下製作的錄製品而侵犯表演者". (d) By deleting "將侵犯權利的錄製品用作交易而侵犯表演者權利" and substituting "進行侵犯權利的錄製品交易而侵犯表演者的權利". (e) By deleting "該等權利不得轉讓或轉傳、".
223(2)	(a) By adding "亦" after "除非法院". (b) By deleting "就侵犯權利的錄製品的處置而作出的命令"

and substituting "處置侵犯權利的錄製品的命令".

Clause

Amendment Proposed

- 224(4)(b) By deleting "所賦予" and substituting "賦予有關表演".
- 224(5) By deleting "該表演的錄製品" and substituting "該錄製品".
- 225(1) By adding "有關的" after "任何人不得在自".
- 226(1)(a) By adding "的" after "表演者".
- 226(4)(a) By deleting "出庭" and substituting "出席".
and (b)
- 228(2) By adding "的條文" after "第 IX 分部".
- 231(1) By adding "對該等表演者或合資格的人的" after "受到某國家、地區或地方".
- 231(2)(a) By deleting "在作出該項表演時，該表演者" and substituting "在表演時，表演者".
- 231(2)(b) By deleting "居留權的" and substituting "居留權".
(i)
- 234 By deleting "223(1)" and substituting "233(1)".
- 235(1) By adding "品" after "錄製".

<u>Clause</u>	<u>Amendment Proposed</u>
239(1)	By adding "的" after "賦予".
239(2)	By deleting "直接與該機構的活動有關的人" and substituting "與該機構的活動有直接關連的人".
244(1)	By deleting "其".
246(1)	(a) By deleting "在" and substituting "製作". (b) By deleting "情況下而製作".
246	By deleting subclause (5) and substituting - "(5) 就在本部生效日期之前購買的錄製品而言，本條不適用。".
247	(a) By deleting "該項複製並不抵觸" and substituting "該作為並不抵觸". (b) By deleting "及" and substituting "或".
249(1)	By deleting "指定的機構設置" and substituting "指定機構所經辦".
249(3)	By deleting "設置" and substituting "經辦".
249(4)	By deleting "施行該條" and substituting "施行第 70 條".

ClauseAmendment Proposed

251 By deleting subclause (1) and substituting -

"(1) 任何人如打算廣播某項表演的錄製品，或將某項表演的錄製品包括在有線傳播節目服務內，則在不侵犯本部賦予的權利的情況下，就本部而言，該人須視為已獲同意為廣播或有線傳播節目的目的而製作進一步錄製品。".

252(1) By deleting "將節目" and substituting "將該等節目".

252(2) By deleting paragraph (b) and substituting -

"(b) 履行該等職能而依據該局的指示製作或使用錄製品。".

253(1) By deleting "某地方觀看或聆聽該廣播或有線傳播節目" and substituting "觀看或聆聽該廣播或節目的地方".

253 By deleting subclause (2) and substituting -

"(2) 如有以下情況，觀眾或聽眾可視為已支付進入某地方的入場費 —

(a) 該等觀眾或聽眾已支付進入某一地方的入場費、而該某地方構成該某一地方的一部分；或

(b) 在該某地方(或該某地方構成其一部分的地方)有貨品供應或服務提供，而該貨品或服務的價格 —

(i) 實質上可歸因於提供觀看或聆聽

該廣播或節目的設施；或

Clause

Amendment Proposed

- (ii) 高於通常在該地方收取的價格，並且可部分歸因於上述設施。".

253(3)(a) By deleting "觀看或聆聽廣播或有線傳播節目".

253(3)(b) (a) By deleting "有線傳播節目的設施" and substituting "節目的設施".

(b) By deleting "觀看或聆聽廣播或有線傳播節目的入場費" and substituting "的入場費".

253(4) (a) By deleting "就任何表演或錄製品而言，".

(b) By adding "就任何表演或錄製品" after "本部".

(c) By deleting "該錄製品或影片" and substituting "該廣播或節目".

254(1) (a) By deleting "沒有作出更改的".

(b) By adding "在沒有作出更改的情況下" after "藉接收和".

254(1)(c) By deleting "傳播站" and substituting "轉播電台".

255(1) (a) By deleting "就包括在廣播或有線傳播節目內的表演或錄製品而言，".

(b) By deleting "有線傳播節目的錄製品" and substituting "有線傳播節目的紀錄".

ClauseAmendment Proposed

- (c) By deleting "所賦予" and substituting "就包括在廣播或有線傳播節目內的表演或錄製品賦予".

256 By deleting subclause (1) and substituting -

"(1) 為了將某指定類別的廣播或有線傳播節目的紀錄或其複製品放在由指定機構經辦的檔案室內，任何人均可製作該紀錄或其複製品而不屬侵犯本部就包括在廣播或有線傳播節目內的表演或錄製品而賦予的任何權利。".

256(2) By deleting "與第 84 條" and substituting "與該條".

258(3)(d) By deleting "是該表演的" and substituting "是該錄製品的".

259(2) By deleting the comma after "其他人".

259(5) By deleting "須".

260(4) By deleting "陳述" and substituting "獲聆聽".

260(6) By deleting "獲授人員" where it twice appears and substituting "獲授權人員".

260(7) By deleting "陳述" and substituting "獲聆聽".

<u>Clause</u>	<u>Amendment Proposed</u>
264(1)	By deleting "執行扣留令" and substituting "扣留令的執行".
265(2)(b)	By deleting "或已" and substituting "可".
267(1)	By deleting "為就執行扣留令" and substituting "就扣留令的執行".
267(2)	By deleting "第(1)款就總監及獲授權人員執行上述職責而真誠地採取或真誠地遺漏採取任何行動而賦予他們" and substituting "如有就上述職責的執行而真誠地採取或真誠地遺漏採取的任何行動，則第(1)款就該行動而賦予總監及獲授權人員".
268	<p>By deleting subclause (1) and substituting -</p> <p style="padding-left: 40px;">"(1) 凡版權擁有人、表演者或就表演具有錄製權的人，或在版權擁有人、表演者或就表演具有錄製權的人的特許下（視何者適用而定），以採用任何防止複製的保護措施的形式 —</p> <p style="padding-left: 80px;">(a) 向公眾發放或向公眾提供版權作品的複製品；或</p> <p style="padding-left: 80px;">(b) 向公眾提供非錄製表演或向公眾發放或向公眾提供表演的錄製品的複製品，</p> <p style="padding-left: 40px;">則本條適用。".</p>
268	<p>By deleting subclause (2) and substituting -</p> <p style="padding-left: 40px;">"(2) 任何人如 —</p>

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- (a) 製作、輸入、輸出、出售、出租、要約出售或要約出租，或為出售或出租而展示或宣傳任何器件或設施，而該器件或設施是經特定設計或改裝以規避所採用的某形式的防止複製的保護措施的；或
- (b) 發表任何資料而該資料擬使他人能夠規避或協助他人規避所採用的某形式的防止複製的保護措施，

而該人知道或有理由相信該器件或設施或資料將用以製作侵犯版權複製品或侵犯權利的錄製品，則向公眾發放或向公眾提供上述複製品或非錄製表演的人針對該人而具有的權利及補救，與版權擁有人就侵犯版權而具有的相同。".

268(4) By deleting "並擬將之" and substituting "而其意圖是該等器件或設施應該".

268(5) (a) By adding "所製作的" before "複製品或錄製品".

(b) By deleting "製作".

269 By deleting the heading and substituting -

"就干擾權利管理資料的不合法作為而具有的權利及補救".

269(2) By deleting "作為" and substituting "事情".

269(3) (a) By deleting "在看似是".

- (b) By deleting "有關時" and substituting "有關而出現".

Clause

Amendment Proposed

270(2)(b) By adding "該資料" after "資料而".

Schedule 2 (a) In section 1(1), in the definition of "《1911 年法令》", by deleting "在憲報" and substituting "的憲報".

(b) In section 4(2), by adding "僅" after "凡".

(c) In section 4(2) -

(i) by deleting "在《1956 年法令》下" and substituting "《1956 年法令》所指";

(ii) by deleting "延續該提述" and substituting "延續該成文法則、文書或其他文件";

(iii) by deleting "在本條例下" and substituting "本條例所指".

(d) In section 4(3) -

(i) by deleting "該等條文" and substituting "該條文";

(ii) by deleting "則已作出的該等事情，在猶如該等事情" and substituting "則該等事情在其".

(e) In section 4(4), by deleting "提述包括" and substituting "包括提述".

(f) In section 4(5) -

(i) by deleting "延續該提述" and substituting "延續該成文法則、文書或其他文件";

(ii) by deleting "即提述" and substituting "該提述須解釋

為提述".

Clause

Amendment Proposed

- (g) In section 6 -
 - (i) by deleting "在任何作品或標的物的複製或表演方面" and substituting "就任何作品或其他標的物的複製或表演而";
 - (ii) by deleting "作為" where it twice appears and substituting "行動".
- (h) In section 7(3), by deleting "在 1972 年 12 月 12 日之前製作的構成" and substituting "構成在 1972 年 12 月 12 日之前製作的".
- (i) By deleting section 7(4)(a) and (b) and substituting -
 - "(a) 影片作為原創的戲劇作品而受到或曾經受到保護；或
 - (b) 憑藉對構成影片的一部分的照片的保護而受到或曾經受到保護，".
- (j) In section 10(2), by deleting "在生效之後作出的委託而" and substituting "委託而在生效之後".
- (k) In section 11(1), by deleting "是為《1956 年法令》的目的而界定的詞句，其" and substituting "曾為《1956 年法令》的目的而界定，則該等詞句的".
- (l) In section 11(2)(a) -
 - (i) by adding "在" before "作者死後";
 - (ii) by deleting "須".

<u>Clause</u>	<u>Amendment Proposed</u>
(m)	In section 11(2)(b) - <ul style="list-style-type: none">(i) by adding "在" before "作者死後";(ii) by deleting "須".
(n)	In section 11(3)(a), by deleting "本應按照《1956 年法令》" and substituting "按照《1956 年法令》本應".
(o)	In section 12(3) - <ul style="list-style-type: none">(i) by deleting "在任何作品或標的物的複製品的租賃方面" and substituting "就任何作品或標的物的複製品的租賃而";(ii) by deleting "以作上述租賃為出發點" and substituting "為達致上述租賃";(iii) by deleting "第 10 條已實施" and substituting "第 10 條的實施";(iv) by deleting "作為" where it twice appears and substituting "行動".
(p)	In section 14(a) - <ul style="list-style-type: none">(i) by deleting "存放於";(ii) by deleting "中的未發表作品" and substituting "內";(iii) by deleting "製作該等作品的複製品" and substituting "複製未發表的作品".
(q)	In section 14(b), by deleting "發表意圖" and substituting "意圖發表".

ClauseAmendment Proposed

- (r) In section 14(c) -
 - (i) by deleting "後來";
 - (ii) by adding "而後來" before "作出".
- (s) In section 16 -
 - (i) by deleting "該作品" and substituting "該論文、文章或其部分";
 - (ii) by deleting "類似性質" and substituting "性質類似".
- (t) In section 23, by deleting "轉歸" and substituting "歸屬".
- (u) In section 23(5)(c) -
 - (i) by deleting "的獨立部分構成" and substituting "獨立部分";
 - (ii) by adding "的作品" after "的部分".
- (v) In section 26(1)(b), by deleting "該條" and substituting "本條例第 101 條".
- (w) In section 31(2), by adding "下" after "規限".
- (x) In section 32(2), by deleting "本會按照《1956 年法令》" and substituting "按照《1956 年法令》本會".
- (y) In section 35(2), by deleting "本會按照《1956 年法令》" and substituting "按照《1956 年法令》本會".
- (z) In section 37(b), by deleting "由合法地藉作者而提出申索" and substituting "在作者之下合法地提出申索".

ClauseAmendment Proposed

(za) In section 38 -

- (i) deleting "變通後" and substituting "變通的規限下，猶如它是根據本條例訂立一樣";
- (ii) by deleting "並猶如它是根據本條例訂立一樣".

(zb) In section 39 -

- (i) by deleting "變通後" and substituting "變通的規限下，猶如它是為施行本條例第 140 及 266 條而訂立一樣";
- (ii) by deleting "並猶如它是為施行本條例第 140 及 266 條而訂立一樣".

(zc) In section 40 -

- (i) by deleting "變通後" and substituting "變通的規限下，猶如它是根據本條例而訂立一樣";
- (ii) by deleting "並猶如它是根據本條例而訂立一樣".

Schedule 3 (a) In section 1(1) -

- (i) in the definition of "《版權條例》", by deleting "實施" and substituting "生效";
- (ii) in the definition of "新的表演權利條文", by deleting "及就第 III 部的條文而作出相應修訂或廢除的附表 4 及 5" and substituting "、附表 4 及 5，以及其就第 III 部的條文而作出相應修訂或廢除的條文的範圍".

(b) In section 1(2), by adding "僅" after "凡".

ClauseAmendment Proposed

- (c) In section 4(2) -
 - (i) by deleting "在提述" and substituting "凡提述";
 - (ii) by deleting "若非" and substituting "，而該等權利或表演";
 - (iii) by deleting "在《版權條例》下的表演者權利的情況" and substituting "《版權條例》所指的表演者的權利";
 - (iv) by deleting "在延續該等提述" and substituting "則在延續該成文法則、文書或其他文件";
 - (v) by deleting "須解釋為指(或按個別情況的需要而須解釋為包括)" and substituting "，該項提述須解釋為(或按個別情況的需要而須解釋為包括)本條例所指的表演者的權利".
- (d) In section 4(3), by deleting "，則已作出的該等事情，在猶如該等事情" and substituting "則該等事情在其".
- (e) In section 4(5) -
 - (i) by deleting "延續該提述" and substituting "延續該成文法則、文書或其他文件條文";
 - (ii) by deleting "即" and substituting "該項提述須解釋為".
- (f) In section 5(1)(b)(i), by deleting "現存的".
- (g) In section 5(2), by adding "的日期" after "屆滿".
- (h) In section 6 -
 - (i) by deleting "在錄製任何表演或複製任何錄製品方面"

and substituting "就錄製任何表演或複製任何錄製品而";

Clause

Amendment Proposed

- (ii) by deleting "作為" where it twice appears and substituting "行動".

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COMMITTEE STAGE

Amendments to be moved by the Hon. CHAN Kam-lamClauseAmendment Proposed

35

By deleting subclause (4) and substituting -

"(4) For the purposes of sections 115 to 129 (criminal provisions) "infringing copy" does not include a copy of a work -

- (a) that was lawfully made in the country, territory or area where it was made;
- (b) that has been or is proposed to be imported into Hong Kong at any time after the expiration of 24 months beginning on the work in Hong Kong or elsewhere; and
- (c) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relation to that work,

or a copy of an accessory work -

- (i) that was lawfully made in the country, territory or area where it was made;
- (ii) that has been or is proposed to be imported into Hong Kong; and

ClauseAmendment Proposed

- (iii) its makes in Hong Kong would copyright in the work in question, or a breach of an exclusive licence agreement relating to that work." .have constituted an infringement of the

New

By adding after clause 35 -

"Defences

**35A. Defence for the purposes
of sections 30 and 31**

(1) For the purposes of sections 30 and 31 and for the avoidance of doubt, it is declared that if in an action for infringement of copyright under section 30 or 31 in respect of a copy of a work which is an infringing copy by virtue only of section 35(3), the defendant proves that -

- (a) he had made reasonable enquiries sufficient to satisfy himself that the copy of the work imported or proposed to be imported into Hong Kong was not an infringing copy of the work;
- (b) he had reasonable grounds to be satisfied in the circumstances of the case that the copy was not an infringing copy; and
- (c) there were no other circumstances which would have led him reasonably to suspect that the copy was an infringing copy,

he has proved that he did not have reason to believe that the copy was an infringing copy.

ClauseAmendment Proposed

(2) In determining whether a defendant has proved under subsection (1) that he did not have reason to believe that the copy was an infringing copy of the work, the court may have regard to, including but not limited to, the following

-

- (a) whether he had made enquiries with a relevant trade body in respect of that category of work;
- (b) whether he had given any notice drawing attention of the copyright owner or exclusive licensee to his interest to import and to sell the copy of the work;
- (c) whether he had complied with any code of practice that may exist in respect of the supply of that category of work;
- (d) whether the response, if any, to those enquiries made by the defendant were reasonable and timely.

(3) In an action against a person for infringement of copyright under section 30 or 31, it is a defence for that person to prove that -

- (a) he had placed an order with the copyright owner or the exclusive licensee, as the case may be, for the supply of copies of the work;
- (b) the person with whom he placed the order had acted unconscionably by either withholding supply on unreasonable grounds or by agreeing to supply on unreasonable terms; and

ClauseAmendment Proposed

- (c) the import took place after that unconscionable act by the copyright owner or exclusive licensee and after the expiration of 24 months beginning on the first day of publication of the work in Hong Kong or elsewhere.

(4) In determining whether the copyright owner or exclusive licensee had acted unconscionably, the court shall take into consideration the established practices of the copyright owner or the exclusive licensee for the orderly distribution of copies of that category of work and, in particular, whether the order, if fulfilled, would conflict with a normal exploitation of the work by the copyright owner or the exclusive licensee, or would unreasonably prejudice the legitimate interests of the copyright owner or exclusive licensee."

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COMMITTEE STAGE

Amendments Proposed by Dr the Hon. HUANG Chen-ya

<u>Clause</u>	<u>Amendment Proposed</u>
35	<p>By deleting sub clause (4) and substituting -</p> <p>"(4) For the purposes of section 115 to 129 (criminal provisions) "infringing copy" (侵犯版權複製品) does not include a copy of a work -</p> <p>(a) that was lawfully made in the country, territory or area where it was made;</p> <p>(b) that has been or is proposed to be imported into Hong Kong at any time after the expiration of 1 year beginning on the first day of publication of the work in Hong Kong or elsewhere (save that in considering a copy of a film the said period of "1 year" shall be substituted by "18 months"); and</p> <p>(c) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work,</p> <p>or a copy of an accessory work -</p> <p>(i) that was lawfully made in the country, territory or area where it was made;</p> <p>(ii) that has been or is proposed to be imported into Hong Kong; and</p>

ClauseAmendment Proposed

- (iii) its making in Hong Kong would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work."

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COMMITTEE STAGE

Amendments Proposed by Dr the Hon. HUANG Chen-yaClauseAmendment Proposed

New

By adding before DIVISION III -

"

Defences**35A. Defences for the purposes of sections 30 & 31**

(1) For the purposes of sections 30 and 31 and for the avoidance of doubt, it is declared that if in an action for infringement of copyright under section 30 or 31 in respect of a copy of a work which is an infringing copy by virtue only of section 35(3), the defendant proves that -

- (a) he had made reasonable enquiries sufficient to satisfy himself that the copy of the work imported or proposed to be imported into Hong Kong was not an infringing copy of the work;
- (b) he had reasonable grounds to be satisfied in the circumstances of the case that the copy was not an infringing copy; and
- (c) there were no other circumstances which would have led him reasonably to suspect that the copy was an infringing copy.

he has proved that he did not have reason to believe that the copy was an infringing copy.

ClauseAmendment Proposed

- (2) In determining whether a defendant has proved under subsection (1) that he did not have reason to believe that the copy was an infringing copy of the work, the court may have regard to, including but not limited to, the following -
- (a) whether he had made enquiries with a relevant trade body in respect of that category of work;
 - (b) whether he had given any notice drawing attention of the copyright owner or exclusive licensee to his interest to import and to sell the copy of the work;
 - (c) whether he had complied with any code of practice that may exist in respect of the supply of that category of work;
 - (d) whether the response, if any, to those enquiries made by the defendant was reasonable and timely;
 - (e) whether he was provided with the name, address and contact details of the copyright owner or exclusive licensee (as the case may be);
 - (f) whether he was provided with the date of first day of publication of the work;
 - (g) whether he was provided with proof of any relevant exclusive licence.
- (3) In an action against a person for infringement of copyright under section 30 or 31, it is a defence for that person to prove that -

ClauseAmendment Proposed

- (a) he had placed an order with the copyright owner or the exclusive licensee, as the case may be, for the supply of copies of the work;
 - (b) the person with whom he placed the order had acted unconscionably by either withholding supply on unreasonable grounds or by agreeing to supply on unreasonable terms; and
 - (c) the import took place after that unconscionable act by the copyright owner or exclusive licensee and after the expiration of the period referred to in section 35(4)(b).
- (4) In determining whehter the copyright owner or exclusive licensee had acted unconscionably, the court shall take into consideration the established practices of the particular trade for the orderly distribution of copies of that catetory of work and, in practicular, whether the order, if fulfilled, would conflict with a normal exploitation of the work by the copyright owner or the exclusive licensee, or would unreaonably prejudice the legitimate interests of the copyright owner or exclusive licensee.
- (5) In determining whether supply is withheld on "unreasonable grounds" or whether the agreement to supply is on "unreasonable terms" the court shall have regard to the reasonable requirements of the particular trade or particular public, including but not limited to price and delivery times, the practice of the trade with existing stocks in Hong Kong, the practice of the trade generally for the product in its particular medium, category or language, the size of the order, enquiries made and whether or not any person has previously had unfulfilled orders with the particular supplier."

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COMMITTEE STAGE

Amendments proposed by Dr the Hon. HUANG Chen-ya

<u>Clause</u>	<u>Amendment Proposed</u>
110	<p>(a) In sub-clause (1), by deleting "where" and substituting "Subject to subsection (1A), where" -</p> <p>(b) By adding -</p> <p>"(1A) Where an action for infringement of copyright brought by an exclusive licensee relates (wholly or partly) to an infringement in respect of an infringing copy within the meaning of section 35(3), the exclusive licensee may not, without the leave of the court, commence the action unless the copyright owner is joined as a plaintiff.</p> <p>(1B) In an application for leave under sub-section (1A) to commence an action without joining the copyright owner as plaintiff, the court shall not grant leave unless there are exceptional circumstances, other than costs considerations, beyond the control of the copyright owner or the exclusive licensee."</p>

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COMMITTEE STAGE

Amendment to be moved by the Hon. SIN Chung-kai

ClauseAmendment Proposed

1(2) By deleting the subclause and substituting -

"(2) The following provisions shall come into operation on a day to be appointed by the Secretary for Trade and Industry by notice in the Gazette -

- (a) the definition of "register", "Registrar" and "registration" in section 141(4);
- (b) sections 142 to 149;
- (c) paragraph 5 of schedule 4."

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COMMITTEE STAGE

Amendments proposed by the Hon. Howard YOUNGClauseAmendment Proposed

New By adding before DIVISION III -

"

Defences**35A. Defences for the purposes of section 30 & 31**

(1) For the purposes of sections 30 and 31 and for the avoidance of doubt, it is declared that if in an action for infringement of copyright under section 30 or 31 in respect of a copy of a work which is an infringing copy by virtue only of section 35(3), the defendant proves that -

- (a) he had made reasonable enquiries sufficient to satisfy himself that the copy of the work imported or proposed to be imported into Hong Kong was not an infringing copy of the work;
- (b) he had reasonable grounds to be satisfied in the circumstances of the case that the copy was not an infringing copy; and
- (c) there were no other circumstances which would have led him reasonably to suspect that the copy was an infringing copy,

he has proved that he did not have reason to believe that the copy was an infringing copy.

ClauseAmendment Proposed

- (2) In determining whether a defendant has proved under subsection (1) that he did not have reason to believe that the copy was an infringing copy of the work, the court may have regard to, including but not limited to, the following -
- (a) whether he had made enquiries with a relevant trade body in respect of that category of work;
 - (b) whether he had given any notice drawing attention of the copyright owner or exclusive licensee to his interest to import and to sell the copy of the work;
 - (c) whether he had complied with any code of practice that may exist in respect of the supply of that category of work;
 - (d) whether the response, if any, to those enquiries made by the defendant was reasonable and timely;
 - (e) whether he was provided with the name, address and contact details of the copyright owner or exclusive licensee (as the case may be);
 - (f) whether he was provided with the date of first day of publication of the work;
 - (g) whether he was provided with proof of any relevant exclusive licence.
- (3) In an action against a person for infringement of copyright under section 30 or 31, it is a defence for that person to prove that -

ClauseAmendment Proposed

- (a) he had placed an order with the copyright owner or the exclusive licensee, as the case may be, for the supply of copies of the work;
 - (b) the person with whom he placed the order had acted unconscionably by either withholding supply on unreasonable grounds or by agreeing to supply on unreasonable terms; and
 - (c) the import took place after that unconscionable act by the copyright owner or exclusive licensee and after the expiration of the period referred to in section 35(4)(b).
- (4) In determining whether the copyright owner or exclusive licensee had acted unconscionably, the court shall take into consideration the established practices of the copyright owner or the exclusive licensee for the orderly distribution of copies of that category of work and, in particular, whether the order, if fulfilled, would conflict with a normal exploitation of the work by the copyright owner or the exclusive licensee, or would unreasonably prejudice the legitimate interests of the copyright owner or exclusive licensee.
- (5) In determining whether supply is withheld on "unreasonable grounds" or whether the agreement to supply is on "unreasonable terms" the court shall have regard to the reasonable requirements of the particular trade or particular public, including but not limited to price and delivery times, the practice of the trade with existing stocks in Hong Kong, the practice of the trade generally for the product in its particular medium, category or language, the size of the order, enquiries made and whether or not any person has previously had unfulfilled orders with the particular supplier."

ClauseAmendment Proposed

115

By adding -

"(5A) For the purpose of subsections (1)(b) and (3), where a person is charged with an offence under subsection (1) in respect of a copy of a copyright work which is an infringing copy by virtue only of section 35(3) and not being excluded under section 35(4), if he proves that -

- (a) he had made reasonable enquiries sufficient to satisfy himself that the copy in question was not an infringing copy of the work;
- (b) he had reasonable grounds to be satisfied in the circumstances of the case that the copy was not an infringing copy;
- (c) there were no other circumstances which would have led him reasonably to suspect that the copy was an infringing copy,

he has proved that he had no reason to believe that the copy in question was an infringing copy of the copyright work.

(5B) In determining whether the person charged has proved under subsection (5A) that he had no reason to believe that the copy in question was an infringing copy of the work, the court may have regard to, including but not limited to, the following -

- (a) whether he had made enquiries with a relevant trade body in respect of that category of work;
- (b) whether he had given any notice drawing attention of the copyright owner or exclusive licensee to his interest to import and to sell the copy of the work;

ClauseAmendment Proposed

- (c) whether he had complied with any code of practice that may exist in respect of the supply of that category of work;
- (d) whether the response, if any, to those enquiries made by the defendant was reasonable and timely;
- (e) whether he was provided with the name, address and contact details of the copyright owner or exclusive licensee (as the case may be);
- (f) whether he was provided with the date of first day of publication of the work;
- (g) whether he was provided with proof of any relevant exclusive licence.

Schedule 2 By adding after paragraph 12(4) -

"(4A) For the purposes of section 35 of the Ordinance (meaning of "infringing copy"), if an article has been imported before commencement without infringing copyright under the law existing at the time of importation, the terms of any exclusive licence agreement relating to that article are to be disregarded and, for the avoidance of doubt, any possession or dealing in the article which takes place after commencement shall not infringe copyright within the terms of sections 31 and 115 to 129 of the Ordinance."

SMOKING (PUBLIC HEALTH) (AMENDMENT) (NO. 2) BILL 1997

COMMITTEE STAGEAmendments to be moved by the Secretary for Health and Welfare

<u>Clause</u>	<u>Amendment</u>
2(a)	By deleting "餐館、" and substituting "食肆、".
2(c)	By adding - ""restaurant" (食肆) means a restaurant licensed pursuant to the Public Health and Municipal Services Ordinance (Cap. 132);".
3	(a) By renumbering the clause as clause 3(2). (b) By adding - "(1) Section 3(1A) is amended by repealing "by order in the Gazette".".
New	By adding - "3A. Display of signs outside restaurants Section 6A is amended - (a) in subsection (1) by repealing "餐館" wherever it appears and substituting "食肆"; (b) by repealing subsection (4).".

ClauseAmendment Proposed

6 In the heading by deleting "content" and substituting "yield".

13 By deleting the clause and substituting -

"13. Section added

The following is added -

"13B. Prohibition on placing of tobacco advertisement on the Internet

(1) No person shall place or cause to be placed a tobacco advertisement on the Internet.

(2) For the avoidance of doubt, a holder of a Public Non-Exclusive Telecommunications Service Licence granted under the Telecommunication Ordinance (Cap. 106) shall not be responsible for -

- (a) any content placed on the Internet by a user and made available for the use of another user unless the holder has knowledge of such content and can reasonably be expected to block the use of such content or require amendment of such content; or
- (b) any such content to which the holder only provides access, including the automatic and temporary storage of such content by the holder due to the request of a user.

ClauseAmendment Proposed

(3) Subsection (1) shall not apply to any tobacco advertisement which is contained in any private correspondence on the Internet and is not for commercial purposes."."

14(c) By deleting the proposed section 14(2) and substituting -

"(2) Subject to subsections (2A) to (3), where -

- (a) an advertisement; or
- (b) any object, other than a tobacco product, which is displayed to the public, whether for sale or otherwise, in the course of conducting any business or providing any service,

includes the name or trade name of any person associated with the marketing of any tobacco product, or any trade mark or brand name of a tobacco product, or any pictorial device or part thereof commonly associated therewith, then the advertisement or object shall be deemed to be a tobacco advertisement.

(2A) Subsection (2) shall not apply to any advertisement or object if the inclusion of such name, trade name, trade mark, brand name or pictorial device or part thereof mentioned in subsection (2) is exclusively for -

- (a) a non-tobacco product or service;
- (b) job recruitment purposes.

(2B) Subsection (2) shall not apply to any advertisement or object which includes -

ClauseAmendment Proposed

- (a) the name of any company or body corporate associated with the manufacture or marketing of any tobacco product, or
- (b) any name identified with the trade name or brand name of any tobacco product, in association with any product not being tobacco,

as the sponsor of an event or as congratulating another person or thing on an achievement of, or event relating to, such person or thing and which does not mention the words "cigarette", "cigarettes", "smoking", "tobacco", "cigar", "cigars", "pipe" or "pipes" or "香煙", "吸煙", "煙草", "雪茄" or "煙斗".

15

By deleting the proposed section 14A(1) to (3) and substituting -

"(1) Any public officer authorized in writing by the Secretary may, without payment for it, remove or cause to be removed any tobacco advertisement or advertising structure in respect of which he reasonably suspects that an offence under this Ordinance has been or is being committed.

(2) A magistrate may, on an application of the Secretary or any public officer authorized in writing by the Secretary, order the disposal of any tobacco advertisement or advertising structure removed under subsection (1), whether or not any person is convicted of any offence under this Ordinance, on the grounds that an offence under this Ordinance has been or is being committed in relation to such advertisement or structure.

ClauseAmendment Proposed

(3) The magistrate shall not order such disposal unless he is first satisfied that all persons with an interest in such advertisement or structure have, in so far as is reasonably practicable, had the opportunity of making representations thereon to the magistrate or that no such persons can, after reasonable inquiry, be found.

(4) The Government may recover the costs of the removal or disposal from the proprietor of the brand of tobacco product which is mentioned in the tobacco advertisement or advertising structure removed under subsection (1) or from the owner of such advertisement or structure."

New

By adding -

"22B. Schedule amended

Schedule 3 is amended by adding -

"2. Airport Authority Passenger terminal complex of the Airport as defined in section 2 of the Airport Authority Ordinance (Cap. 483)".

23

The proposed Schedule 4 is amended by adding -

"2. Schools registered or provisionally registered under the Education Ordinance (Cap. 279).

3. Post secondary colleges, technical colleges or technical institutes, industrial training centres or skills centres.

ClauseAmendment Proposed

4. Universities.
5. The Hong Kong Academy for Performing Arts."

SMOKING (PUBLIC HEALTH) (AMENDMENT) (NO. 2) BILL 1997

COMMITTEE STAGEAmendments to be moved by Dr the Hon. LEONG Che-hung

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>By adding -</p> <p>"(2A) Notwithstanding subsection (2), section 11 shall come into operation on the 1st anniversary of the day on which this Ordinance is enacted."</p>
1	<p>By adding -</p> <p>"(2B) Notwithstanding subsection (2), section 10(a) shall come into operation on 31 December 1999."</p>
10	<p>By deleting paragraph (a) and substituting -</p> <p>"(a) by repealing subsection (1) and substituting -</p> <p>"(1) No person shall print, publish or cause to be published a tobacco advertisement in a printed publication to which this section applies.""</p>
11	<p>In the proposed new section 12, by adding -</p> <p>"(1A) Subsection (1) does not apply to any tobacco advertisement which -</p> <p>(a) is in or upon any stall or pitch of a hawker who is licensed pursuant to the Public Health and Municipal Services Ordinance (Cap. 132) to hawk commodities, including tobacco products, at that stall or pitch; and</p>

ClauseAmendment Proposed

- (b) bears a health warning in the prescribed form and manner."

11 In the proposed new section 12, by adding -

"(1B) Subsection (1) does not apply to any tobacco advertisement which is in or upon any premises of a retail dealer dealing in commodities including tobacco products if -

- (a) the number of persons employed by the dealer does not exceed 2; and
- (b) the tobacco advertisement bears a health warning in the prescribed form and manner."

14(c) In the proposed new subsection (2), by deleting paragraph (iii) and substituting -

"(iii) it mentions the name of any company or body corporate associated with the manufacture or marketing of cigarettes, cigarette tobacco, cigars or pipe tobacco as the sponsor of an event and does not mention -

- (A) any other name identified with the trade name or brand name of any cigarette, cigarette tobacco, cigars or pipe tobacco; or
- (B) the words "cigarette", "cigarettes", "smoking", "tobacco", "tobaccos", "cigar", "cigars", "pipe" or "pipes", "香煙", "吸煙", "煙草", "雪茄" or "煙斗".

SMOKING (PUBLIC HEALTH) (AMENDMENT) (NO. 2) BILL 1997

COMMITTEE STAGEAmendments to be moved by the Hon. LAW Chi-kwong

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>By adding -</p> <p>"(2A) Notwithstanding subsection (2), section 11 shall come into operation on the 2nd anniversary of the day on which this Ordinance is enacted."</p>
2(b)	<p>By deleting "3(1) or (1A)" and substituting "3(1), (1A) or (1C)".</p>
3	<p>By deleting the proposed new subsection (1B) and substituting -</p> <p>"(1B) Subject to subsection (1C), the manager of any premises specified in Schedule 4 may designate any such premises or part thereof as a no smoking area.</p> <p>(1C) The manager of a restaurant which provides indoor seating accommodation for more than 200 persons, excluding accommodation being used exclusively for a private event and separated by full height partition, shall designate not less than one-third of the area of such as a no smoking area."</p>
4	<p>By adding -</p> <p>"(c) by adding -</p> <p>(4) Any manager who contravenes section 3(1C) commits an offense and is liable on</p>

<u>Clause</u>	summary conviction to a fine at level 4." <u>Amendment Proposed</u>
New	<p data-bbox="373 371 552 405">By adding -</p> <p data-bbox="568 465 1129 499">"22A. Designated no smoking areas</p> <p data-bbox="663 562 1190 595">Schedule 2 is amended by adding -</p> <p data-bbox="663 658 1417 981">"4. (a) Any indoor area open to the public in a supermarket or bank." (b) Any indoor area open to the public in a department stores or shopping malls, except the restaurant within a department store or a shopping mall.</p>
23	In the proposed new schedule, by deleting "Restaurants, department stores, shopping malls, supermarkets, banks" and substituting "Restaurants".

SMOKING (PUBLIC HEALTH) (AMENDMENT) (NO. 2) BILL 1997

COMMITTEE STAGE

Amendment to be moved by the Hon. Mrs Selina CHOW, OBE, JP

ClauseAmendment Proposed

11

In the proposed new section 12, by adding -

"(4) Subsection (1) shall not apply to any tobacco advertisement which is in or upon a retail outlet at which commodities including tobacco products are sold. Such advertisement shall have a health warning in the prescribed form and manner."

14(c)

By deleting the proposed subsection (4).

18(b)

By adding -

"(4) Subsection (3)(c) and (d) shall not apply to a gift presented at a retail outlet immediately following the purchase of cigarettes at that outlet. Such a gift shall comply with the following conditions -

- (i) the reasonable retail market value of the gift at the material time does not exceed the retail price at the material time of a 20 sticks packet cigarette of the brand purchased; and
- (ii) where the gift has a tobacco advertisement, the gift shall also have a health warning in the prescribed form and manner."

SMOKING (PUBLIC HEALTH) (AMENDMENT) (NO.2) BILL 1997

COMMITTEE STAGEAmendments to be moved by the Hon. LEUNG Yiu-chungClauseAmendment Proposed

- 11 (a) In the proposed section 12(1), by deleting "writing or other".
- (b) By adding after the proposed section 12(2) -
- "(2A) Subsection (1) does not apply to any tobacco advertisement displayed at any event which is sponsored under or by reference to any name identified with the trade name or brand name of any cigarettes, cigarette tobacco, cigar or pipe tobacco and which -
- (a) advertises the event; and
- (b) is displayed only for the duration of the event (and such minimum period prior to or after the event as is reasonably necessary in connection with mounting and removing the display).".
- 14(c) (a) In the proposed section 14(2) -
- (i) by deleting "Subject to subsection (3), where" and substituting "Where";
- (ii) by adding "not" after "deemed";
- (iii) by deleting "unless" and substituting "if";
- (iv) in subparagraph (ii), by adding "or" at the end;

ClauseAmendment Proposed

- (v) in subparagraph (iii) (B), by deleting "in association with any product not being tobacco,".
- (b) In the proposed section 14(3), by deleting "Notwithstanding subsection (2), any" and substituting "Any".