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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 15 OF 2007

L.S.

Donald TSANG
Chief Executive
5 July 2007

An Ordinance to amend the Copyright Ordinance to make provisions or further provisions for—

- (a) the acts which may be done in relation to works or performances notwithstanding the copyright in the works or the rights in the performances;
- (b) the rental right of copyright owners and performers;
- (c) the moral rights of performers;
- (d) the infringement of copyright in works or rights in performances;
- (e) the technological measures which are used for the protection of copyright in works or rights in performances; and
- (f) miscellaneous and transitional matters,

to repeal the Copyright (Suspension of Amendments) Ordinance 2001, and to make provisions for related matters.

[6 July 2007]

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Copyright (Amendment) Ordinance 2007.

2. Commencement

(1) Subject to subsection (2), this Ordinance shall come into operation on the day on which it is published in the Gazette.

(2) The following sections shall come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette—

- (a) section 6(1) (insofar as it relates to the new section 25(1)(c), (d), (e) and (f)), (2) and (4);
- (b) section 31(5);
- (c) section 33;
- (d) section 36(7);
- (e) section 36(8), (9), (10) and (12) (insofar as it relates to the new section 121(2D));
- (f) section 37;
- (g) section 38;
- (h) section 39;
- (i) section 47(2) (insofar as it relates to paragraphs (c), (d), (e) and (f) of the new definition of “rental right” in section 198(1));
- (j) section 49;
- (k) section 51;
- (l) section 53;
- (m) section 54;
- (n) section 58;
- (o) section 60;
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- (s) section 69;
- (t) section 70; and
- (u) section 75 (insofar as it relates to Parts 3 and 4 of the new Schedule 7).

PART 2

AMENDMENTS TO COPYRIGHT ORDINANCE

3. Long title amended

The long title to the Copyright Ordinance (Cap. 528) is amended by repealing everything after “An Ordinance to” and substituting “make provisions in respect of copyright and related rights and for connected purposes.”

4. Duration of copyright in literary, dramatic, musical or artistic works

Section 17(5)(b)(i) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

5. The acts restricted by copyright in a work

Section 22(1)(c) is repealed and the following substituted—
“(c) to rent copies of the work to the public (see section 25);”.

6. Infringement by rental of work to the public

(1) Section 25(1) is repealed and the following substituted—

“(1) The rental of copies of any of the following works to the public is an act restricted by the copyright in the work—

- (a) a computer program;
- (b) a sound recording;
- (c) a film;
- (d) a literary, dramatic or musical work included in a sound recording;
- (e) a literary or artistic work included in a comic book; or
- (f) the typographical arrangement of a published edition of a comic book.”.

(2) Section 25(3) is amended by repealing “The” and substituting “Subject to subsection (3A), the”.

(3) Section 25(3)(b) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(4) Section 25 is amended by adding—

“(3A) The rental of copies of a work referred to in subsection (1)(e) or (f) includes the making available of copies of the work for on-the-spot reference use subject to direct or indirect payment.”.

7. Secondary infringement: possessing or dealing with infringing copy

(1) Section 31(1)(a) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(2) Section 31(1)(c) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(3) Section 31(1)(c) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(4) Section 31(1)(d) is amended by repealing “otherwise than for the purpose of, in the course of, or in connection with, any trade or business” and substituting “otherwise than for the purpose of or in the course of any trade or business”.

8. Secondary infringement: providing means for making infringing copies

Section 32(1)(c) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

9. Meaning of “infringing copy”

(1) Section 35(3) is amended by repealing “Except as provided in section 35A,” and substituting “Except as otherwise provided in section 35A or 35B,”.

(2) Section 35(4)(b) is amended by repealing “18 months” and substituting “15 months”.

(3) Section 35 is amended by adding—

“(6A) Where, in any proceedings, a question arises as to whether a copy of a work that was lawfully made in the country, territory or area where it was made is an infringing copy by virtue only of subsection (3), and it is shown—

- (a) in the case of a copy of a work that is stored in an optical disc, that the optical disc is not marked with a manufacturer's code as required under section 15 of the Prevention of Copyright Piracy Ordinance (Cap. 544);
- (b) that a label or mark on the copy, the article in which the copy is embodied or the packaging or container in which the copy is packaged or contained indicates that the copy was made in a country, territory or area outside Hong Kong; or
- (c) that a label or mark on the copy, the article in which the copy is embodied or the packaging or container in which the copy is packaged or contained indicates that distribution, sale or supply of the copy is prohibited in Hong Kong or restricted to countries, territories or areas outside Hong Kong,

then, unless there is evidence to the contrary, the copy shall be presumed to have been imported into Hong Kong.

(6B) In subsection (6A)(a)—

- “manufacturer's code” (製造者代碼) has the meaning assigned to it by section 2(1) of the Prevention of Copyright Piracy Ordinance (Cap. 544);
- “marked” (標上) has the meaning assigned to it by section 15(3) of the Prevention of Copyright Piracy Ordinance (Cap. 544);
- “optical disc” (光碟) has the meaning assigned to it by section 2(1) of the Prevention of Copyright Piracy Ordinance (Cap. 544).”

(4) Section 35(7) is repealed and the following substituted—

“(7) In this Part, “infringing copy” (侵犯版權複製品) includes a copy which is to be treated as an infringing copy by virtue of any of the following provisions—

- (a) section 35B(5) (imported copy not an “infringing copy” for purposes of section 35(3));
- (b) section 40B(5) (accessible copies made for persons with a print disability);
- (c) section 40C(7) (accessible copies made by specified bodies for persons with a print disability);
- (d) section 40D(2) (intermediate copies possessed by specified bodies);
- (e) section 40D(7) (intermediate copies dealt with by specified bodies);
- (f) section 41A(7) (copies made for purposes of giving or receiving instruction);

- (g) section 41(5) (copies made for purposes of instruction or examination);
- (h) section 44(3) (recordings made by educational establishments for educational purposes);
- (i) section 45(3) (reprographic copying by educational establishments for purposes of instruction);
- (j) section 46(4)(b) (copies made by librarian or archivist in reliance on false declaration);
- (k) section 54A(3) (copies made for purposes of public administration);
- (l) section 64(2) (further copies, adaptations, etc. of work in electronic form retained on transfer of principal copy);
- (m) section 72(2) (copies made for purpose of advertising artistic work for sale); or
- (n) section 77(4) (copies made for purposes of broadcast or cable programme).”.

10. Section added

The following is added immediately after section 35A—

“35B. Imported copy not an “infringing copy” for the purposes of section 35(3)

- (1) A copy of a work to which this subsection applies is not—
 - (a) in relation to the person who imports it into Hong Kong, an infringing copy for the purposes of section 35(3) if—
 - (i) it was lawfully made in the country, territory or area where it was made; and
 - (ii) it is not imported with a view to its being dealt in by any person for the purpose of or in the course of any trade or business; or
 - (b) in relation to the person who possesses it, an infringing copy for the purposes of section 35(3) if—
 - (i) it was lawfully made in the country, territory or area where it was made; and
 - (ii) it is not possessed with a view to its being dealt in by any person for the purpose of or in the course of any trade or business.
- (2) Subsection (1) applies to a copy of a work of any description except a copy of a work—

- (a) that is—
 - (i) a musical sound recording;
 - (ii) a musical visual recording;
 - (iii) a television drama; or
 - (iv) a movie; and

(b) that is, or is intended to be, played or shown in public.

(3) Notwithstanding the exception in subsection (2), subsection (1) applies to a copy of a work that is referred to in subsection (2)(a) and that is, or is intended to be, played or shown in public—

(a) by an educational establishment for the educational purposes of the establishment; or

(b) by a specified library for use of the library.

(4) For the purposes of subsection (3)(b), a library is regarded as a specified library if it falls within the description of any library specified under section 46(1)(b).

(5) Where a copy of a work is not an infringing copy by virtue of subsection (1) but is subsequently dealt in for the purpose of or in the course of any trade or business—

(a) if that dealing takes place within the period of 15 months referred to in section 35(4)(b), it is, for the purposes of sections 118 to 133 (criminal provisions), to be treated, in relation to that dealing and the person who deals in it, as an infringing copy; and

(b) irrespective of the time at which that dealing takes place, it is, for the purposes of any provision of this Ordinance except sections 118 to 133, to be treated, in relation to that dealing and the person who deals in it, as an infringing copy.

(6) In this section, “deal in” (經銷) means sell, let for hire, offer or expose for sale or hire, or distribute for profit or reward.”.

11. Defences for the purposes of sections 30 and 31

Section 36(1) is amended by adding “and which was lawfully made in the country, territory or area where it was made” after “section 35(3)”.

12. Research and private study

(1) Section 38(1) is amended by repealing “of any description”.

(2) Section 38(3) is repealed and the following substituted—

“(3) In determining whether any dealing with a work is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (b) the nature of the work;
- (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
- (d) the effect of the dealing on the potential market for or value of the work.”.

13. Sections added

The following are added immediately after section 40—

“Persons with a print disability

40A. Definitions for sections 40A to 40F

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

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

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

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

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

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

- (a) an educational establishment specified in section 1 of Schedule 1;

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

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

(1) If—

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

it is not an infringement of copyright in the work or, in the case of a published edition, in the typographical arrangement, for one accessible copy of the master copy to be made by or on behalf of the person for his personal use.

(2) Subsection (1) does not apply—

- (a) if the master copy is an infringing copy;
- (b) if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
- (c) if the master copy is of a dramatic work or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the work or part of the work.

(3) Subsection (1) does not apply unless, at the time when the accessible copy is made by or on behalf of the person with a print disability, the maker of the copy is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to the person cannot be obtained at a reasonable commercial price.

(4) If a person makes an accessible copy on behalf of a person with a print disability under this section and charges for it, the sum charged must not exceed the cost incurred in making and supplying the copy.

(5) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes copyright, for all subsequent purposes.

(6) In subsection (5), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

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

(1) If—

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

it is not an infringement of copyright in the work or, in the case of a published edition, in the typographical arrangement, for the specified body to make for those persons or supply to those persons accessible copies of the master copy for their personal use.

(2) Subsection (1) does not apply—

- (a) if the master copy is an infringing copy;
- (b) if the master copy is of a musical work or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of the work; or
- (c) if the master copy is of a dramatic work or part of a dramatic work, and the making of an accessible copy would involve recording a performance of the work or part of the work.

(3) Subsection (1) does not apply unless, at the time when the accessible copies are made, the specified body is satisfied, after making reasonable enquiries, that copies of the relevant copyright work in a form that is accessible to a person with a print disability cannot be obtained at a reasonable commercial price.

(4) The specified body must—

- (a) within a reasonable time before making or supplying the accessible copies, notify the relevant copyright owner of its intention to make or supply the accessible copies; or
- (b) within a reasonable time after making or supplying the accessible copies, notify the relevant copyright owner of the fact that it has made or supplied the accessible copies.

(5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.

(6) If the specified body charges for making and supplying an accessible copy under this section, the sum charged must not exceed the cost incurred in making and supplying the copy.

(7) Where an accessible copy which apart from this section would be an infringing copy is made or supplied in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes copyright, for all subsequent purposes.

(8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

40D. Intermediate copies

(1) A specified body entitled to make accessible copies of a master copy under section 40C may possess an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but—

- (a) the specified body may possess the intermediate copy only for the purpose of the production of further accessible copies; and
- (b) the specified body must destroy the intermediate copy within 3 months after it is no longer required for that purpose.

(2) An intermediate copy possessed otherwise than in accordance with subsection (1) is to be treated as an infringing copy.

(3) A specified body may lend or transfer an intermediate copy possessed under subsection (1) to another specified body which is also entitled to make accessible copies of the relevant copyright work under section 40C.

(4) The specified body must—

- (a) within a reasonable time before lending or transferring the intermediate copy, notify the relevant copyright owner of its intention to lend or transfer the intermediate copy; or
- (b) within a reasonable time after lending or transferring the intermediate copy, notify the relevant copyright owner of the fact that it has lent or transferred the intermediate copy.

(5) The requirement under subsection (4) does not apply if the specified body cannot, after making reasonable enquiries, ascertain the identity and contact details of the relevant copyright owner.

(6) If the specified body charges for lending or transferring an intermediate copy under this section, the sum charged must not exceed the cost incurred in lending or transferring the copy.

(7) Where an intermediate copy which apart from this section would be an infringing copy is possessed, lent or transferred in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

(a) for the purpose of that dealing; and

(b) if that dealing infringes copyright, for all subsequent purposes.

(8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

40E. Records to be kept by specified bodies

(1) A specified body must make a record of any accessible copy made or supplied under section 40C as soon as practicable after it is made or supplied.

(2) The record referred to in subsection (1) must include—

(a) the date on which the accessible copy is made or supplied;

(b) the form of the accessible copy;

(c) the title, publisher and edition of the relevant master copy;

(d) where the accessible copy is made for or supplied to a body or a class of persons, the name of the body or a description of the class of persons; and

(e) where more than one copy of the accessible copy is made or supplied, the total number of such copies.

(3) A specified body must make a record of any intermediate copy lent or transferred under section 40D as soon as practicable after it is lent or transferred.

(4) The record referred to in subsection (3) must include—

(a) the name of the specified body to which and the date on which the intermediate copy is lent or transferred;

(b) the form of the intermediate copy; and

(c) the title, publisher and edition of the relevant master copy.

(5) A specified body must—

(a) retain any record made under subsection (1) or (3) for a period of at least 3 years after it is made; and

- (b) allow the relevant copyright owner or a person acting ²⁰for him, on giving reasonable notice, to inspect and make copies of the record at any reasonable time.

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

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

14. Section added

The following is added immediately before section 41 under the cross-heading of “**Education**”—

“41A. Fair dealing for purposes of giving or receiving instruction

(1) Fair dealing with a work by or on behalf of a teacher or by a pupil for the purposes of giving or receiving instruction in a specified course of study provided by an educational establishment does not infringe the copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) In determining whether any dealing with a work is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;

- (b) the nature of the work;
 - (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
 - (d) the effect of the dealing on the potential market for or value of the work.
- (3) Where any dealing with a work involves the inclusion of any passage or excerpt from a published literary or dramatic work in an anthology—
- (a) if the inclusion is not accompanied by a sufficient acknowledgement, the dealing is not fair dealing under subsection (1); and
 - (b) if the inclusion is accompanied by a sufficient acknowledgement, subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).
- (4) Where any dealing with a work involves the making of a recording of a broadcast or cable programme or a copy of such a recording—
- (a) if an acknowledgement of authorship or other creative effort contained in the work recorded is not incorporated in the recording, the dealing is not fair dealing under subsection (1); and
 - (b) if an acknowledgement of authorship or other creative effort contained in the work recorded is incorporated in the recording, subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).
- (5) Where any dealing with a work involves the making available of copies of the work through a wire or wireless network wholly or partly controlled by an educational establishment—
- (a) if the educational establishment fails to—
 - (i) adopt technological measures to restrict access to the copies of the work through the network so that the copies of the work are made available only to persons who need to use the copies of the work for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; or
 - (ii) ensure that the copies of the work are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,
 the dealing is not fair dealing under subsection (1); and
 - (b) if the educational establishment—

- (i) adopts technological measures to restrict access to the copies of the work through the network so that the copies of the work are made available only to persons who need to use the copies of the work for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; and
 - (ii) ensures that the copies of the work are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,
- subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).

(6) Without affecting the generality of section 37(5), where any dealing with a work involves the making of reprographic copies, the fact that the making of the copies does not fall within section 45 does not mean that it is not covered by this section, and subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).

(7) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes copyright, for all subsequent purposes.

(8) In subsection (7), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.”.

15. Performing, playing or showing work in course of activities of educational establishments

(1) Section 43(1) is amended by repealing “an audience consisting of teachers and pupils at an educational establishment and other persons” and substituting “an audience consisting wholly or mainly of teachers and pupils at an educational establishment, parents or guardians of pupils at the establishment, and other persons”.

(2) Section 43(2) is amended by repealing “for the purposes of instruction” and substituting “for the purposes of giving or receiving instruction”.

(3) Section 43(3) is repealed.

16. Reprographic copying made by educational establishments of passages from published works

(1) Section 45 is amended, in the heading, by adding “or pupils” after “educational establishments”.

(2) Section 45(1) is amended by repealing “for the purposes of instruction” and substituting “for the purposes of giving instruction, or by a pupil for the purposes of receiving instruction in a specified course of study provided by an educational establishment,”.

17. Sections added

The following are added immediately before section 54 under the cross-heading of “Public administration”—

“54A. Fair dealing for purposes of public administration

(1) Fair dealing with a work by the Government, the Executive Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe the copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) In determining whether any dealing with a work is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (b) the nature of the work;
- (c) the amount and substantiality of the portion dealt with in relation to the work as a whole; and
- (d) the effect of the dealing on the potential market for or value of the work.

(3) Where a copy which apart from this section would be an infringing copy is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing copy—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes copyright, for all subsequent purposes.

(4) In subsection (3), “dealt with” (被用以進行交易) means sold, let for hire, or offered or exposed for sale or hire.

54B. Legislative Council

- (1) Copyright is not infringed by—
- (a) anything done for the purposes of the proceedings of the Legislative Council; or
 - (b) anything done by or on behalf of—
 - (i) the members of the Legislative Council; or
 - (ii) The Legislative Council Commission, for the purposes of the exercise and discharge by the Legislative Council of its powers and functions.
- (2) Copyright is not infringed by anything done for the purposes of reporting the proceedings of the Legislative Council; but this is not to be construed as authorizing the copying of a work which is itself a published report of the proceedings.”.

18. Legislative Council and judicial proceedings

(1) Section 54 is amended by repealing the heading and substituting “**Judicial proceedings**”.

(2) Section 54(1) is amended by repealing “the proceedings of the Legislative Council or”.

(3) Section 54(2) is amended, in the Chinese text, by repealing “立法會程序或”.

19. Use of typeface in ordinary course of printing

Section 62(3) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

20. Advertisement of sale of artistic work

(1) Section 72(2) is amended, in the English text, by repealing “if that dealing infringes copyright for all subsequent purposes” and substituting “and, if that dealing infringes copyright, for all subsequent purposes”.

(2) Section 72(2) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

21. Section added

The following is added—

“81A. Playing of sound broadcasts inside vehicles

(1) The playing of a sound broadcast inside a vehicle primarily for the purpose of affording the driver of the vehicle access to public information (including but not limited to news reports, weather forecasts and information relating to road traffic) does not infringe the copyright in the sound broadcast, any sound recording included in it or any literary, dramatic or musical work included in it.

(2) In subsection (1), “vehicle” (車輛) means any vehicle constructed or adapted for use on roads.”.

22. Right to be identified as author or director

(1) Section 89(1) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(2) Section 89(4)(a) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(3) Section 89(7)(c) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(4) Section 89(8) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

23. Requirement that right be asserted

(1) Section 90 is amended, in the heading, in the Chinese text, by repealing “體現” and substituting “宣示”.

(2) Section 90(1) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(3) Section 90(2) is amended, in the Chinese text, by repealing “體現” where it twice appears and substituting “宣示”.

(4) Section 90(2)(a) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(5) Section 90(3) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(6) Section 90(3) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(7) Section 90(3)(b) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(8) Section 90(3)(b) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(9) Section 90(4) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(10) Section 90(4)(a) is amended, in the Chinese text, by repealing “體現” where it twice appears and substituting “宣示”.

(11) Section 90(4)(b) is amended, in the Chinese text, by repealing “體現” where it twice appears and substituting “宣示”.

(12) Section 90(4)(c) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(13) Section 90(4)(d) is amended, in the Chinese text, by repealing “體現” where it twice appears and substituting “宣示”.

(14) Section 90(5) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

24. Exceptions to right

(1) Section 91(4) is amended by adding—
“(ca) section 54B (Legislative Council);”.

(2) Section 91(4)(d) is amended by repealing “Legislative Council and”.

25. Right to object to derogatory treatment of work

Section 92(4)(a) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

26. Infringement of right by possessing or dealing with infringing article

(1) Section 95(1)(a) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(2) Section 95(1)(c) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(3) Section 95(1)(c) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(4) Section 95(1)(d) is amended by repealing “otherwise than for the purpose of, in the course of, or in connection with, any trade or business” and substituting “otherwise than for the purpose of or in the course of any trade or business”.

27. False attribution of work

(1) Section 96(2)(b) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(2) Section 96(5) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(3) Section 96(6) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(4) Section 96(7) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

28. Application of provisions to joint works

(1) Section 99(1) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(2) Section 99(2) is amended, in the Chinese text, by repealing “達成” and substituting “體現”.

29. Transmission of moral rights on death

(1) Section 106(3)(a) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(2) Section 106(3)(b) is amended, in the Chinese text, by repealing “達成” and substituting “體現”.

30. Order for delivery up

Section 109(1)(a) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

31. **Criminal liability for making or dealing with infringing articles, etc.**

(1) Section 118 is amended, in the heading, by repealing “**Criminal liability for**” and substituting “**Offences in relation to**”.

(2) Section 118(1) is repealed and the following substituted—

“(1) A person commits an offence if he, without the licence of the copyright owner of a copyright work—

- (a) makes for sale or hire an infringing copy of the work;
- (b) imports an infringing copy of the work into Hong Kong otherwise than for his private and domestic use;
- (c) exports an infringing copy of the work from Hong Kong otherwise than for his private and domestic use;
- (d) sells, lets for hire, or offers or exposes for sale or hire an infringing copy of the work for the purpose of or in the course of any trade or business;
- (e) exhibits in public or distributes an infringing copy of the work for the purpose of or in the course of any trade or business which consists of dealing in infringing copies of copyright works;
- (f) possesses an infringing copy of the work with a view to—
 - (i) its being sold or let for hire by any person for the purpose of or in the course of any trade or business; or
 - (ii) its being exhibited in public or distributed by any person for the purpose of or in the course of any trade or business which consists of dealing in infringing copies of copyright works; or
- (g) distributes an infringing copy of the work (otherwise than for the purpose of or in the course of any trade or business which consists of dealing in infringing copies of copyright works) to such an extent as to affect prejudicially the copyright owner.”.

(3) Section 118 is amended by adding—

“(1A) Where—

- (a) a person exhibits in public or distributes an infringing copy of a copyright work for the purpose of or in the course of any trade or business; and
- (b) the circumstances in which the infringing copy is so exhibited or distributed give rise to a reasonable suspicion that the trade or business consists of dealing in infringing copies of copyright works,

then, unless there is evidence to the contrary, the trade or business is presumed, for the purposes of any proceedings instituted under subsection (1)(e), to be a trade or business which consists of dealing in infringing copies of copyright works.

(1B) Where—

- (a) a person possesses an infringing copy of a copyright work with a view to its being exhibited in public or distributed by any person for the purpose of or in the course of any trade or business; and
- (b) the circumstances in which the infringing copy is so possessed give rise to a reasonable suspicion that the trade or business consists of dealing in infringing copies of copyright works,

then, unless there is evidence to the contrary, the trade or business is presumed, for the purposes of any proceedings instituted under subsection (1)(f)(ii), to be a trade or business which consists of dealing in infringing copies of copyright works.”.

(4) Section 118 is amended by adding—

“(2A) A person commits an offence if he, without the licence of the copyright owner of a copyright work to which this subsection applies, possesses an infringing copy of the work 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.

(2B) Subsection (2A) applies to a copyright work that is—

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

(2C) Subsection (2A) does not apply to an infringing copy of a computer program in a printed form.

(2D) Subsection (2A) does not apply to the possession of an infringing copy of a computer program if—

- (a) the computer program incorporates the whole or any part of a work that is not a computer program itself, and the computer program is technically required for the viewing or listening of the work by a member of the public to whom a copy of the work is made available; or
- (b) the computer program is incorporated in a work that is not a computer program itself, and the computer program is technically required for the viewing or listening of the work by a member of the public to whom a copy of the work is made available.

(2E) Subsection (2A) does not apply to the possession of an³⁰ infringing copy of a movie, television drama, musical sound recording or musical visual recording by the Hong Kong Film Archive for the purpose of heritage conservation if—

- (a) the infringing copy was donated or given to the Hong Kong Film Archive by the public; or
- (b) the infringing copy was made by the Hong Kong Film Archive to preserve or replace the infringing copy referred to in paragraph (a) against loss, deterioration or damage.

(2F) Subsection (2A) does not apply to the possession of an infringing copy of a movie, television drama, musical sound recording or musical visual recording by the Hong Kong Film Archive for the purpose of doing any act in relation to the infringing copy (other than for the purpose referred to in subsection (2E)) if—

- (a) the infringing copy was—
 - (i) an infringing copy donated or given to the Hong Kong Film Archive by the public; or
 - (ii) an infringing copy made by the Hong Kong Film Archive to preserve or replace the infringing copy referred to in subparagraph (i) against loss, deterioration or damage;
- (b) it is not possible by reasonable enquiry to ascertain the identity and contact details of the copyright owner of the work in question; and
- (c) a copy (other than an infringing copy) of the work in question cannot be obtained on reasonable commercial terms.

(2G) Subsection (2A) does not apply if—

- (a) the person who possesses an infringing copy does so for the purpose of providing legal service in relation to the infringing copy, and—
 - (i) the person is enrolled on the roll of solicitors or the roll of barristers kept under the Legal Practitioners Ordinance (Cap. 159); or
 - (ii) the person has been admitted as a legal practitioner in a jurisdiction other than Hong Kong;
- (b) the person who possesses an infringing copy is serving a pupillage under the Barristers (Qualification for Admission and Pupillage) Rules (Cap. 159 sub. leg. AC) and he possesses the infringing copy for the purpose of assisting the barrister with whom he serves the pupillage in providing legal service in relation to the infringing copy;

- (c) the person who possesses an infringing copy does so for the purpose of providing investigation service in relation to the infringing copy to the copyright owner or exclusive licensee of the copyright work concerned; or
- (d) the person who possesses an infringing copy does so on his client's premises and the infringing copy is provided to him by his client.”.

(5) Section 118 is amended by adding—

“(2H) Without prejudice to section 125, where a body corporate or a partnership has done an act referred to in subsection (2A), the following person shall, unless there is evidence showing that he did not authorize the act to be done, be presumed also to have done the act—

(a) in the case of the body corporate—

- (i) any director of the body corporate who, at the time when the act was done, was responsible for the internal management of the body corporate; or
- (ii) if there was no such director, any person who, at the time when the act was done, was responsible under the immediate authority of the directors of the body corporate for the internal management of the body corporate;

(b) in the case of the partnership—

- (i) any partner in the partnership who, at the time when the act was done, was responsible for the internal management of the partnership; or
- (ii) if there was no such partner, any person who, at the time when the act was done, was responsible under the immediate authority of the partners in the partnership for the internal management of the partnership.

(2I) A defendant charged with an offence under subsection (2A) by virtue of subsection (2H) is taken not to have done the act in question if—

- (a) sufficient evidence is adduced to raise an issue that he did not authorize the act to be done; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

(2J) For the purposes of subsection (2I)(a)—

- (a) the defendant shall be taken to have adduced sufficient evidence if the court is satisfied that—
 - (i) the defendant has caused the body corporate or partnership concerned to set aside financial resources, and has directed the use of the resources, for the acquisition of a sufficient number of copies of the

copyright work to which the proceedings relate, which are not infringing copies, for the use of the body corporate or partnership; or

(ii) the body corporate or partnership concerned has incurred expenditure for the acquisition of a sufficient number of copies of the copyright work to which the proceedings relate, which are not infringing copies, for the use of the body corporate or partnership;

(b) subject to paragraph (a), in determining whether sufficient evidence is adduced, the court may have regard to, including but not limited to, the following—

(i) whether the defendant has introduced policies or practices against the use of infringing copies of copyright works by the body corporate or partnership;

(ii) whether the defendant has taken action to prevent the use of infringing copies of copyright works by the body corporate or partnership.”.

(6) Section 118(3) is amended by adding “or (2A)” after “subsection (1)”.

(7) Section 118 is amended by adding—

“(3A) It is a defence for the person charged with an offence under subsection (2A) to prove that—

(a) he possessed the infringing copy in question in the course of his employment; and

(b) the infringing copy in question was provided to him by or on behalf of his employer for use in the course of his employment.

(3B) Subsection (3A) does not apply to an employee—

(a) who, at the time when the infringing copy in question was acquired, was in a position to make or influence a decision regarding the acquisition of the infringing copy; or

(b) who, at the time when the offence in question was committed, was in a position to make or influence a decision regarding the use or removal of the infringing copy in question.”.

(8) Section 118(4) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(9) Section 118(5) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(10) Section 118(6) is amended by repealing “not being excluded under section 35(4)” and substituting “not being excluded under section 35(4) and which was lawfully made in the country, territory or area where it was made”³³.

(11) Section 118(8) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

(12) Section 118(8A) is repealed.

(13) Section 118 is amended by adding—

“(10) In this section, “dealing in” (經銷) means selling, letting for hire, or distributing for profit or reward.”.

32. Penalties for offences under section 118

Section 119(1) is amended by adding “or (2A)” after “section 118(1)”.

33. Section added

The following is added—

“119B. Offence in relation to making for distribution or distributing on a regular or frequent basis infringing copies of copyright works in printed form contained in books, etc.

(1) A person commits an offence if he does any of the following acts on a regular or frequent basis for the purpose of or in the course of any trade or business—

(a) without the licence of the copyright owner of a copyright work described in subsection (2), makes an infringing copy of the work for distribution, resulting in a financial loss to the copyright owner; or

(b) without the licence of the copyright owner of a copyright work described in subsection (2), distributes an infringing copy of the work, resulting in a financial loss to the copyright owner.

(2) The copyright work referred to in subsection (1)(a) and (b) is a copyright work in a printed form that is contained in—

(a) a book;

(b) a magazine;

(c) a periodical; or

(d) a newspaper.

- (3) Subsection (1) does not apply in circumstances where—
- (a) the making or distribution of the infringing copies of one or more than one copyright work referred to in subsection (1) does not exceed the extent specified in the regulations made under subsection (19); or
 - (b) the infringing copies of one or more than one copyright work referred to in subsection (1) are made or distributed in the manner specified in the regulations made under subsection (21).
- (4) Subsection (1) does not apply to an educational establishment of any of the following descriptions—
- (a) an educational establishment specified in section 1 of Schedule 1;
 - (b) an educational establishment exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112); or
 - (c) an educational establishment receiving direct recurrent subvention from the Government.
- (5) Subsection (1) does not apply to the distribution through a wire or wireless network of an infringing copy to which access is not restricted by procedures of authentication or identification.
- (6) Subsection (1) does not apply if the infringing copy—
- (a) forms part of the special collection of a library or archive owned by the Government, or a library or archive designated under subsection (10)(a); and
 - (b) is distributed solely—
 - (i) for on-the-spot reference use in, or during an activity organized by, a library or archive referred to in paragraph (a); or
 - (ii) for loan to other libraries or archives for the purpose of exhibition or research.
- (7) Subsection (1) does not apply to the making or distribution by a library or archive referred to in subsection (6)(a) of a single copy of any item forming the special collection for the purpose of preserving or replacing the item against loss, deterioration or damage, but the copy may only be distributed for the use referred to in subsection (6)(b).
- (8) In subsections (6) and (7), “special collection” (特別收藏品)—
- (a) in the case of a library or archive owned by the Government, means a collection consisting primarily of works or articles, or copies of works or articles, donated or given by the public that are, in the opinion of the Director of Leisure and Cultural Services, of cultural, historical or heritage importance or value;

- (b) in the case of a library or archive designated under subsection (10)(a), means a collection consisting primarily of works or articles, or copies of works or articles, donated or given by the public that are, in the opinion of the head or controlling body (by whatever name called) of the library or archive, of cultural, historical or heritage importance or value.

(9) For the purposes of the exception under subsections (6) and (7), an archive owned by the Government includes a museum owned by the Government.

(10) The Secretary for Commerce and Economic Development may, having regard to the advice of the Director of Leisure and Cultural Services—

- (a) by notice published in the Gazette designate for the purposes of subsection (6)(a) any library or archive that is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112); and
- (b) by regulations prescribe the conditions that a library or archive designated under paragraph (a) must comply in order to be eligible for the exemption provided by subsections (6) and (7).

(11) Without prejudice to section 125, where a body corporate or a partnership has done an act referred to in subsection (1), the following person shall, unless there is evidence showing that he did not authorize the act to be done, be presumed also to have done the act—

- (a) in the case of the body corporate—
- (i) any director of the body corporate who, at the time when the act was done, was responsible for the internal management of the body corporate; or
- (ii) if there was no such director, any person who, at the time when the act was done, was responsible under the immediate authority of the directors of the body corporate for the internal management of the body corporate;
- (b) in the case of the partnership—
- (i) any partner in the partnership who, at the time when the act was done, was responsible for the internal management of the partnership; or
- (ii) if there was no such partner, any person who, at the time when the act was done, was responsible under the immediate authority of the partners in the partnership for the internal management of the partnership.

- (12) A defendant charged with an offence under subsection (1) ³⁶by virtue of subsection (11) is taken not to have done the act in question if—
- (a) sufficient evidence is adduced to raise an issue that he did not authorize the act to be done; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (13) For the purposes of subsection (12)(a)—
- (a) the defendant shall be taken to have adduced sufficient evidence if the court is satisfied that—
 - (i) the defendant has caused the body corporate or partnership concerned to set aside financial resources, and has directed the use of the resources, for the acquisition of appropriate licences, in accordance with the needs of the body corporate or partnership, to make or distribute, or to make and distribute, copies of the copyright work to which the proceedings relate for the use of the body corporate or partnership;
 - (ii) the defendant has caused the body corporate or partnership concerned to set aside financial resources, and has directed the use of the resources, for the acquisition of a sufficient number of copies of the copyright work to which the proceedings relate, which are not infringing copies, for the use of the body corporate or partnership;
 - (iii) the body corporate or partnership concerned has incurred expenditure for the acquisition of appropriate licences, in accordance with the needs of the body corporate or partnership, to make or distribute, or to make and distribute, copies of the copyright work to which the proceedings relate for the use of the body corporate or partnership; or
 - (iv) the body corporate or partnership concerned has incurred expenditure for the acquisition of a sufficient number of copies of the copyright work to which the proceedings relate, which are not infringing copies, for the use of the body corporate or partnership;
 - (b) subject to paragraph (a), in determining whether sufficient evidence is adduced, the court may have regard to, including but not limited to, the following—
 - (i) whether the defendant has introduced policies or practices against the making and distribution of infringing copies of copyright works by the body corporate or partnership;

- (ii) whether the defendant has taken action to prevent the making or distribution of infringing copies of copyright works by the body corporate or partnership.

(14) It is a defence for the person charged with an offence under subsection (1) to prove that—

- (a) he has taken adequate and reasonable steps to obtain a licence from the copyright owner in question but failed to get a timely response from the copyright owner;
- (b) he has made reasonable efforts but failed to obtain commercially available copies of the copyright work in question and the copyright owner in question has refused to grant him a licence on reasonable commercial terms;
- (c) he did not know and had no reason to believe that the copies made or distributed are infringing copies; or
- (d) he cannot, after making reasonable enquiries, ascertain the identity and contact details of the copyright owner in question.

(15) It is a defence for the person charged with an offence in respect of an act under subsection (1) to prove that—

- (a) he did the act in the course of his employment; and
- (b) he did the act in accordance with the instruction given to him by or on behalf of his employer in the course of his employment.

(16) Subsection (15) does not apply to an employee who, at the time when the infringing copy in question was made or distributed, was in a position to make or influence a decision regarding the making or distribution of the infringing copy.

(17) A person who commits an offence under subsection (1) is liable on conviction on indictment to a fine at level 5 in respect of each infringing copy and to imprisonment for 4 years.

(18) Sections 115 and 117 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under subsection (1).

(19) For the purposes of subsection (3)(a), the Secretary for Commerce and Economic Development may, in relation to one or more than one copyright work referred to in subsection (1), make regulations to prescribe that subsection (1) does not apply in circumstances where the making or distribution of the infringing copies of the copyright work or works does not exceed the extent specified in the regulations.

(20) The Secretary for Commerce and Economic Development may, in the regulations made under subsection (19), specify the extent referred to in that subsection by reference to—

- (a) the number of infringing copies made or distributed; 38
(b) the value of those infringing copies; and
(c) any other factors that he may consider relevant,

and provide for a method or methods for determining the number of those infringing copies, and a method or methods for determining the value of those infringing copies, having regard to the retail value of the related books, magazines, periodicals or newspaper, and any other factors that he may consider relevant.

(21) For the purposes of subsection (3)(b), the Secretary for Commerce and Economic Development may, in relation to one or more than one copyright work referred to in subsection (1), make regulations to prescribe that subsection (1) does not apply in circumstances where the infringing copies of the copyright work or works are made or distributed in the manner specified in the regulations, after having regard to—

- (a) the availability of any licensing scheme that covers the making or distribution of copies of the copyright work or works in the specified manner; and
(b) any other factors that he may consider relevant.”

34. Making infringing copies outside Hong Kong, etc.

Section 120(2) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

35. Time limit for prosecutions

Section 120A is amended by repealing everything after “commission of the offence” and substituting a full stop.

36. Affidavit evidence

(1) Section 121(1) is amended by repealing “An affidavit which purports to have been made by or on behalf of the owner of a copyright work” and substituting “For the purpose of facilitating the proof of subsistence and ownership of copyright, and without prejudice to the operation of sections 11 to 16 (authorship and ownership of copyright) and sections 17 to 21 (duration of copyright), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work”.

(2) Section 121(1)(b) is repealed and the following substituted—

- “(b) the name of the author of the work;
 (ba) where the author of the work is an individual—
 (i) the place of domicile of the author;
 (ii) the place of residence of the author; or
 (iii) the place where the author has a right of abode;
 (bb) where the author of the work is a body corporate—
 (i) the place of incorporation of the author; or
 (ii) the principal place of business of the author;”.

(3) Section 121(1)(c) is amended by repealing “owner of the work” and substituting “copyright owner”.

(4) Section 121(2) is amended by repealing “Without prejudice to subsection (1), an affidavit which purports to have been made by or on behalf of the owner of a copyright work” and substituting “For the purpose of facilitating the proof of subsistence and ownership of copyright, and without prejudice to subsection (1) and the operation of sections 11 to 16 (authorship and ownership of copyright) and sections 17 to 21 (duration of copyright), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work”.

(5) Section 121(2)(a)(iii) is amended by repealing “owner of the work” and substituting “copyright owner”.

(6) Section 121 is amended by adding—

“(2A) For the purposes of facilitating the establishment of the matter referred to in section 35(3)(b), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which—

- (a) states the name of the copyright owner;
- (b) states that a copy of the work exhibited to the affidavit is a true copy of the work;
- (c) states—
 - (i) that the copy of the work exhibited to the affidavit was made in a place outside Hong Kong by the copyright owner; or
 - (ii) that the copy of the work exhibited to the affidavit was made in a place outside Hong Kong by a person who has the licence of the copyright owner to make copies of the work in that place, but does not have the licence of the copyright owner to make copies of the work in Hong Kong; and
- (d) states the name and address of the person (if any) referred to in paragraph (c)(ii),

shall, subject to the conditions contained in subsection (4), be admitted without further proof in any proceedings under this Ordinance.

(2B) For the purposes of any proceedings instituted under section 118(1), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which—

- (a) states the name of the copyright owner; and
- (b) states that the person named in the affidavit does not have the licence of the copyright owner to do an act referred to in section 118(1)(a), (b), (c), (d), (e), (f) or (g) in respect of the work,

shall, subject to the conditions contained in subsection (4), be admitted without further proof in those proceedings.

(2C) For the purposes of any proceedings instituted under section 118(2A), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which—

- (a) states the name of the copyright owner; and
- (b) states that the person named in the affidavit does not have the licence of the copyright owner to do an act referred to in section 118(2A) in respect of the work,

shall, subject to the conditions contained in subsection (4), be admitted without further proof in those proceedings.”.

(7) Section 121 is amended by adding—

“(2D) For the purposes of any proceedings instituted under section 119B(1), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which—

- (a) states the name of the copyright owner; and
- (b) states that the person named in the affidavit does not have the licence of the copyright owner to do an act referred to in section 119B(1) in respect of the work,

shall, subject to the conditions contained in subsection (4), be admitted without further proof in those proceedings.”.

(8) Section 121(3) is amended by repealing “subsection (1) or (2)” and substituting “subsection (1), (2), (2A), (2B), (2C) or (2D)”.

(9) Section 121(4) is amended by repealing “subsection (1) or (2)” and substituting “subsection (1), (2), (2A), (2B), (2C) or (2D)”.

(10) Section 121(7) is amended by repealing “subsection (1) or (2)” and substituting “subsection (1), (2), (2A), (2B), (2C) or (2D)”.

(11) Section 121(8)(b) is repealed and the following substituted—

“(b) the court may of its own motion or, if the defendant who has served a notice under subsection (5) in relation to an affidavit satisfies the court—

- (i) that the ownership or subsistence of the copyright in a work is, insofar as that matter is stated in the affidavit, genuinely in issue;

- (ii) that whether a person has the licence of the copyright owner of a copyright work to do a particular act is, insofar as that matter is stated in the affidavit, genuinely in issue; or
- (iii) where the affidavit is made under subsection (2A), that any matter stated in the affidavit, other than those referred to in subparagraphs (i) and (ii), is genuinely in issue, either before or during the hearing, require the deponent to the affidavit to attend before the court and give evidence.”.

(12) Section 121(13)(a) is amended by repealing “subsection (1) or (2)” and substituting “subsection (1), (2), (2A), (2B), (2C) or (2D)”.

37. Seized articles, etc. liable to forfeiture

- (1) Section 131(1) is amended by adding “, 119B” after “119A”.
- (2) Section 131(7) is amended by adding “, 119B” after “119A”.

38. Disposal of articles, etc. where a person is charged

Section 132 is amended by adding “, 119B” after “119A”.

39. Determination of application for forfeiture

- (1) Section 133(5) is amended by adding “, 119B” after “119A”.
- (2) Section 133(6) is amended by adding “, 119B” after “119A”.

40. Licensing schemes to which sections 155 to 160 apply

Section 154(b) is amended by repealing “a computer program or sound recording” and substituting “a work referred to in section 25(1)(a), (b), (c), (d), (e) or (f)”.

41. Licences to which sections 162 to 166 apply

Section 161(b) is amended by repealing “a computer program or sound recording” and substituting “a work referred to in section 25(1)(a), (b), (c), (d), (e) or (f)”.

42. Constitution for purposes of proceedings

(1) Section 172 is amended by adding—

“(1A) Notwithstanding subsection (1), any proceedings specified for the purposes of this subsection in rules made under section 174 (general procedures rules) may be heard and determined by any of the following persons sitting alone—

- (a) the Chairman of the Tribunal;
- (b) the Deputy Chairman of the Tribunal; or
- (c) a suitably qualified ordinary member of the Tribunal appointed by the Chairman of the Tribunal.”.

(2) Section 172(5) is amended by repealing “subsection (4)(b)” and substituting “subsection (1A) or (4)(b)”.

43. Groundless threat of proceedings in relation to parallel import

(1) Section 187 is amended, in the heading, by repealing “**parallel import**” and substituting “**“parallel-imported” copies of works**”.

(2) Section 187(1) is amended by adding “and which was lawfully made in the country, territory or area where it was made” after “section 35(3)”.

44. Folklore, etc.: anonymous unpublished works

Section 189 is amended, in the heading, in the Chinese text, by repealing “民間傳說” and substituting “民間文學藝術”.

45. Meaning of “publication” and “commercial publication”

Section 196(4)(b)(i) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”

46. Requirement of signature: application in relation to body corporate

(1) Section 197(1) is amended, in the Chinese text, by repealing “展覽” and substituting “陳列”.

(2) Section 197(1) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

(3) Section 197(2) is amended, in the Chinese text, by repealing “體現” and substituting “宣示”.

47. Minor definitions

(1) Section 198(1) is amended by repealing the definition of “business” and substituting—

““business” (業務) includes—

- (a) a trade or profession; and
- (b) business conducted otherwise than for profit;”.

(2) Section 198(1) is amended by repealing the definition of “rental right” and substituting—

““rental right” (租賃權) means the right of a copyright owner to authorize or prohibit the rental of copies of any of the following works—

- (a) a computer program;
- (b) a sound recording;
- (c) a film;
- (d) a literary, dramatic or musical work included in a sound recording;
- (e) a literary or artistic work included in a comic book; or
- (f) the typographical arrangement of a published edition of a comic book;”.

(3) Section 198(1) is amended by adding—

““specified course of study” (指明課程) means a course of study of any of the following descriptions—

- (a) a course of study which is provided for the delivery of a curriculum (however described) developed on the basis of curriculum guidelines issued or endorsed by a body or authority specified in Schedule 1A; or
- (b) a course of study which consists of an assessment of a pupil’s competence in the area covered by the course, and leads to the award of a qualification;”.

(4) Section 198(2) is amended by repealing “, 118(8A)”.

(5) Section 198(3) is repealed and the following substituted—

“(3) In this Part, “lawfully made” (合法地製作), in relation to a copy of a work made in a country, territory or area—

(a) means that the copy was made by—

- (i) a person who is entitled to the copyright in the work in the country, territory or area, as the case may be; or
- (ii) a person who is licensed by the person referred to in subparagraph (i) to make the copy in the country, territory or area, as the case may be; but

(b) does not include a copy that was made in a country, territory or area where there is no law protecting copyright in the work or where the copyright in the work has expired.”.

(6) Section 198 is amended by adding—

“(4) The Secretary for Commerce and Economic Development may, by notice published in the Gazette, amend Schedule 1A.”.

48. Index of defined expressions

Section 199 is amended, in the Table, by adding—
“specified course of study section 198(1)”.

49. Rights conferred on performers and persons having fixation rights

(1) Section 200(1)(a) is amended by repealing “207” and substituting “207A”.

(2) Section 200(2) is amended, in the definition of “performance”, by adding—

“(ca) a performance of an artistic work;
(cb) an expression of folklore; or”.

50. Infringement of performer’s rights by importing, exporting, possessing or dealing with infringing fixation

Section 207(1)(b) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

51. Section added

The following is added immediately after section 207—

“207A. Infringement of performers’ rights by renting copies to the public without consent

(1) A performer’s rights are infringed by a person who, without the performer’s consent, rents to the public copies of a sound recording in which the whole or any substantial part of a qualifying performance is fixed.

(2) In this Part, “rent” (租賃), in relation to a sound recording—

- (a) subject to paragraph (b), means making a copy of the sound⁴⁵ recording available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage;
- (b) does not include—
- (i) making a copy of the sound recording available for the purpose of public performance, playing or showing in public, broadcasting or inclusion in a cable programme service;
 - (ii) making a copy of the sound recording available for the purpose of exhibition in public; or
 - (iii) making a copy of the sound recording available for on-the-spot reference use.

(3) A reference in this Part to the renting of copies of a sound recording includes the renting of the original.

(4) The right of a performer under this section to rent copies of a sound recording to the public is referred to in this Part as “rental right”.

52. Infringement of fixation rights by importing, exporting, possessing or dealing with infringing fixation

Section 211(1)(b) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

53. Section added

The following is added immediately after section 213—

“213A. Power of Tribunal to give consent on behalf of owners of performers’ rental right in certain cases

(1) The Copyright Tribunal may, on the application of a person wishing to rent a copy of a sound recording in which a performance is fixed, give consent in a case where that person cannot, after making reasonable enquiries, ascertain the identity or whereabouts of the person entitled to the rental right.

(2) Consent given by the Tribunal has effect as consent of the person entitled to the rental right for the purposes of the provision of this Part relating to performers’ rental right and may be given subject to any conditions specified in the Tribunal’s order.

(3) The Tribunal shall not give consent under subsection (1) except after the service of such notices as may be required by rules made under section 174 (general procedural rules) or as the Tribunal may in any particular case direct.

(4) Where the Tribunal gives consent under this section, it shall, in default of agreement between the applicant and the person entitled to the rental right, make such order as it thinks fit as to the payment to be made to that person in consideration of consent being given.”.

54. Performers’ economic rights

Section 215(1) is repealed and the following substituted—

“(1) The following rights conferred by this Part on a performer are property rights (“a performer’s economic rights”)—

- (a) the right of reproduction (section 203);
- (b) the right of distribution (section 204);
- (c) the right of making available to the public (section 205);
- (d) the rental right (section 207A).”.

55. Order for delivery up

Section 228(1) is amended by repealing “for the purpose of, in the course of, or in connection with, any trade or business” and substituting “for the purpose of or in the course of any trade or business”.

56. Meaning of “infringing fixation”

(1) Section 229(4) is amended by repealing “A fixation” and substituting “Except as provided in section 229A, a fixation”.

(2) Section 229(7) is repealed and the following substituted—

“(7) In this Part, “infringing fixation” (侵犯權利的錄製品) includes a fixation which is to be treated as an infringing fixation by virtue of any of the following provisions—

- (a) section 229A(5) (imported fixation not an “infringing fixation” for purposes of section 229(4));
- (b) section 242A(3) (fixations made for purposes of giving or receiving instruction);
- (c) section 243(3) (fixations made for purposes of instruction or examination);
- (d) section 245(3) (fixations made by educational establishments for educational purposes);

- (e) section 246A(3) (fixations made for purposes of public administration);
- (f) section 251(2) (fixations of performance in electronic form retained on transfer of principal fixation); or
- (g) section 256(3) (fixations made for purposes of broadcast or cable programme).”.

(3) Section 229(8) is repealed and the following substituted—

“(8) In subsection (5)(a), “lawfully made” (合法地製作), in relation to a fixation of a performance made in a country, territory or area—

- (a) means that the fixation was made by—
 - (i) the performer;
 - (ii) a person having fixation rights in relation to the performance in the country, territory or area, as the case may be; or
 - (iii) a person having the consent of the performer or the person referred to in subparagraph (ii) to make the fixation in the country, territory or area, as the case may be; but
- (b) does not include a fixation that was made in a country, territory or area where there is no law protecting rights in performances in the performance or where the rights in performances in the performance has expired.”.

57. Section added

The following is added immediately after section 229—

“229A. Imported fixation not an “infringing fixation” for the purposes of section 229(4)

- (1) A fixation of a performance to which this subsection applies is not—
 - (a) in relation to the person who imports it into Hong Kong, an infringing fixation for the purposes of section 229(4) if—
 - (i) it was lawfully made in the country, territory or area where it was made; and
 - (ii) it is not imported with a view to its being dealt in by any person for the purpose of or in the course of any trade or business; or

- (b) in relation to the person who possesses it, an infringing fixation for the purposes of section 229(4) if—
 - (i) it was lawfully made in the country, territory or area where it was made; and
 - (ii) it is not possessed with a view to its being dealt in by any person for the purpose of or in the course of any trade or business.

(2) Subsection (1) applies to a fixation of any performance except a fixation of a performance—

- (a) that is—
 - (i) a musical sound recording;
 - (ii) a musical visual recording;
 - (iii) a television drama; or
 - (iv) a movie; and
- (b) that is, or is intended to be, played or shown in public.

(3) Notwithstanding the exception in subsection (2), subsection (1) applies to a fixation of a performance that is referred to in subsection (2)(a) and that is, or is intended to be, played or shown in public—

- (a) by an educational establishment for the educational purposes of the establishment; or
- (b) by a specified library for use of the library.

(4) For the purposes of subsection (3)(b), a library is regarded as a specified library if it falls within the description of any library specified under section 46(1)(b).

(5) Where a fixation of a performance which is not an infringing fixation by virtue of subsection (1) is subsequently dealt in for the purpose of or in the course of any trade or business, it is to be treated, in relation to that dealing and the person who deals in it, as an infringing fixation.

(6) In this section, “lawfully made” (合法地製作), in relation to a fixation of a performance made in a country, territory or area—

- (a) means that the fixation was made by—
 - (i) the performer;
 - (ii) a person having fixation rights in relation to the performance in the country, territory or area, as the case may be; or
 - (iii) a person having the consent of the performer or the person referred to in subparagraph (ii) to make the fixation in the country, territory or area, as the case may be; but
- (b) does not include a fixation that was made in a country, territory or area where there is no law protecting rights in performances in the performance or where the rights in performances in the performance has expired.

(7) Subject to subsection (6), expressions used in this section have the same meaning as in section 35B.”.

58. Jurisdiction of Copyright Tribunal

Section 233(1) is amended by adding—

“(aa) section 213A (application to give consent on behalf of owners of performers’ rental right);”.

59. Expressions having same meaning as in copyright provisions

(1) Section 238(1) is amended by adding—

“artistic work;”.

(2) Section 238(1) is amended, in the Chinese text, by repealing—

“獲授權人員；及
關長。”

and substituting—

“獲授權人員；
關長；及”.

60. Index of defined expressions

(1) Section 239 is amended, in the Table, by adding—

“artistic work section 238(1) (and section 5)”.

(2) Section 239 is amended, in the Table, by adding—

“rental right section 207A(4)”.

61. Section added

The following is added—

**“242A. Fair dealing for purposes of
giving or receiving
instruction**

(1) Fair dealing with a performance or fixation by or on behalf of a teacher or by a pupil for the purposes of giving or receiving instruction in a specified course of study provided by an educational establishment does not infringe any of the rights conferred by this Part.

(2) In determining whether any dealing with a performance or fixation is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (b) the nature of the performance or fixation;
- (c) the amount and substantiality of the portion dealt with in relation to the performance or fixation as a whole; and
- (d) the effect of the dealing on the potential market for or value of the performance or fixation.

(3) Where a fixation which apart from this section would be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing fixation—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes any of the rights conferred by this Part, for all subsequent purposes.

(4) Where any dealing with a fixation involves the making available of copies of the fixation through a wire or wireless network wholly or partly controlled by an educational establishment—

- (a) if the educational establishment fails to—
 - (i) adopt technological measures to restrict access to the copies of the fixation through the network so that the copies of the fixation are made available only to persons who need to use the copies of the fixation for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; or
 - (ii) ensure that the copies of the fixation are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,
 the dealing is not fair dealing under subsection (1); and
- (b) if the educational establishment—
 - (i) adopts technological measures to restrict access to the copies of the fixation through the network so that the copies of the fixation are made available only to persons who need to use the copies of the fixation for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; and

(ii) ensures that the copies of the fixation are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months, subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).

(5) Expressions used in this section have the same meaning as in section 41A.”.

62. Playing or showing sound recording, film, broadcast or cable programme at educational establishment

(1) Section 244(1) is amended by repealing “an audience consisting of teachers and pupils at the establishment and other persons” and substituting “an audience consisting wholly or mainly of teachers and pupils at the establishment, parents or guardians of pupils at the establishment, and other persons”.

(2) Section 244(2) is repealed.

63. Sections added

The following are added—

“246A. Fair dealing for purposes of public administration

(1) Fair dealing with a performance or fixation by the Government, the Executive Council, the Judiciary or any District Council for the purposes of efficient administration of urgent business does not infringe any of the rights conferred by this Part.

(2) In determining whether any dealing with a performance or fixation is fair dealing under subsection (1), the court shall take into account all the circumstances of the case and, in particular—

- (a) the purpose and nature of the dealing, including whether the dealing is for a non-profit-making purpose and whether the dealing is of a commercial nature;
- (b) the nature of the performance or fixation;
- (c) the amount and substantiality of the portion dealt with in relation to the performance or fixation as a whole; and
- (d) the effect of the dealing on the potential market for or value of the performance or fixation.

(3) Where a fixation which apart from this section would be an infringing fixation is made in accordance with this section but is subsequently dealt with, it is to be treated as an infringing fixation—

- (a) for the purpose of that dealing; and
- (b) if that dealing infringes any of the rights conferred by this Part, for all subsequent purposes.

(4) Expressions used in this section have the same meaning as in section 54A.

246B. Legislative Council

(1) The rights conferred by this Part are not infringed by—

- (a) anything done for the purposes of the proceedings of the Legislative Council or for the purposes of reporting such proceedings; or
- (b) anything done by or on behalf of—
 - (i) the members of the Legislative Council; or
 - (ii) The Legislative Council Commission, for the purposes of the exercise and discharge by the Legislative Council of its powers and functions.

(2) Expressions used in this section have the same meaning as in section 54B.”.

64. Legislative Council and judicial proceedings

(1) Section 247 is amended by repealing the heading and substituting “**Judicial proceedings**”.

(2) Section 247(1) is amended by repealing “the proceedings of the Legislative Council or”.

65. Section added

The following is added—

“258A. Playing of sound broadcasts inside vehicles

(1) The playing of a sound broadcast inside a vehicle primarily for the purpose of affording the driver of the vehicle access to public information (including but not limited to news reports, weather forecasts and information relating to road traffic) does not infringe any of the rights conferred by this Part.

(2) Expressions used in this section have the same meaning as in section 81A.”.

66. Part IIIA added

The following is added after Part III—

“PART IIIA

PERFORMERS’ MORAL RIGHTS

Introductory

272A. Moral rights conferred on certain performers

(1) This part confers the following moral rights on a performer of a live aural performance or a performer whose performance is fixed in a sound recording—

- (a) the right to be identified as a performer (section 272B); and
- (b) the right not to have his performance subjected to derogatory treatment (section 272F).

(2) The moral rights are conferred on the performer only if the performance is a qualifying performance.

(3) The moral rights conferred on the performer are in addition to any other rights in relation to the performance that the performer or any other person may have under this Ordinance.

(4) In this Part—
“aural performance” (聲藝表演)—

(a) means a performance which may be perceived by the human ear; or

(b) where part of a performance may be perceived by the human ear, means that part of the performance,

and includes a musical performance, a spoken performance and a performance in any intermediate forms between singing and speaking;

“make available to the public live” (即場向公眾提供), in relation to a performance, means to make available of the unfixed performance, by wire or wireless means, in such a way that members of the public in Hong Kong or elsewhere may access the performance from a place individually chosen by them;

“performership” (演出) means participation in a performance, as the performer or one of the performers;

“sound recording” (聲音紀錄)—

(a) subject to paragraph (b), has the same meaning as in Part II (copyright);

(b) does not include a film sound-track which accompanies a film within the meaning of Part II.

(5) The following expressions have the same meaning in this Part as in Part II (copyright)—

broadcast;

business;

cable programme;

cable programme service; and

published.

(6) The following expressions have the same meaning in this Part as in Part III (rights in performances)—

fixation;

performance;

performer; and

qualifying performance.

(7) For the purposes of this Part, if a performance of a musical work is conducted by a conductor, the sounds of the performance are treated as having been made by the conductor and the person who actually made those sounds, and a reference to a performer includes a reference to the conductor.

(8) Section 204(2), (3) and (4) applies, with the necessary modifications, to references in this Part to the issue to the public of copies of a sound recording, as it applies to references in Part III to the issue to the public of copies of a fixation.

(9) Section 205(2), (3) and (4) applies, with the necessary modifications, to references in this Part to the making available to the public of copies of a sound recording, as it applies to references in Part III to the making available to the public of copies of a fixation.

Right to be identified as performer

272B. Right to be identified as performer

(1) A performer of a live aural performance or a performer whose performance is fixed in a sound recording has the right to be identified as a performer in the performance whenever—

- (a) the performance is staged in public, made available to the public live, broadcast live or included live in a cable programme service; or
- (b) copies of the sound recording in which the performance is fixed are issued or made available to the public, broadcast or included in a cable programme service.

(2) The right of the performer under this section is, in the case of the issue or making available to the public of copies of a sound recording in which the performance is fixed, the right to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy.

(3) The right of the performer under this section is, in any case other than the case referred to in subsection (2), the right to be identified in a manner likely to bring his identity to the notice of a person hearing the performance, broadcast or cable programme in question.

(4) The rights of the performer referred to in subsections (2) and (3) include the right to be identified in a clear and reasonably prominent or audible manner.

(5) If the performer in asserting his right to be identified specifies a pseudonym, initials or some other particular form of identification, that form must be used; otherwise any reasonable form of identification may be used.

(6) If a performance is presented by performers who use a group name, identification by using the group name is sufficient identification of the performers in the group.

272C. Requirement that right under section 272B be asserted

(1) A person does not infringe the right conferred by section 272B (right to be identified as performer) by doing any of the acts referred to in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.

(2) The right may be asserted generally, or in relation to any specified act or description of acts—

- (a) on an assignment of a performer's economic rights conferred by Part III in a live aural performance that has taken place or is to take place or in a performance that has been fixed or is to be fixed in a sound recording, by including in the instrument effecting the assignment a statement that the performer asserts in relation to that performance or that performance fixed in the sound recording his right to be identified; or

- (b) by instrument in writing signed by the performer.
- (3) The persons bound by an assertion of the right under subsection (2) are—
- (a) in the case of an assertion under subsection (2)(a), the assignee and anyone claiming through him, whether he has notice of the assertion;
 - (b) in the case of an assertion under subsection (2)(b), anyone to whose notice the assertion is brought.
- (4) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.

272D. Exceptions to right under section 272B

(1) The right conferred by section 272B (right to be identified as performer) does not apply where it is not reasonably practicable to identify the performer.

(2) The right does not apply in relation to a performance given for the purposes of reporting current events.

(3) The right does not apply in relation to a performance given for the purposes of advertising any goods or services or making announcements of matters of public interest.

(4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe any right conferred by Part III—

- (a) section 241 (fair dealing for certain purposes), insofar as it relates to the reporting of current events by means of a sound recording, broadcast or cable programme;
- (b) section 242 (incidental inclusion of performance or fixation);
- (c) section 243(2) (examination questions);
- (d) section 246B (Legislative Council);
- (e) section 247 (judicial proceedings);
- (f) section 248 (statutory inquiries).

Right to object to derogatory treatment

272E. Right to object to derogatory treatment

(1) A performer of a live aural performance or a performer whose performance is fixed in a sound recording has the right not to have his performance subjected to derogatory treatment.

- (2) The right is infringed by a person who does any of the following acts—
- (a) in relation to a live aural performance, subjects the performance, or causes the performance to be subjected, to derogatory treatment when the performance is caused to be heard in public, broadcasted, included in a cable programme service or made available to the public live;
 - (b) in relation to a performance fixed in a sound recording—
 - (i) causes to be heard in public, broadcasts or includes in a cable programme service the performance by means of the sound recording in a manner which subjects the performance to derogatory treatment; or
 - (ii) makes available to the public copies of the sound recording in a manner which subjects the performance to derogatory treatment; or
 - (c) in relation to a performance which has been subjected to derogatory treatment and is fixed in a sound recording—
 - (i) causes to be heard in public, broadcasts or includes in a cable programme service the sounding recording; or
 - (ii) makes available to the public copies of the sound recording.
- (3) For the purposes of this section—
- (a) “treatment” (處理)—
 - (i) in relation to a live aural performance, means any addition to, deletion from, alteration to or adaptation of the performance; or
 - (ii) in relation to a performance fixed in a sound recording, means any addition to, deletion from, alteration to or adaptation of the sound recording; and
 - (b) the treatment of a live aural performance or a performance fixed in a sound recording is derogatory if it amounts to distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

272F. Infringing of right under section 272E by possessing or dealing with infringing articles

- (1) The right conferred by section 272E (right to object to derogatory treatment) is also infringed by a person who—
- (a) possesses for the purpose of or in the course of any trade or business; or

(b) sells or lets for hire, or offers or exposes for sale or hire, or distributes,
an article which is, and which he knows or has reason to believe is, an infringing article.

(2) In this section—

“infringing article” (侵犯權利物品) means a performance fixed in a sound recording which—

(a) has been subjected to derogatory treatment within the meaning of section 272E; and

(b) has been or is likely to be the subject of any of the acts referred to in that section in circumstances infringing that right.

272G. Exceptions to right under section 272E

(1) The right conferred by section 272E (right to object to derogatory treatment) does not apply in relation to any performance given for the purposes of reporting current events.

(2) The right is not infringed by modifications made to a performance which are consistent with normal editorial or production practice.

(3) Subject to subsection (4), the right is not infringed by an act done for the purpose of—

(a) avoiding the commission of an offence; or

(b) complying with a duty imposed by or under an enactment.

(4) Where a performer is identified at the time of the relevant act under subsection (3) or has previously been identified in or on published copies of sound recordings in which the relevant performance is fixed, subsection (3) has effect only if there is a sufficient disclaimer.

(5) In subsection (4), “sufficient disclaimer” (足夠的卸責聲明) means a clear and reasonably prominent indication—

(a) given at the time of the relevant act under subsection (3); and

(b) if the performer is then identified, appearing along with the identification,

that the live aural performance or the performance fixed in a sound recording has been subjected to treatment to which the performer has not consented.

Supplementary

272H. Duration of rights

The rights conferred by section 272B (right to be identified as performer) and section 272E (right to object to derogatory treatment) continue to subsist so long as the performer's rights conferred by Part III subsist in the sound recording in which the performance is fixed.

272I. Consent and waiver of rights

(1) It is not an infringement of any of the rights conferred by section 272B (right to be identified as performer) and section 272E (right to object to derogatory treatment) to do any act to which the person entitled to the right has consented.

(2) Any of the rights referred to in subsection (1) may be waived by instrument in writing signed by the person giving up the right.

(3) A waiver may relate to a specific performance, to performances of a specified description or to performances generally, and may relate to existing or future performances.

(4) A waiver may be conditional or unconditional, and may be expressed to be subject to revocation.

(5) If a waiver is made in favour of the owner or prospective owner of the right in the performance, it is presumed to extend to his licensees and successors in title unless a contrary intention is expressed.

(6) Nothing in this Part is to be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to any of the rights referred to in subsection (1).

(7) In this section, "performance" (表演) means a live aural performance or a performance fixed in a sound recording.

272J. Application of provisions to joint performers

(1) The right conferred by section 272B (right to be identified as performer) is, in the case of joint performership, a right of each joint performer to be identified as a joint performer and must be asserted in accordance with section 272C by each joint performer in relation to himself.

(2) The right conferred by section 272E (right to object⁶⁰ to derogatory treatment) is, in the case of joint performership, a right of each joint performer and his right is satisfied if he consents to the treatment in question.

(3) A waiver under section 272I of those rights by one joint performer does not affect the rights of the other joint performer or performers.

(4) If there are 2 or more performers in a live aural performance or a performance fixed in a sound recording, the performers may enter into a joint performership agreement in writing by which each of them agrees not to exercise his right conferred by section 272E (right to object to derogatory treatment) in respect of the live aural performance or the performance fixed in a sound recording, as the case may be, except jointly with the other performer or performers.

272K. Application of provisions to part of performance

(1) The right conferred by section 272B (right to be identified as performer) applies in relation to the whole or any substantial part of a live aural performance or a performance fixed in a sound recording.

(2) The right conferred by section 272E (right to object to derogatory treatment) applies in relation to the whole or any part of a live aural performance or a performance fixed in a sound recording.

272L. Moral rights not assignable

The rights conferred by section 272B (right to be identified as performer) and section 272E (right to object to derogatory treatment) are not assignable.

272M. Transmission of moral rights on death

(1) On the death of a person entitled to the right conferred by section 272B (right to be identified as performer) or section 272E (right to object to derogatory treatment)—

(a) the right passes to such person as he may by testamentary disposition specifically direct;

(b) if there is no such direction but the performer's economic rights conferred by Part III in respect of the performance in question form part of his estate, the right passes to the person to whom the economic rights pass; and

(c) if or to the extent that the right does not pass under paragraph (a) or (b), the right is exercisable by his personal representatives.

(2) Where a performer's economic rights conferred by Part III and forming part of his estate pass in part to one person and in part to another, as for example where a bequest is limited so as to apply—

(a) to one or more, but not all, of the things the owner has the exclusive right to do or consent; or

(b) to part, but not the whole, of the period for which the rights subsist,

any right which passes with the performer's economic rights by virtue of subsection (1)(b) is correspondingly divided.

(3) Where by virtue of subsection (1)(a) or (b) a right becomes exercisable by more than one person, the following provisions have effect with respect to the right—

(a) it may, in the case of the right conferred by section 272B (right to be identified as performer), be asserted by any of them;

(b) it is, in the case of the right conferred by section 272E (right to object to derogatory treatment), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and

(c) any waiver of the right in accordance with section 272I by any of them does not affect the rights of the others.

(4) A consent or waiver previously given or made binds any person to whom a right passes by virtue of subsection (1).

(5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

272N. Remedies for infringement of performers' moral rights

(1) An infringement of the right conferred by section 272B (right to be identified as performer) or section 272E (right to object to derogatory treatment) is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) In proceedings for infringement of the right conferred by section 272E, the court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating a performer from the treatment of a live aural performance or a performance fixed in a sound recording.

**272O. Presumptions relevant to sound recordings
in which performances are fixed**

In proceedings brought by virtue of this Part with respect to a sound recording in which a performance is fixed, where copies of the sound recording as issued or made available to the public bear a statement—

- (a) that a named person was a performer in the performance; or
- (b) that a named group of performers were the performers in the performance,

the statement is admissible as evidence of the facts stated and is presumed to be correct until the contrary is proved.”.

67. Cross-heading substituted

The cross-heading before section 273 is repealed and the following substituted—

“Circumvention of effective technological measures”.

68. Section substituted

Section 273 is repealed and the following substituted—

**“273. Interpretation of sections 273
to 273H**

(1) In sections 273A to 273H, “circumvent” (規避), in relation to an effective technological measure which has been applied in relation to a copyright work—

- (a) where the use of the work is controlled through the measure by the copyright owner of the work, means to circumvent the measure without the authority of the copyright owner;
- (b) where the use of the work is controlled through the measure by an exclusive licensee of the copyright owner of the work, means to circumvent the measure without the authority of the exclusive licensee; or

- (c) where the use of the work is controlled through the measure by any other person who, with the licence of the copyright owner of the copyright work—
 - (i) issues to the public copies of the work;
 - (ii) makes available to the public copies of the work; or
 - (iii) broadcasts the work, or includes the work in a cable programme service,

means to circumvent the measure without the authority of that other person.

(2) For the purposes of this section and sections 273A to 273H, where a technological measure has been applied in relation to a copyright work, the measure is referred to as an effective technological measure if the use of the work is controlled by any person referred to in subsection (1)(a), (b) or (c) through—

- (a) an access control or protection process (including the encryption, scrambling and any other transformation of the work) which achieves the intended protection of the work in the normal course of its operation; or
 - (b) a copy control mechanism which achieves the intended protection of the work in the normal course of its operation.
- (3) In subsection (2)—
- (a) “technological measure” (科技措施) means any technology, device, component or means which is designed, in the normal course of its operation, to protect any description of copyright work;
 - (b) the reference to protection of a copyright work is to the prevention or restriction of acts which are done without the licence of the copyright owner of the work and are restricted by the copyright in the work;
 - (c) the reference to use of a copyright work does not extend to any use of the work which is outside the scope of the acts restricted by the copyright in the work.”.

69. Sections added

The following are added immediately after section 273—

**“273A. Rights and remedies in respect of
circumvention of effective
technological measures**

(1) Subject to sections 273D and 273H, this section applies where an effective technological measure has been applied in relation to a copyright work, and a person does any act which circumvents the measure, knowing, or having reason to believe, that he is doing an act which circumvents the measure.

(2) The following persons have the same rights and remedies against the person referred to in subsection (1) as a copyright owner has in respect of an infringement of copyright—

- (a) the copyright owner of the work;
- (b) an exclusive licensee of the copyright owner of the work;
and
- (c) any other person who, with the licence of the copyright owner of the work—
 - (i) issues to the public copies of the work;
 - (ii) makes available to the public copies of the work; or
 - (iii) broadcasts the work, or includes the work in a cable programme service.

(3) The rights and remedies conferred by subsection (2) on the copyright owner, the exclusive licensee and the person referred to in subsection (2)(c) are concurrent.

(4) Sections 112(3) and 113(1), (4), (5) and (6) apply, with the necessary modifications, in proceedings in relation to the copyright owner, the exclusive licensee and the person referred to in subsection (2)(c), as they apply in proceedings in relation to a copyright owner and an exclusive licensee with concurrent rights and remedies.

(5) Sections 115, 116 and 117 (presumptions as to certain matters relating to copyright) apply, with the necessary modifications, in proceedings instituted under this section, as they apply in proceedings instituted under Part II (copyright).

**273B. Rights and remedies in respect of
devices and services designed
to circumvent effective
technological measures**

(1) Subject to sections 273E and 273H, this section applies where an effective technological measure has been applied in relation to a copyright work, and a person—

- (a) makes, imports, exports, sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire, any relevant device;
- (b) exhibits in public, possesses or distributes any relevant device for the purpose of or in the course of any trade or business;
- (c) distributes (otherwise than for the purpose of or in the course of any trade or business) any relevant device to such an extent as to affect prejudicially the owner of the copyright; or
- (d) provides any relevant service.

(2) In subsection (1)—

“relevant device” (有關器件), in relation to the effective technological measure referred to in that subsection, means any device, product, component or means—

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;
- (b) which has only a limited commercially significant purpose or use other than to circumvent the measure; or
- (c) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of the measure;

“relevant service” (有關服務), in relation to the effective technological measure referred to in that subsection, means any service—

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;
- (b) which has only a limited commercially significant purpose or use other than to circumvent the measure; or
- (c) which is performed for the purpose of enabling or facilitating the circumvention of the measure.

(3) The following persons have the same rights and remedies against the person referred to in subsection (1) as a copyright owner has in respect of an infringement of copyright—

- (a) the copyright owner of the work;
- (b) an exclusive licensee of the copyright owner of the work; and
- (c) any other person who, with the licence of the copyright owner of the work—
 - (i) issues to the public copies of the work;
 - (ii) makes available to the public copies of the work; or
 - (iii) broadcasts the work, or includes the work in a cable programme service.

(4) The rights and remedies conferred by subsection (3) on the copyright owner, the exclusive licensee and the person referred to in subsection (3)(c) are concurrent.

(5) Sections 112(3) and 113(1), (4), (5) and (6) apply, with the necessary modifications, in proceedings in relation to the copyright owner, the exclusive licensee and the person referred to in subsection (3)(c), as they apply in proceedings in relation to a copyright owner and an exclusive licensee with concurrent rights and remedies.

(6) The copyright owner, the exclusive licensee and the person referred to in subsection (3)(c) have the same rights and remedies under section 109 (order for delivery up) in relation to any device, product, component or means which a person has in his possession, custody or control with the intention that it is to be used to circumvent effective technological measures, as a copyright owner has in relation to an infringing copy.

(7) The rights and remedies conferred by subsection (6) on the copyright owner, the exclusive licensee and the person referred to in subsection (3)(c) are concurrent.

(8) Section 113(7) (order as to exercise of rights by copyright owner where exclusive licensee has concurrent rights) applies, with the necessary modifications, in respect of anything done under section 109 by virtue of subsection (6), in relation to the copyright owner, the exclusive licensee and the person referred to in subsection (3)(c), as it applies, in respect of anything done under section 109, in relation to a copyright owner and an exclusive licensee with concurrent rights and remedies.

(9) Section 111 (order as to disposal of infringing copy or other article) applies, with the necessary modifications, in relation to the disposal of anything delivered up under section 109 by virtue of subsection (6).

(10) Sections 115, 116 and 117 (presumptions as to certain matters relating to copyright) apply, with the necessary modifications, in proceedings instituted under this section, as they apply in proceedings instituted under Part II (copyright).

273C. Offences in relation to circumvention of effective technological measures

(1) Subject to sections 273F and 273H, where an effective technological measure has been applied in relation to a copyright work, a person commits an offence if he—

- (a) makes for sale or hire any relevant device;
- (b) imports into Hong Kong for sale or hire any relevant device;

- (c) exports from Hong Kong for sale or hire any relevant device;
- (d) sells, lets for hire, or offers or exposes for sale or hire any relevant device for the purpose of or in the course of any trade or business;
- (e) exhibits in public or distributes any relevant device for the purpose of or in the course of any trade or business which consists of dealing in circumvention devices;
- (f) possesses any relevant device with a view to—
 - (i) its being sold or let for hire by any person for the purpose of or in the course of any trade or business; or
 - (ii) its being exhibited in public or distributed by any person for the purpose of or in the course of any trade or business which consists of dealing in circumvention devices; or
- (g) provides any relevant service for the purpose of or in the course of a circumvention business.

(2) In subsection (1)—

“circumvention business” (規避業務) means a business, conducted for profit, which includes the offering to the public of services which enable or facilitate the circumvention of effective technological measures;

“circumvention device” (規避器件) means any device, product, component or means—

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures;

“dealing in” (經銷) means selling, letting for hire, or distributing for profit or reward;

“relevant device” (有關器件), in relation to the effective technological measure referred to in that subsection—

- (a) subject to paragraph (b), means any device, product, component or means—
 - (i) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;
 - (ii) which has only a limited commercially significant purpose or use other than to circumvent the measure; or

(iii) which is primarily designed, produced or adapted for⁶⁸ the purpose of enabling or facilitating the circumvention of the measure;

(b) does not include any unauthorized decoder referred to in section 6, or any decoder referred to in section 7, of the Broadcasting Ordinance (Cap. 562);

“relevant service” (有關服務), in relation to the effective technological measure referred to in that subsection, means any service—

(a) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;

(b) which has only a limited commercially significant purpose or use other than to circumvent the measure; or

(c) which is performed for the purpose of enabling or facilitating the circumvention of the measure.

(3) A person who commits an offence under subsection (1) is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 4 years.

(4) It is a defence for the person charged with an offence in respect of an effective technological measure under subsection (1) to prove that he did not know and had no reason to believe that the relevant device or relevant service which is the subject of the offence enabled or facilitated the circumvention of the measure.

273D. Exceptions to section 273A

(1) Section 273A does not apply to an act which circumvents an effective technological measure if—

(a) the measure has been applied in relation to a computer program;

(b) the act is done with respect to the identification or analysis of particular elements of the computer program that are not readily available to the person who does the act;

(c) the act is done for the sole purpose of achieving interoperability of an independently created computer program with the computer program or another computer program;

(d) the copy of computer program in relation to which the act is done is not an infringing copy; and

(e) the act of identification or analysis referred to in paragraph (b) does not constitute an infringement of copyright.

(2) Section 273A does not apply to an act which circumvents an effective technological measure if—

- (a) the act is done by or under the authority of the owner or operator of a computer, computer system or computer network; and
- (b) the act is done for the sole purpose of testing, investigating or correcting a security flaw or vulnerability of the computer, computer system or computer network, as the case may be.

(3) Section 273A does not apply to an act which circumvents an effective technological measure if the act is done for the sole purpose of research into cryptography and—

- (a) where the research is conducted by or on behalf of a specified educational establishment, or for the purposes of giving or receiving instruction in a specified course of study in the field of cryptography provided by a specified educational establishment—
 - (i) the research does not constitute an infringement of copyright;
 - (ii) it is necessary for the act to be done in order to conduct the research; and
 - (iii) the information derived from the research is not disseminated to the public except in a specified manner; or
- (b) in any other case—
 - (i) the research does not constitute an infringement of copyright;
 - (ii) it is necessary for the act to be done in order to conduct the research; and
 - (iii) the act or the dissemination to the public of information derived from the research does not affect prejudicially the copyright owner.

(4) In subsection (3)—

“specified educational establishment” (指明教育機構) means—

- (a) an educational establishment specified in section 4, 6, 7, 8, 9, 12, 14 or 15 of Schedule 1; or
- (b) Hong Kong Shue Yan University registered under the Post Secondary Colleges Ordinance (Cap. 320);

“specified manner” (指明方式), in relation to the dissemination to the public of information derived from a research into cryptography—

- (a) means a manner which is reasonably calculated to advance the state of knowledge or development of cryptography or related technology; and

- (b) includes dissemination of the information in a journal or at a conference the target readers or audiences of which are primarily persons engaged in, or pursuing a course of study in, the field of cryptography or related technology.
- (5) Section 273A does not apply to an act which circumvents an effective technological measure if—
 - (a) the measure, or the copyright work in relation to which the measure has been applied, has the capability to collect or disseminate personally identifying information which tracks and records the manner of a person's use of a computer network without providing conspicuous notice of such collection or dissemination to the person;
 - (b) the act is done for the sole purpose of identifying or disabling the function of the measure or work, as the case may be, in collecting or disseminating personally identifying information; and
 - (c) the act does not affect the ability of any person to gain access to any work.
- (6) Section 273A does not apply to an act which circumvents an effective technological measure if—
 - (a) a person does the act when using a technology, product or device; and
 - (b) the sole purpose of the technology, product or device, as the case may be, is to prevent access of minors to harmful materials on the Internet.
- (7) Section 273A does not apply to an act which circumvents an effective technological measure if—
 - (a) the measure has been applied in relation to a copyright work of any description issued to the public in a physical article;
 - (b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis;
 - (c) the act is done for the sole purpose of overcoming the regional coding, technology, device, component or means, as the case may be, contained in the measure so as to gain access to the work; and
 - (d) the copy of the work in relation to which the act is done—
 - (i) is not an infringing copy; or

(ii) if it is an infringing copy, is an infringing copy by virtue only of section 35(3) and was lawfully made in the country, territory or area where it was made.

(8) Section 273A does not apply to an act which circumvents an effective technological measure if—

- (a) the measure has been applied in relation to a copy of any description mentioned in section 50(1), 51(1) or 53;
- (b) the act of circumvention is done by the librarian or archivist of a specified library or archive; and
- (c) the act is done for the sole purpose of the doing of any of the acts permitted under sections 50, 51 and 53.

(9) Section 273A does not apply to an act which circumvents an effective technological measure if the act is done by, or on behalf of, law enforcement agencies for the purpose of the prevention, detection or investigation of an offence, or the conduct of a prosecution.

273E. Exceptions to section 273B

(1) In this section—

“relevant device” (有關器件) means any device, product, component or means—

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures;

“relevant service” (有關服務) means any service—

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is performed for the purpose of enabling or facilitating the circumvention of effective technological measures.

- (2) Section 273B does not apply if—
- (a) a person works collaboratively with another person to identify or analyse particular elements of a computer program for the sole purpose of achieving interoperability of an independently created computer program with the computer program or another computer program; and
 - (b) that person, for the purpose of enabling that other person to do any relevant act—
 - (i) makes or imports any relevant device for that other person;
 - (ii) sells, lets for hire, exports or distributes any relevant device to that other person;
 - (iii) possesses any relevant device; or
 - (iv) provides any relevant service to that other person.
- (3) In subsection (2), “relevant act” (有關作為) means—
- (a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(1); or
 - (b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).
- (4) Section 273B does not apply if—
- (a) a person works collaboratively with another person to test, investigate or correct a security flaw or vulnerability of a computer, computer system or computer network under the authority of the owner or operator of the computer, computer system or computer network, as the case may be; and
 - (b) that person, for the purpose of enabling that other person to do any relevant act—
 - (i) makes or imports any relevant device for that other person;
 - (ii) sells, lets for hire, exports or distributes any relevant device to that other person;
 - (iii) possesses any relevant device; or
 - (iv) provides any relevant service to that other person.
- (5) In subsection (4), “relevant act” (有關作為) means—
- (a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(2); or
 - (b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).

- (6) Section 273B does not apply if—
- (a) a person works collaboratively with another person to conduct research into cryptography; and
 - (b) that person, for the purpose of enabling that other person to do any relevant act—
 - (i) makes or imports any relevant device for that other person;
 - (ii) sells, lets for hire, exports or distributes any relevant device to that other person;
 - (iii) possesses any relevant device; or
 - (iv) provides any relevant service to that other person.
- (7) In subsection (6), “relevant act” (有關作為) means—
- (a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(3); or
 - (b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).
- (8) Section 273B does not apply to a relevant device or relevant service if—
- (a) an effective technological measure, or a copyright work in relation to which an effective technological measure has been applied, has a function in collecting or disseminating personally identifying information which tracks and records the manner of a person’s use of a computer network; and
 - (b) the sole purpose of the device or service, as the case may be, is to identify or disable that function of the measure or work, as the case may be.
- (9) Section 273B does not apply to a relevant device if—
- (a) the relevant device is incorporated, or is intended to be incorporated, into a technology, product or device; and
 - (b) the sole purpose of the technology, product or device, as the case may be, is to prevent access of minors to harmful materials on the Internet.
- (10) Section 273B does not apply to a relevant service if the sole purpose of the service is to prevent access of minors to harmful materials on the Internet.
- (11) Section 273B does not apply to a relevant device or relevant service if—
- (a) an effective technological measure has been applied in relation to a copyright work issued to the public in a physical article;

- (b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis; and
- (c) the sole purpose of the relevant device or relevant service, as the case may be, is to overcome the regional coding, technology, device, component or means, as the case may be, contained in the measure.

(12) Section 273B does not apply to an act done by, or on behalf of, law enforcement agencies for the purpose of the prevention, detection or investigation of an offence, or the conduct of a prosecution.

273F. Exceptions to section 273C

(1) In this section—

“relevant device” (有關器件) means any device, product, component or means—

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures;

“relevant service” (有關服務) means any service—

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is performed for the purpose of enabling or facilitating the circumvention of effective technological measures.

(2) Section 273C does not apply if—

- (a) a person works collaboratively with another person to identify or analyse particular elements of a computer program for the sole purpose of achieving interoperability of an independently created computer program with the computer program or another computer program; and
- (b) that person, for the purpose of enabling that other person to do any relevant act—

- (i) makes or imports any relevant device for that other person;
 - (ii) sells, lets for hire, exports or distributes any relevant device to that other person;
 - (iii) possesses any relevant device with a view to selling, letting for hire or distributing the device to that other person; or
 - (iv) provides any relevant service to that other person.
- (3) In subsection (2), “relevant act” (有關作為) means—
- (a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(1); or
 - (b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).
- (4) Section 273C does not apply if—
- (a) a person works collaboratively with another person to test, investigate or correct a security flaw or vulnerability of a computer, computer system or computer network under the authority of the owner or operator of the computer, computer system or computer network, as the case may be; and
 - (b) that person, for the purpose of enabling that other person to do any relevant act—
 - (i) makes or imports any relevant device for that other person;
 - (ii) sells, lets for hire, exports or distributes any relevant device to that other person;
 - (iii) possesses any relevant device with a view to selling, letting for hire or distributing the device to that other person; or
 - (iv) provides any relevant service to that other person.
- (5) In subsection (4), “relevant act” (有關作為) means—
- (a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(2); or
 - (b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).
- (6) Section 273C does not apply if—
- (a) a person works collaboratively with another person to conduct research into cryptography; and
 - (b) that person, for the purpose of enabling that other person to do any relevant act—

- (i) makes or imports any relevant device for that other person;
 - (ii) sells, lets for hire, exports or distributes any relevant device to that other person;
 - (iii) possesses any relevant device with a view to selling, letting for hire or distributing the device to that other person; or
 - (iv) provides any relevant service to that other person.
- (7) In subsection (6), “relevant act” (有關作為) means—
- (a) an act which circumvents an effective technological measure and to which section 273A does not apply by virtue of section 273D(3); or
 - (b) an act done outside Hong Kong which, if done in Hong Kong, would constitute an act referred to in paragraph (a).
- (8) Section 273C does not apply to a relevant device or relevant service if—
- (a) an effective technological measure, or a copyright work in relation to which an effective technological measure has been applied, has a function in collecting or disseminating personally identifying information which tracks and records the manner of a person’s use of a computer network; and
 - (b) the sole purpose of the device or service, as the case may be, is to identify or disable that function of the measure or work, as the case may be.
- (9) Section 273C does not apply to a relevant device if—
- (a) the relevant device is incorporated, or is intended to be incorporated, into a technology, product or device; and
 - (b) the sole purpose of the technology, product or device, as the case may be, is to prevent access of minors to harmful materials on the Internet.
- (10) Section 273C does not apply to a relevant service if the sole purpose of the service is to prevent access of minors to harmful materials on the Internet.
- (11) Section 273C does not apply to a relevant device or relevant service if—
- (a) an effective technological measure has been applied in relation to a copyright work issued to the public in a physical article;
 - (b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis; and

- (c) the sole purpose of the relevant device or relevant service, as the case may be, is to overcome the regional coding, technology, device, component or means, as the case may be, contained in the measure.

(12) Section 273C does not apply to an act done by, or on behalf of, law enforcement agencies for the purpose of the prevention, detection or investigation of an offence, or the conduct of a prosecution.

273G. Application of sections 273, 273A, 273B, 273D and 273E to performances

Sections 273, 273A(1), (2), (3) and (4), 273B(1), (2), (3), (4), (5), (6), (7), (8) and (9), 273D and 273E apply, with the necessary modifications, in relation to—

- (a) an unfixed performance or a fixation of a performance;
- (b) a performer or a person having fixation rights in relation to a performance; and
- (c) the rights conferred by Part III on a performer or a person having fixation rights in relation to a performance.

273H. Exceptions to sections 273A, 273B, 273C and 273G

The Secretary for Commerce and Economic Development may, by notice published in the Gazette, exclude from the application of any provisions of sections 273A, 273B, 273C and 273G any work or performance, class of works or performances or class of devices, products, components, means or services if he is satisfied—

- (a) that any use of or dealing with the work or performance, class of works or performances or class of devices, products, components, means or services, as the case may be, does not constitute or lead to an infringement of copyright or the rights conferred by Part III (rights in performances); and
- (b) that any such use or dealing has been, or is likely to be, adversely impaired or affected as a result of the application of the provisions.”.

70. Rights and remedies in respect of unlawful acts to interfere with rights management information

Section 274 is amended by adding—

“(2A) The person who provides rights management information does not have the rights and remedies against the person referred to in subsection (2) unless the second-mentioned person, when doing an act referred to in subsection (2)(a) or (b), knows or has reason to believe that by doing the act he is inducing, enabling, facilitating or concealing an infringement of copyright or an infringement of rights conferred by Part III (rights in performances).

(2B) If the copyright owner of a work to which rights management information is attached, or the copyright owner’s exclusive licensee, is not the person who provides the rights management information, the copyright owner or the exclusive licensee, as the case may be, has the same rights and remedies as the person who provides the rights management information has against the person referred to in subsection (2).

(2C) The rights and remedies conferred by subsection (1) on the person who provides rights management information and the rights and remedies conferred by subsection (2B) on the copyright owner and his exclusive licensee are concurrent.

(2D) Sections 112(3) and 113(1), (4), (5) and (6) apply, with the necessary modifications, in proceedings in relation to the person who provides rights management information, the copyright owner and the exclusive licensee, as they apply in proceedings in relation to a copyright owner and an exclusive licensee with concurrent rights and remedies.

(2E) Sections 115, 116 and 117 (presumptions as to certain matters relating to copyright) apply, with the necessary modifications, in proceedings instituted under this section, as they apply in proceedings instituted under Part II (copyright).

(2F) This section, except subsection (2E), applies, with the necessary modifications, in relation to—

- (a) a fixation of a performance;
- (b) a performer or a person having fixation rights in relation to a performance; and
- (c) the rights conferred by Part III on a performer or a person having fixation rights in relation to a performance.”.

71. Transitional provisions and savings

(1) Section 282 is amended, in the heading, by adding “**in relation to amendments effected by the Copyright (Amendment) Ordinance 2003**” after “**savings**”.

(2) Section 282 is amended by adding “by the Copyright (Amendment) Ordinance 2003 (27 of 2003)” after “this Ordinance”.

72. Section added

The following is added—

**“283. Transitional provisions and savings
in relation to amendments effected
by the Copyright (Amendment)
Ordinance 2007**

(1) In this section, “2007 Amendment Ordinance” (《2007年修訂條例》) means the Copyright (Amendment) Ordinance 2007 (15 of 2007).

(2) Schedule 7 contains transitional provisions and savings in relation to certain amendments made to this Ordinance by the 2007 Amendment Ordinance.

(3) The Chief Executive in Council may make regulations containing transitional provisions and savings consequent on the enactment of the 2007 Amendment Ordinance.

(4) Without prejudice to the generality of subsection (3), the regulations may in particular provide for—

(a) the application of provisions of this Ordinance as amended by the 2007 Amendment Ordinance; or

(b) the continued application of provisions of this Ordinance as in force immediately before the commencement of any provisions of the 2007 Amendment Ordinance,

in connection with any matter specified in the regulations.

(5) Regulations made under this section may, if they so provide, be deemed to have come into operation on a date earlier than the date on which they are published in the Gazette but not earlier than the date on which the 2007 Amendment Ordinance is published in the Gazette.

(6) To the extent that any regulations come into operation on a date earlier than the date on which they are published in the Gazette, those regulations shall be construed so as not to—

(a) affect, in a manner prejudicial to any person, the rights of that person existing before the date on which the regulations are published in the Gazette; or

(b) impose liabilities on any person in respect of anything done, or omitted to be done, before that date.

(7) In the event of an inconsistency between any regulations made under this section and the provisions of Schedule 7, Schedule 7 shall prevail to the extent of the inconsistency.”

73. Educational establishments

(1) Schedule 1 is amended, within the square brackets, by repealing “s. 195” and substituting “ss. 40A, 119B, 195 & 273D”.

(2) Schedule 1 is amended by repealing section 15 and substituting—
 “15. The Open University of Hong Kong established by The Open University of Hong Kong Ordinance (Cap. 1145).”.

74. Schedule 1A added

The following is added—

“SCHEDULE 1A

[s. 198]

BODIES AND AUTHORITIES SPECIFIED FOR
 PURPOSES OF DEFINITION OF “SPECIFIED
 COURSE OF STUDY”

1. Curriculum Development Council the members of which are appointed by the Chief Executive.”.

75. Schedule 7 added

The following is added—

“SCHEDULE 7

[s. 283]

TRANSITIONAL PROVISIONS AND SAVINGS IN RELATION TO
 AMENDMENTS EFFECTED BY THE COPYRIGHT
 (AMENDMENT) ORDINANCE 2007
 (15 OF 2007)

PART 1

INTRODUCTORY

1. Interpretation

- (1) In this Schedule—

“2007 Amendment Ordinance” (《2007年修訂條例》) means the Copyright (Amendment) Ordinance 2007 (15 of 2007);

“Suspension Ordinance” (《暫停條例》) means the Copyright (Suspension of Amendments) Ordinance 2001 (Cap. 568).

(2) Expressions used in this Schedule which are defined for the purposes of Part II (copyright) and Part IIIA (performers’ moral rights) of this Ordinance have the same meaning as in those Parts.

PART 2

ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS AND PERFORMANCES

2. **Savings for certain existing agreements**

Nothing in section 13, 14, 15, 16, 17, 21, 61, 62, 63 or 65 of the 2007 Amendment Ordinance affects a licence or agreement made before the commencement date of that section.

PART 3

RENTAL RIGHT OF COPYRIGHT OWNERS AND PERFORMERS

Division 1—Transitional provisions and savings in relation to amendments effected by section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(c), (e) and (f) of this Ordinance)

3. **General provisions**

(1) Subject to sections 4 and 5 of this Schedule, section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(c), (e) and (f) of this Ordinance) applies to copyright works made before, on or after the commencement date of that section.

(2) No act done before the commencement date of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(c), (e) and (f) of this Ordinance) shall be regarded as an infringement of any new right arising by virtue of that section.

4. **New rental right: effect of pre-commencement authorization of copying**

Where—

- (a) the owner or prospective owner of copyright in any work has, before the commencement date of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(c), (e) and (f) of this Ordinance), authorized a person to make a copy of the work; and
- (b) a new right arises by virtue of that section in relation to that copy,

the new right shall vest on the commencement date of that section in the person so authorized, subject to any agreement to the contrary.

5. **Savings for existing stocks**

(1) Any new right arising by virtue of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(c) of this Ordinance) does not apply to a copy of a film acquired by a person before the commencement date of that section for the purpose of renting it to the public.

(2) Any new right arising by virtue of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(e) and (f) of this Ordinance) does not apply to a copy of a comic book acquired by a person before the commencement date of that section for the purpose of renting it to the public.

Division 2—Transitional provisions and savings in relation to amendments effected by section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(d) of this Ordinance)

6. **General provisions**

(1) Subject to sections 7 and 8 of this Schedule, section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(d) of this Ordinance) applies to copyright works made before, on or after the commencement date of that section.

(2) No act done before the commencement date of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(d) of this Ordinance) shall be regarded as an infringement of any new right arising by virtue of that section.

7. New rental right: effect of pre-commencement authorization of copying

Where—

- (a) the owner or prospective owner of copyright in any work has, before the commencement date of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(d) of this Ordinance), authorized a person to make a copy of the work; and
- (b) a new right arises by virtue of that section in relation to that copy,

the new right shall vest on the commencement date of that section in the person so authorized, subject to any agreement to the contrary.

8. Savings for existing stocks

Any new right arising by virtue of section 6 of the 2007 Amendment Ordinance (insofar as it relates to section 25(1)(d) of this Ordinance) does not apply to a copy of a sound recording acquired by a person before the commencement date of that section for the purpose of renting it to the public.

Division 3—Transitional provisions and savings in relation to amendments effected by section 51 of the 2007 Amendment Ordinance

9. General provisions

(1) Subject to sections 10 and 11 of this Schedule, section 51 of the 2007 Amendment Ordinance applies to qualifying performances that take place before, on or after the commencement date of that section.

(2) No act done before the commencement date of section 51 of the 2007 Amendment Ordinance shall be regarded as an infringement of any new right arising by virtue of that section.

10. New rental right: effect of pre-commencement authorization of copying

Where—

- (a) the owner or prospective owner of a performer's rights in a qualifying performance has, before the commencement date of section 51 of the 2007 Amendment Ordinance, authorized a person to make a copy of a recording of the performance; and

(b) a new right arises by virtue of that section in relation to that copy, the new right shall vest on the commencement date of that section in the person so authorized, subject to any agreement to the contrary.

11. Savings for existing stocks

Any new right arising by virtue of section 51 of the 2007 Amendment Ordinance does not apply to a copy of a sound recording of a qualifying performance acquired by a person before the commencement date of that section for the purpose of renting it to the public.

PART 4

MORAL RIGHTS OF PERFORMERS

Transitional provisions and savings in relation to amendments effected by section 66 of the 2007 Amendment Ordinance

12. General provisions

No act done before the commencement date of section 66 of the 2007 Amendment Ordinance shall be regarded as an infringement of any new rights of performers arising by virtue of that section.

13. Savings for certain existing agreements

(1) Except as otherwise expressly provided, nothing in section 66 of the 2007 Amendment Ordinance affects an agreement made before the commencement date of that section.

(2) No act done in pursuance of an agreement referred to in subsection (1) on or after the commencement date of section 66 of the 2007 Amendment Ordinance shall be regarded as an infringement of any new rights of performers arising by virtue of that section.

14. New moral rights of performers of live aural performances

(1) Any new rights of performers arising by virtue of section 66 of the 2007 Amendment Ordinance in respect of a live aural performance only subsist in a live aural performance that takes place on or after the commencement date of that section.

(2) Any new rights of performers arising by virtue of section 66 of the 2007 Amendment Ordinance in respect of a performance fixed in a sound recording only subsist if the performance concerned takes place on or after the commencement date of that section.

PART 5

INFRINGEMENT OF COPYRIGHT IN WORKS AND RIGHTS IN PERFORMANCES

Division 1—Transitional provisions and savings in relation to amendments effected by section 9(2) of the 2007 Amendment Ordinance

15. Exemption from criminal liability incurred in respect of copies of works imported before commencement of section 9(2) of the 2007 Amendment Ordinance

(1) As from the commencement date of section 9(2) of the 2007 Amendment Ordinance, a person shall not be liable to conviction for an offence under section 118 of this Ordinance in respect of an act done before, on or after that commencement date in relation to a copy of a work to which this subsection applies.

(2) Subsection (1) applies to a copy of a work imported into Hong Kong before the commencement date of section 9(2) of the 2007 Amendment Ordinance—

- (a) which is an infringing copy by virtue only of section 35(3) of this Ordinance as in force immediately before that commencement date;
- (b) which was lawfully made in the country, territory or area where it was made; and
- (c) which, if imported into Hong Kong on or after that commencement date, would, by virtue of section 35(4) of this Ordinance as amended by section 9(2) of the 2007 Amendment Ordinance, not be an infringing copy for the purposes of sections 118 to 133 (criminal provisions) of this Ordinance.

**Division 2—Transitional provisions and savings
in relation to amendments effected by section 10
of the 2007 Amendment Ordinance**

**16. Application of section 35B of this
Ordinance to previously imported
copies**

(1) For the purpose of any act done on or after the commencement date of section 10 of the 2007 Amendment Ordinance in relation to a copy of a work to which this subsection applies (including any act alleged to constitute an infringement of copyright or an offence under this Ordinance)—

- (a) section 35B of this Ordinance shall have effect as if it had been enacted before the copy is imported into Hong Kong or acquired; and
- (b) the copy is, by virtue of paragraph (a), not an infringing copy for the purposes of section 35(3) of this Ordinance unless, having regard to section 35B of this Ordinance, it would also be an infringing copy for the purposes of section 35(3) of this Ordinance if it were imported into Hong Kong or acquired on or after that commencement date.

(2) Subsection (1) applies to a copy of a work imported into Hong Kong before the commencement date of section 10 of the 2007 Amendment Ordinance—

- (a) which is an infringing copy by virtue only of section 35(3) of this Ordinance as in force immediately before that commencement date; and
- (b) which was lawfully made in the country, territory or area where it was made.

(3) For the avoidance of doubt, nothing in this section or in the 2007 Amendment Ordinance relieves any person from liability to civil action in relation to an infringement of copyright which occurred before the commencement date of section 10 of the 2007 Amendment Ordinance.

**17. Exemption from criminal liability
previously incurred in respect of
“parallel-imported” copies of
works to which section 35B
of this Ordinance applies**

(1) As from the commencement date of section 10 of the 2007 Amendment Ordinance, a person shall not be liable to conviction for an offence under section 118(1) of this Ordinance as in force immediately before

that commencement date and read together with the Suspension Ordinance, in respect of an act done before that commencement date in relation to a copy of a work to which this subsection applies unless, having regard to section 35B of this Ordinance, the copy would also be an infringing copy for the purposes of section 35(3) of this Ordinance if it were imported into Hong Kong or acquired on or after that commencement date.

(2) Subsection (1) applies to a copy of a work imported into Hong Kong before the commencement date of section 10 of the 2007 Amendment Ordinance—

- (a) which is an infringing copy by virtue only of section 35(3) of this Ordinance as in force immediately before that commencement date; and
- (b) which was lawfully made in the country, territory or area where it was made.

Division 3—Transitional provisions and savings in relation to amendments effected by section 31 of the 2007 Amendment Ordinance

18. Application of section 118(2H) of this Ordinance

For the avoidance of doubt, section 118(2H) of this Ordinance does not apply in relation to any act referred to in section 118(2A) of this Ordinance and done by a body corporate or a partnership before the commencement date of section 31(4) of the 2007 Amendment Ordinance.

19. Retrospective application of the exemption and defence provided by section 118(2E), (2F), (2G), (3A) and (3B) of this Ordinance

(1) Section 118(2E), (2F), (2G), (3A) and (3B) of this Ordinance applies in proceedings to which this subsection applies, in the same manner as it applies in proceedings for an offence under section 118(2A) of this Ordinance.

(2) Subsection (1) applies to proceedings for an offence under section 118(1)(d) of this Ordinance as in force immediately before the commencement date of section 31(4) of the 2007 Amendment Ordinance and read together with the Suspension Ordinance, in a case where the infringing copy to which the charge relates is an infringing copy of the kind described in section 2(2), (3), (4) or (5) of the Suspension Ordinance.

(3) Subsection (1) does not apply to proceedings for an offence committed before 1 April 2001.

**Division 4—Transitional provisions and savings in relation
to amendments effected by section 57 of the
2007 Amendment Ordinance**

**20. Application of section 229A of this
Ordinance to previously imported
fixations**

(1) For the purpose of any act done on or after the commencement date of section 57 of the 2007 Amendment Ordinance in relation to a fixation of a performance to which this subsection applies (including any act alleged to constitute an infringement of any of the rights conferred by Part III of this Ordinance)—

- (a) section 229A of this Ordinance shall have effect as if it had been enacted before the fixation is imported into Hong Kong or acquired; and
- (b) the fixation is, by virtue of paragraph (a), not an infringing fixation for the purposes of section 229(4) of this Ordinance unless, having regard to section 229A of this Ordinance, it would also be an infringing fixation for the purposes of section 229(4) of this Ordinance if it were imported into Hong Kong or acquired on or after that commencement date.

(2) Subsection (1) applies to a fixation of a performance imported into Hong Kong before the commencement date of section 57 of the 2007 Amendment Ordinance—

- (a) which is an infringing fixation by virtue only of section 229(4) of this Ordinance as in force immediately before that commencement date; and
- (b) which was lawfully made in the country, territory or area where it was made.

(3) For the avoidance of doubt, nothing in this section or in the 2007 Amendment Ordinance relieves any person from liability to civil action in relation to an infringement of any of the rights conferred by Part III of this Ordinance which occurred before the commencement date of section 57 of the 2007 Amendment Ordinance.”.

PART 3

MISCELLANEOUS

Copyright (Suspension of Amendments) Ordinance 2001

76. Repeal

The Copyright (Suspension of Amendments) Ordinance 2001 (Cap. 568) is repealed.

Organized and Serious Crimes Ordinance

77. Offences relevant to definitions of “organized crime” and “specified offence”

Schedule 1 to the Organized and Serious Crimes Ordinance (Cap. 455) is amended, in paragraph 18, by adding “and which was lawfully made in the country, territory or area where it was made” after “section 35(3) of that Ordinance” where it twice appears.

Prevention of Copyright Piracy Ordinance

78. Time limit for prosecutions

Section 36D of the Prevention of Copyright Piracy Ordinance (Cap. 544) is amended by repealing everything after “commission of the offence” and substituting a full stop.
