



TERRALEX®

CROSS-BORDER COPYRIGHT GUIDE 2018



Hong Kong

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Background on HKSAR Basic Law

No articles on the laws of Hong Kong Special Administrative Region (HKSAR) should be written without a brief introduction to the Basic Law. The Basic Law was adopted on 4 April 1990 by the Seventh National People's Congress (NPC) of the People's Republic of China (Mainland China). It came into effect on 1 July 1997, the day the sovereignty of HKSAR reverted to Mainland China.

Under Article 5 of the Basic Law, HKSAR shall continue with its capitalist system and way of life for 50 years from 1997, to 2047. Furthermore, under Article 8 of the Basic Law, the laws previously in force in HKSAR – that is, the common law, rules of equity, ordinances, subordinate legislation and customary law – shall be maintained, except for any that contravene the Basic Law, and subject to any amendment by the legislature of HKSAR.

To put it simply, HKSAR maintains its own set of laws despite being part of China.

1. Legislation and regulation

1.1 What are the main sources of copyright law?

The main source of copyright law in HKSAR is the Copyright Ordinance, which came into effect on 27 June 1997. It has been amended several times in the last 20 years by virtue of the Copyright (Amendment) Ordinance 2007 & 2009 (collectively referred to as the 'Copyright Ordinance'). In addition, the Prevention of Copyright Piracy Ordinance and the body of decided cases form part of the sources of copyright law in the HKSAR.

HKSAR is a signatory to a number of international conventions and treaties relating to copyright law, including: the Berne Convention, the Universal Copyright Convention, the World Trade Organization (WTO) – Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), the Phonograms Convention, the World International Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty.

2. Subsistence of copyright

2.1 What type of works can be protected by copyright?

The types of work which can be protected by copyright include:

- original literary, dramatic, musical or artistic works
- sound recordings, films, broadcasts or cable programmes, and
- typographical arrangements of published editions.

These definitions according to the Copyright Ordinance are set out below:

Literary works

A literary work is any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes: (a) a compilation of data or other material, in any form, which by reason of the selection or arrangement of its contents constitutes an intellectual creation, including but not limited to a table; (b) a computer program; and (c) preparatory design material for a computer program.

Dramatic works

Dramatic work includes a work of dance or mime.

Musical works

A musical work is a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

Artistic works

An artistic work is: (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality; (b) a work of architecture, being a building or model for a building; or (c) a work of artistic craftsmanship.

Building includes any fixed structure, and a part of a building or a fixed structure.

Graphic works include: (a) any painting, drawing, diagram, map, chart or plan; and (b) any engraving, etching, lithograph, woodcut or similar work.

Photograph means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film.

Sculpture includes a cast or model made for the purposes of sculpture.

Sound recordings, films, broadcasts and cable programmes

Sound recording means: (a) a recording of sounds, from which the sounds may be reproduced; or (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part

may be produced, regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

Film means a recording on any medium from which a moving image may by any means be produced.

Broadcast means a transmission by wireless telegraphy of sounds or of visual images and sounds or of representations thereof which: (a) is capable of being lawfully received by members of the public in Hong Kong or elsewhere; or (b) is transmitted for presentation to members of the public in Hong Kong or elsewhere, otherwise than through a service for making available to the public of copies of works or fixations of performances.

Cable programme means any item included in a cable programme service. A cable programme service means a service which consists of – wholly or mainly – the lawful sending by any person, by means of a telecommunications system (whether run by himself or by any other person), of sounds, visual images, other information or any combination of them either: (a) for lawful reception, otherwise than by wireless telegraphy, at two or more places in Hong Kong or elsewhere, whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service; or (b) for lawful reception, by whatever means, at a place in Hong Kong or elsewhere for the purposes of their being presented there either to members of the public or to any group of persons. It includes such a service that has as a component a multipoint microwave distribution system.

2.2 What is required for works to qualify for copyright protection?

If the work falls within the category of literary, dramatic, musical or artistic work as set out in 2.1 above, it will be protected by copyright if it is original. A work is original if the author (see 3.1 below for how to decide who is the author) has created the work through his/her own skill, judgement and individual effort and has not copied from other works. A work qualifies for copyright protection if the author was at the material time (a) an individual domiciled, resident or having a right of abode in Hong Kong or elsewhere; or (b) a body incorporated under the law of any country, territory or area; or if the work is published in Hong Kong or elsewhere.

2.3 What rights does copyright grant to the rights holder?

The Copyright Ordinance sets out the rights subsisting in copyright works which are the exclusive rights of the rights holder (before any licences are granted). They include the right to:

- copy the work
- issue copies, rent or make available the work to the public
- perform, show, play or broadcast the work to the public
- make an adaptation of the work or do any of the above in relation to the adaptation

Rights holders also have the moral rights described at 2.4 below.

2.4 Are moral rights protected (for example, rights to be identified as an author of a work or to object to derogatory treatment of a work)?

Yes. In Hong Kong, moral rights must be asserted before they can be enforced on literary, dramatic, musical or artistic works or films. The following moral rights are provided for by the Copyright Ordinance:

- the right to be identified as the author or a director of a copyright work
- the right to object to derogatory treatment of a copyright work
- the right not to suffer false attribution to a copyright work.

2.5 What is the duration of copyright in protected works?

Category of work
Literary, dramatic, musical or artistic works
Duration
Copyright expires 50 years from the end of the calendar year in which the author dies.
Where a work has joint/co-authors, copyright expires 50 years from the end of the calendar year in which the last known author dies.
Category of work
Broadcasts and cable programmes

Duration
Copyrights in a broadcast and cable programme expire 50 years from the end of the calendar year in which the broadcast was made.
Where the author's identity is unknown, copyright expires 50 years from the end of the calendar year in which the work was made or was made available to the public.
Category of work
Computer-generated literary, dramatic, musical or artistic works.
Duration
Copyright expires 50 years from the end of the calendar year in which the work was made.
Category of work
Sound recordings
Duration
Copyright expires 50 years from the end of the calendar year in which the recording was made or, if the recording was published lawfully, 50 years from the end of the calendar year in which it was first released.
Category of work
Films
Duration
For films, the reference point is the end of the calendar year in which the last living (a) principal director, (b) author of the screenplay, (c) author of the dialogue or (d) composer of music specially created for and used in the film dies. Copyright then lasts for 50 years after that date.
Category of work
Typographical arrangements
Duration
Copyright expires 25 years from the end of the calendar year in which the work was first published.

2.6 For how long do moral rights subsist in copyright works?

An author's moral rights to be identified as the author, to object to derogatory treatment and to privacy last for the life of the author plus 50 years.

The right not to suffer false attribution lasts for the life of the author plus 20 years.

3. Ownership

3.1 Who is the first owner of a copyright work?

As a general rule, the first owner of the copyright is the author. The main exception to this rule is where the work was made by a person in the course of their employment; in those circumstances, the employer is the first owner unless there is an agreement to the contrary.

The author is defined as the person who creates the work. The Copyright Ordinance provides guidance for the specific categories of work where the creator is less clear:

- for sound recordings, the author is the producer
- for films, there are two authors: the producer and the principal director of a film
- for broadcasts, it is the person making the broadcast
- for cable programmes, the person providing the cable programme service
- for typographical arrangements, it is the publisher of the arrangement.

3.2 Can copyright in a work be jointly owned? If so, what are the rights of a co-owner?

Copyright in a work can be jointly owned by two or more persons. This can occur where a work is created by more than one person or where there is an assignment of the whole or of part of a work.

To qualify as joint authors, it is necessary that the contributions of each author are not distinct. If they are distinct then two works subsist, each with separate copyright.

Joint owners have their own individual rights with respect to the work that can be assigned independently of the other(s), but the consent of all joint authors is required for licensing or use of the copyright work.

3.3 Can you register copyright? If so, what are the benefits of such registration and what other steps, if any, can you take to help you bring an infringement action?

Copyright is an unregistered right in Hong Kong; it arises automatically upon creation of the work. There is no registration system.

A copyright notice may be useful to evidence ownership of copyright and the date of authorship. It creates a presumption that the named person is the author and puts third parties on notice of the rights. However, copyright subsists without such notice and the failure to display such notice does not affect copyright in a work.

3.4 What steps should you take to validly transfer, assign, or license copyright?

An assignment of copyright must be in writing, signed by or on behalf of the copyright owner.

A licence of copyright can, in addition to being in writing, be agreed orally or implied (although this is not best practice as the rights holder will not benefit from certain statutory rights as licensee, such as the right to sue third-party infringers).

3.5 Can moral rights be transferred, assigned or licensed?

No. Moral rights can be waived but they cannot be assigned.

4. Infringement

Owners of copyright can take legal action if any of their exclusive rights (as set out in 2.3 above) have been infringed. There are two classes of infringement: primary infringement and secondary infringement.

4.1 What acts constitute primary infringement of copyright?

Primary infringement occurs where a person performs any of the following acts without the consent of the rights holder:

- copying
- issuing copies of the work to the public
- renting or making available the work to the public
- performing, showing or playing a copyright work in public
- broadcasting or inclusion of the work in a cable programme service
- making an adaptation of a copyright work or doing any of the acts listed above in relation to an adaptation.

Primary infringements are 'strict liability' offences. This means that there is no need to show that the alleged infringer had knowledge of another's subsisting right, or an intention to infringe that right.

4.2 What acts constitute secondary infringement of copyright?

Secondary infringement occurs where a person, with the relevant knowledge or reasonable grounds for such knowledge:

- Imports or exports infringing copies
- Possesses or deals with infringing copies
- Provides means for making infringing copies
- Permits use of premises for infringing performance
- Provides apparatus for infringing performance.

4.3 What acts are permitted with respect to copyright works (ie what exceptions apply)?

There are a number of acts that can be carried out in relation to copyright works despite the fact they might be protected by copyright. They include (amongst others):

Act

Incidental inclusion in an artistic work, sound recording, film, broadcast or cable programme

Description

Making available to the public of copies, or playing, showing or broadcasting, of anything whose making of which is not an infringement of copyright by reason of it being an incidental inclusion in an artistic work, sound recording, film, broadcast or cable programme, is also not an infringement.

Act

Fair dealing with a work for research and private study

Description

In determining fair dealing, the factors to be considered include:

- the purpose and nature of the dealing
- the nature of the work
- the amount and substantiality of the portion dealt with in relation to the work as a whole
- the effect of the dealing on the potential market for or value of the work.

Act

Fair dealing with a work for criticism, review and news reporting

Description

An acknowledgement of any copyright work used in a criticism, review or the reporting of current events is required.

No acknowledgement is required when reporting current events, by means of a sound recording, film broadcast or cable programme.

Act

Things done for the purpose of instruction or examination

Description

Copying in the course of instruction or of preparation does not infringe copyright if the copying is done by a person giving instruction and is not by means of reprographic process.

Equally, copyright is not infringed if the copying is for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions.

However, anything done beyond this scope will be considered as infringement of copyright.

4.4 Is it permissible to provide a hyperlink to, or frame, a work protected by copyright? If so, in what circumstances?

At the time of writing, there has been no case concerning disputes over hyperlinks in Hong Kong. The position of the Hong Kong courts towards hyperlinks is yet to be confirmed.

Given that the internet is a massive information exchange system, uploading a webpage to the internet usually means giving an implied licence to the rest of the world to access the webpage. However, there is a certain scope of this implied licence and that does not mean one can do anything one may want with others' webpages.

Hyperlinks are special tags allowing internet users to go from one webpage to another simply by clicking it. Hyperlinks are generally divided into (1) surface links and (2) deep links. The former take the user to the homepage of another website, and the latter take the user to, say, a featured article, inside the other website, skipping the homepage.

While surface links are generally permitted under the implied licence (by creating a website, one would welcome others getting access to the website through hyperlinks to the homepage), the situation with deep links may be more controversial. A homepage usually contains information such as the website's terms and conditions, privacy policy and also advertisements. Bypassing the homepage may mean skipping important information that the website owner wants to convey to visitors or terms and conditions that the website owner wants the visitors to accept, and most important of all, may deprive the owner of potential advertising revenue. These may arguably go beyond the scope of the implied licence.

4.5 Is a licensee of copyright able to bring an infringement action?

Under the Copyright Ordinance, an infringement of copyright is actionable by the copyright owner. When copyright is licensed, the authority for the licensee to bring an infringement action depends on the type of licence involved.

An exclusive licence is a licence in writing signed by or on behalf of the copyright owner authorising the licensee to exercise rights which would otherwise be exercisable exclusively by the copyright owner. One such right is the right to bring an infringement action.

In the case where a copyright infringement action brought by an exclusive licensee relates to an infringement in respect of importation of infringing copies into Hong Kong, the exclusive licensee cannot proceed with the action unless the copyright owner is joined as a plaintiff.

A non-exclusive licensee may also bring an infringement action but only where the licence is in writing and signed by the copyright owner and expressly grants the non-exclusive licensee the right of action.

5. Remedies

5.1 What remedies are available against a copyright infringer?

Under the Copyright Ordinance, in an action for infringement of copyright, the following remedies are available to the rights holders:

- injunction against the infringer
- delivery up of infringing copies or articles
- disposal of infringing copy or other articles
- detention order
- disclosure of information of infringer
- account for profits
- damages.

Additional damages may be awarded by the court in consideration of the following factors:

- flagrancy of infringement
- any benefit accruing to the defendant by reason of the infringement
- the completeness, accuracy and reliability of the defendant's business accounts and records.

5.2 Are there any specific remedies for online copyright infringement?

Hong Kong does not have any specific remedies for online copyright infringement. When it appears that a website is displaying infringing materials, the copyright owner can seek an injunction order from the court ordering the internet service provider (ISP) to remove the material from the website and, if applicable, claim damages.

5.3 Under what circumstances is copyright infringement a criminal act and what sanctions may apply?

A number of criminal acts have been stipulated in the Copyright Ordinance in relation to copyright. Any person who commits an offence relating to copyright is likely to be subject to a fine and/or a prison sentence.

If an offence is committed by a company and it is proven that the offending act has been committed with the consent of or the connivance of, or to be attributed to, any officer of the company, then the officer concerned, as well as the company, can be liable for the criminal act.

Criminal act
Making a copy of a copyright work for sale or hire
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copy is infringing a person's copyright
Maximum penalty
On conviction on indictment: a fine at level 5 (HK\$25,001-HK\$50,000) for each copy and imprisonment for 4 years
Criminal act
Importing or exporting from Hong Kong a copyright work other than for private and domestic use
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copy is infringing a person's copyright
Maximum penalty
On conviction on indictment: a fine at level 5 (HK\$25,001-HK\$50,000) for each copy and imprisonment for 4 years
Criminal act
Selling or letting for hire or offering for sale or hire a copy of a copyright work whilst in the course of business
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copy is infringing a person's copyright
Maximum penalty
On conviction on indictment: a fine at level 5 (HK\$25,001-HK\$50,000) for each copy and imprisonment for 4 years
Criminal act
Possessing a copy of a copyright work with a view to its being sold or let for hire, or exhibited in public or distributed whilst in the course of business
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copy is infringing a person's copyright
Maximum penalty
On conviction on indictment: a fine at level 5 (HK\$25,001-HK\$50,000) for each copy and imprisonment for 4 years

Criminal act
Distributing an infringing copy of a copyright work to such an extent that it prejudices the rights owner
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copy is infringing a person's copyright
Maximum penalty
On conviction on indictment: a fine at level 5 (HK\$25,001-HK\$50,000) and imprisonment for 4 years
Criminal act
Possessing a copy of a copyright work that is a computer program (excludes a printed form), a movie, a television drama, a musical sound recording, or a musical visual recording with a view to it being used by any person in the course of business
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copy is infringing a person's copyright
Maximum penalty
On conviction on indictment: a fine at level 5 (HK\$25,001-HK\$50,000) for each copy and imprisonment for 4 years
Criminal act
Making, importing into or exporting from Hong Kong, possessing, selling or letting for hire an article specifically designed for making copies of a copyright work
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the article is to be used to make infringing copies for sale
Maximum penalty
On conviction on indictment: a fine of HK\$500,000 and imprisonment for 8 years
Criminal act
Possessing a reprographic copy of a copyright work published in a book, magazine or periodical whilst in the course of a copying service business
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copy is infringing a person's copyright
Maximum penalty
On conviction on indictment: a fine at level 5 (HK\$25,001-HK\$50,000) for each copy and imprisonment for 4 years

Criminal act
Making and distributing a copy of a copyright work in printed form on a regular or frequent basis in the course of business, resulting in a financial loss to the copyright owner
Relevant intention, knowledge or belief
The knowledge, or having reason to believe, that the copies made or distributed are infringing copies
Maximum penalty
On conviction on indictment: a fine at level 5 (HK\$25,001-HK\$50,000) for each copy and imprisonment for 4 years
Criminal act
Making articles outside Hong Kong for import to Hong Kong or making articles outside Hong Kong specifically designed for making copies of copyright work
Relevant intention, knowledge or belief
The knowledge that it would constitute an infringing copy of a copyright work if the articles were made in Hong Kong, or the articles were intended to be used in Hong Kong for making an infringing copy of the copyright work for sale or hire in the course of business
Maximum penalty
On conviction on indictment: a fine of HK\$500,000 and imprisonment for 8 years

5.4 Is there a time limit for bringing a copyright infringement claim?

The time limit is six years to bring a claim for breach of copyright. Time begins to run from the date the damage is suffered.

5.5 Can legal (or any other) costs be recovered in an action for copyright infringement? If so, what percentage of costs will typically be recovered by the successful party?

In Hong Kong, after a case has been concluded, the unsuccessful party shall pay the costs of the successful party as well as its own costs. However, this is subject to the wide discretion of the court. As a general rule, a successful party would only be able to recover two-thirds of its costs, and the amount of costs would be for the court to assess either at the end of the hearing ('summary assessment') or after the trial ('taxation').

6. Enforcement

6.1 What courts can you bring a copyright infringement action in and what monetary thresholds, if any, apply?

In deciding which court a copyright infringement action should be brought to, the two main considerations are the financial value of the amount of the claim and the type of remedy that the copyright owner is claiming for.

The District Court is responsible for handling claims exceeding HK\$50,000 but not exceeding HK\$100,000. In addition, the District Court entertains application of:

- order for delivery up of infringing copies
- order for disposal of infringing copies.

Claims exceeding HK\$1,000,000 and application for other orders will be within the jurisdiction of the High Court. There will be no cap on the amount of costs recoverable in the High Court.

6.2 Are there any other ways in which you can enforce copyright?

Seizure of works infringing copyright

The Customs and Excise Department of HKSAR has extensive powers of search and seizure relating to infringing copyright works under the Copyright Ordinance and may act upon request of a copyright owner.

Criminal sanctions

Criminal proceedings can be brought on the grounds prescribed in 5.3 below and pursued through the criminal courts.

Copyright Tribunal

Any dispute relating to licensing schemes, granting of licences or their operation (other than a single collective work or work made by a single individual, firm or a group of companies) can be referred to the Copyright Tribunal, an independent tribunal established by the Copyright Ordinance. The Copyright Tribunal does not deal with copyright infringement cases or with criminal 'piracy' of copyright works.

Arbitration and mediation

In appropriate cases, disputes concerning copyright infringement can be resolved by arbitration or mediation.

6.3 What agency bodies are responsible for promoting and/or enforcing copyright?

The Intellectual Property Department (IPD) is the official governmental body in Hong Kong responsible for the protection, promotion and registration of trade marks, patents, designs, and copyrights.

The roles and functions of the IPD are as follows:

- advising on policies and legislation to protect IP
- providing civil legal advice on IP matters to government bureaux departments
- promotion of and education about the protection of IP.

The Customs and Excise Department (CED) is responsible for enforcing copyright and taking criminal sanctions against copyright infringement in Hong Kong. As a pre-requisite for criminal investigation by the CED, a rights owner shall prove the subsistence of copyright in the work alleged to have been infringed, and furnish sufficient evidence to show an infringement has taken place.

6.4 What are the main collective rights management agencies that operate in your jurisdiction and who do they represent?

A person may use copyright materials without infringing the rights of the copyright owner if he/she obtains a copyright licence from one of the collective rights management agencies in Hong Kong, which are 'licensing bodies' under the Copyright Ordinance.

By charging the user of the work royalty fees, the licensing bodies provide lawful means for the public to use copyrighted materials. Once a copyright owner becomes member of a licensing body, they may either appoint the licensing body as their agent, or transfer their rights to the licensing body for administration purposes.

At present, the Copyright Licensing Bodies Registry has registered the following five licensing bodies:

Agency
Composers and Authors Society of Hong Kong Limited
Who represents
Music composers and lyricists
Agency
Phonographic Performance (South China Asia) Limited
Who represents
Music recording companies
Agency
Hong Kong Reprographic Rights Licensing Society
Who represents
Authors and publishers of books, newspapers, magazines, journals, periodicals, and musical works, dramatic works or artistic works embodied in hard copy form

7. Copyright reform

Agency
The Hong Kong Copyright Licensing Services Limited
Who represents
Newspapers and magazine publishers
Agency
Hong Kong Recording Industry Alliance Limited
Who represents
Recording companies

6.5 Are copyright levies payable? By whom, and in what circumstances?

Copyright levies are not payable in Hong Kong.

7.1 What do you consider to be the top two recent copyright developments?

Infringing Website List

The Hong Kong Creative Industries Association (HKCIA), a non-profit organisation established in Hong Kong, launched an 'Infringing Website List' Scheme in December 2016. A total of 14 overseas pirate websites that offer unauthorised access to copyright contents have been listed so far on the Infringing Website List. As reported by HKCIA, this has resulted in the removal of advertisements on infringing websites by 50 brands in Hong Kong and the reduction of traffic to the infringing websites by 14%. The HKCIA is looking forward to expanding the list to include up to 150 infringing websites by the end of first quarter of 2018.

New rules for the Copyright Tribunal

As discussed in 6.2 above, the Copyright Tribunal (the Tribunal) is an independent judicial body responsible for resolving specific types of disputes, mainly relating to the use or licensing of copyright works.

In order to modernise the practice and procedures of the Copyright Tribunal, a new set of Copyright Tribunal Rules (Cap. 528D) took effect on 1 May 2017. The new Rules empowered the Tribunal to exercise active case management and promote the use of alternative dispute resolution.

The major amendments include:

- if a respondent does not serve a response within the prescribed time limit, the Tribunal may treat the application as being uncontested and may proceed to deal with the application as it thinks fit
- the Tribunal may direct a party to serve on the other party interrogatories regarding the dispute and the other party shall give an answer
- where a party fails to comply with an order or direction given by the Tribunal, the Tribunal may order that the party be debarred from taking any further part in the proceedings without the Tribunal's leave and give any consequential orders that it thinks fit.

Moreover, the procedures and forms for all types of applications before the Tribunal have been standardised. With the enactment of the new Rules, the Copyright Tribunal is likely to be able to assist copyright holders in enforcing their rights in a more effective, flexible and cost-efficient manner.

7.2 What do you consider will be the top two upcoming copyright developments?

Copyright (Amendment) Bill 2014

On 18 June 2014, the HKSAR Government introduced the Copyright (Amendment) Bill 2014 (the Bill) to the Legislative Council with the aim of keeping the Hong Kong copyright regime in step with technological advancements (notably the internet). The key amendments proposed in the Bill were as follows:

- provide for fair dealing exceptions for the purposes of:
 - parody, satire, caricature and pastiche
 - commenting on current events
 - quotation
 - temporary reproduction of copyright works by online service providers
 - media shifting of sound recording
- provide for criminal sanctions against unauthorised communication of copyright works to the public
- introduce a new exclusive right for copyright owners to communicate their works to the public through any mode of electronic transmission
- establishing statutory safe harbour for online service providers so that their liabilities for copyright infringement occurring on their service platforms could be limited under certain conditions.

The Bill created a heated political debate and faced opposition by copyright work users, as they saw it as removing grey areas in copyright protection and encouraging copyright owners to take actions against common online activities such as parodies and the modification and adaptation of lyrics, thereby suppressing freedom of expression of the general public.

Consequently, the Bill was not passed by the Legislative Council in March 2016. Although the Government announced at the time that it would not persist with the Bill, there may be further developments with respect to this area of law following the election of a new Chief Executive.

Update on copyright exceptions for persons with print disability

The HKSAR Government launched a public consultation on 9 May 2017 to gauge views on areas in the Copyright Ordinance which might need to be amended to align with the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or print disabled.

Although the existing copyright exceptions in the Copyright Ordinance are, to a large extent, in conformity with the Marrakesh Treaty, the HKSAR Government considered that it is an appropriate time to conduct a review of Copyright Ordinance to ensure the latest international standards have been complied with. The issues that require review are:

- whether the definition of ‘beneficiary person’ should extend to include persons with perceptual or reading disability
- improvements regarding the scope of ‘specified body’
- whether the types of copyright works covered by the print disability-related exceptions should include ‘works in audio form’
- in relation to the acts which could be performed by persons with a print disability and/or specified bodies, whether ‘supply of accessible copies to beneficiary persons’ should cover ‘distribution’ and ‘making available to the public’, and whether there should be an additional exception regarding ‘right of public performance’
- improvements regarding the conditions to be met under the existing provisions
- the application of anti-circumvention of technological measures provisions to beneficiary persons and whether they should be exempted from such measures, and
- provision for cross-border exchange (ie export and import) of accessible copies.

The three-month consultation period ended on 9 August 2017. The proposed amendments to the Copyright Ordinance with respect to print disability will hopefully be launched in the near future.

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