

防止盜用版權條例

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PREVENTION OF COPYRIGHT PIRACY ORDINANCE

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香港特別行政區

1998 年第 22 號條例

印章位置

行政長官
董建華
1998 年 4 月 2 日

本條例旨在就防止盜用版權而訂定進一步的條文。

由臨時立法會制定。

導言

1. 簡稱及生效日期

- (1) 本條例可引稱為《防止盜用版權條例》。
- (2) 本條例自工商局局長以憲報公告指定的日期起實施。

2. 釋義

- (1) 在本條例中，除文意另有所指外——
 - “地方”(place)指陸上或水上的任何地區，包括任何建築物、構築物或圍封地(不論可否移動)；
 - “光碟”(optical disc)包括——
 - (a) 附表 1 所列的任何媒體或器件；及
 - (b) 可以數碼形式貯存和可用激光解讀的數據的任何其他媒體或器件，而為求更明確，“光碟”並包括為任何目的而製造的任何該等媒體或器件，不論其有否貯存任何可用激光解讀的數據；
 - “法院”(court)包括裁判官；

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 22 OF 1998

L.S.

TUNG Chee-hwa
Chief Executive
2 April 1998

An Ordinance to make further provision for the prevention of copyright piracy.

Enacted by the Provisional Legislative Council.

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Prevention of Copyright Piracy Ordinance.
- (2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Trade and Industry by notice in the Gazette.

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires—
 - “authorized officer”(獲授權人員) means a public officer authorized by the Commissioner under section 32;
 - “Commissioner”(關長) means the Commissioner of Customs and Excise and any Deputy or Assistant Commissioner of Customs and Excise;
 - “court”(法院) includes a magistrate;
 - “licence”(特許) means a licence granted under section 5;
 - “licensed premises”(獲批特許的處所), in relation to a licensee, means any premises specified in his licence in which optical discs are authorized to be manufactured;
 - “licensee”(特許持有人) means a person to whom a licence is granted, and includes any person to whom a licence is transferred in accordance with section 8;
 - “manufacturer’s code”(製造者代碼) means a manufacturer’s code assigned to a licensee under section 5(2)(a) or 8(3)(b);

“特許”(licence)指根據第5條批予的特許；

“特許持有人”(licensee)指獲批特許的人，包括按照第8條獲轉讓特許的人；

“登記冊”(register)指關長根據第31條備存的登記冊；

“製造者代碼”(manufacturer's code)指根據第5(2)(a)或8(3)(b)條編配予某特許持有人的製造者代碼；

“獲批特許的處所”(licensed premises)就某特許持有人而言，指其特許所指明並獲授權在內製造光碟的任何處所；

“獲授權人員”(authorized officer)指關長根據第32條授權的公職人員；

“關長”(Commissioner)指海關關長及任何海關副關長或海關助理關長。

(2) 就本條例而言，任何人如擁有、指導、管理或以其他方式控制任何在香港的業務，而該業務包括在香港製造光碟，則該人即屬在香港製造光碟。

(3) 本條例所用的所有其他字及詞句如於《版權條例》(1997年第92號)中界定，則其涵義與該條例中該等字及詞句的涵義相同。

製造光碟的特許

3. 製造光碟須取得特許

- (1) 任何人除非持有有效的特許，否則不得在香港製造光碟。
- (2) 第(1)款不適用於——
 - (a) 受僱於特許持有人而在其受僱期間製造光碟的僱員；或
 - (b) 為規例所訂明的目的而製造光碟。

4. 禁止在未獲批特許的處所製造光碟

- (1) 除在獲批特許的處所外，特許持有人不得在香港的任何地方製造光碟。
- (2) 第(1)款不適用於為規例所訂明的目的而製造光碟。

5. 特許的申請及批予

- (1) 關長可向任何按照本條例申請特許的人批予特許。

“optical disc”(光碟) includes—

- (a) any medium or device listed in Schedule 1; and
 - (b) any other medium or device on which data may be stored in digital form and read by means of a laser,
- and, for greater certainty, includes any such medium or device manufactured for any purpose and whether or not any data readable by means of a laser has been stored on it;

“place”(地方) means any area on land or water and includes any building, structure or enclosure, whether moveable or not;

“register”(登記冊) means the register kept by the Commissioner under section 31.

(2) For the purpose of this Ordinance, a person manufactures optical discs in Hong Kong if he owns, directs, manages or otherwise has control of a business in Hong Kong which includes the manufacturing of optical discs in Hong Kong.

(3) All other words and expressions used in this Ordinance and defined in the Copyright Ordinance (92 of 1997) have the same meaning as in that Ordinance.

Licences to manufacture optical discs

3. Licence required to manufacture optical discs

- (1) No person shall manufacture optical discs in Hong Kong unless he holds a valid licence.
- (2) Subsection (1) does not apply—
 - (a) to an employee of a licensee who manufactures optical discs in the course of his employment; or
 - (b) to the manufacture of optical discs for a purpose prescribed by the regulations.

4. Prohibition on manufacturing at unlicensed premises

- (1) No licensee shall manufacture optical discs in any place in Hong Kong other than a licensed premises.
- (2) Subsection (1) does not apply to the manufacture of optical discs for a purpose prescribed by the regulations.

5. Application for and grant of licence

- (1) The Commissioner may grant a licence to any person who makes an application for a licence in accordance with this Ordinance.

- (2) 關長在批予特許時——
- (a) 須將一個製造者代碼編配予特許持有人；
 - (b) 須施加由他不時為本條的目的而藉憲報公告所公布的所有條件；及
 - (c) 可為達致以下目的而施加其認為合適的其他條件——
 - (i) 防止製造任何版權作品的侵犯版權複製品；
 - (ii) 保障版權擁有人及其他根據《版權條例》(1997 年第 92 號) 獲授予權利的人的權利；
 - (iii) 確使特許持有人遵守本條例或規例的任何條文；
 - (iv) 確使特許持有人遵守該特許的任何條件；及
 - (v) 確使本條例得以有效地執行。
- (3) 製造者代碼須由以下項目組成——
- (a) 一個或多於一個字母或號碼；
 - (b) 一個標記、記號、符號或器件；或
 - (c) 任何字母、號碼、標記、記號、符號或器件的組合，
- 以關長所決定者為準。
- (4) 根據第 (2)(b) 款刊登的公告不得視為附屬法例。

6. 特許的格式、期限及效用

- (1) 每項特許，均須符合關長所決定的格式，而其有效期為特許所指明的不超過 3 年的期間。
- (2) 每項特許均授權該項特許所指名的人在該特許所指明的處所製造光碟。
- (3) 以下各項須批註於有關特許內——
 - (a) 根據第 5(2) 或 8(3) 條施加的任何條件；
 - (b) 編配予有關特許持有人的製造者代碼；
 - (c) 任何根據第 7 條對特許作出的修訂或任何根據第 8(3) 條對批註於特許內的任何條件作出的修訂；及
 - (d) 任何根據第 8 條批准的特許轉讓。

7. 特許的修訂及續期

- (1) 關長可應特許持有人按照本條例提出的申請而修訂該項特許或將該項特許續期。

- (2) In granting a licence, the Commissioner—
- (a) shall assign to the licensee a manufacturers' code;
 - (b) shall impose all of the conditions as may be published by him from time to time by notice in the Gazette for the purpose of this section; and
 - (c) may impose such other conditions as he thinks fit for—
 - (i) preventing the manufacture of infringing copies of copyright works;
 - (ii) protecting the rights of copyright owners and other persons to whom rights are conferred under the Copyright Ordinance (92 of 1997);
 - (iii) securing compliance by the licensee with any provisions of this Ordinance or the regulations;
 - (iv) securing compliance by the licensee with any conditions of the licence; and
 - (v) ensuring the effective administration of this Ordinance.
- (3) A manufacturer's code shall consist of—
- (a) one or more letters or numbers;
 - (b) a mark, sign, symbol or device; or
 - (c) any combination of letters, numbers, marks, signs, symbols or devices,

as determined by the Commissioner.

- (4) A notice published under subsection (2)(b) shall not be regarded as subsidiary legislation.

6. Form, duration and effect of licence

- (1) Every licence shall be in a form determined by the Commissioner and shall be valid for such period, not exceeding 3 years, as is specified in the licence.
- (2) Every licence shall authorize the person named therein to manufacture optical discs in the premises specified in the licence.
- (3) The following matters shall be endorsed on a licence—
 - (a) any conditions imposed under section 5(2) or 8(3);
 - (b) the manufacturer's code assigned to the licensee;
 - (c) any amendments made to the licence under section 7 or to any conditions endorsed on the licence under section 8(3); and
 - (d) any transfer of the licence approved under section 8.

7. Amendment and renewal of licence

- (1) The Commissioner may amend or renew a licence upon application made by the licensee in accordance with this Ordinance.

- (2) 修訂特許或將特許續期的申請，必須在關長所指明的期間內提出。
- (3) 第 5 及 6 條在按情況需要而加以變通後適用於本條所指的特許的修訂或續期。

8. 特許的轉讓

- (1) 如關長根據第 (2) 款批准轉讓，則特許持有人可將其特許轉讓予另一人。
- (2) 特許持有人如按照本條例提出申請，並提出令關長信納的因由，關長可批准將該特許轉讓予另一人。
- (3) 關長在批准轉讓特許時，可——
 - (a) 按其認為合適而修訂任何批註於該特許內的條件或施加任何新條件，包括第 5(2)(b) 條所提述的任何條件；及
 - (b) 編配一個製造者代碼予獲轉讓特許的人，以代替批註於該特許內的製造者代碼。

9. 特許的展示

- (1) 除第 (2) 款另有規定外，特許持有人須安排將其特許時刻於有關的獲批特許的處所的顯眼位置展示。
- (2) 如有多於一個獲批特許的處所，則特許持有人須——
 - (a) 安排將其特許於其中任何一個獲批特許的處所展示；及
 - (b) 為每個其他獲批特許的處所向關長取得一張特許的複本，並安排將該複本時刻於該等獲批特許的處所的顯眼位置展示。

10. 須提供新資料

- (1) 如——
 - (a) 特許持有人在根據本條例提出的任何申請中所列的任何詳情有所改變；或
 - (b) 特許持有人在先前根據本條給予的任何通知中所列的任何詳情有所改變，
 該特許持有人須將該項改變通知關長。
- (2) 特許持有人須在有關改變生效後 30 日內將改變通知關長。
- (3) 根據本條給予的通知，須按關長所規定的格式及方式給予。

(2) An application to amend or renew a licence must be made during such period as the Commissioner may specify.

(3) Sections 5 and 6 apply, with such modifications as the circumstances require, to the amendment or renewal of a licence under this section.

8. Transfer of licence

- (1) A licensee may transfer his licence to another person if the Commissioner approves the transfer under subsection (2).
- (2) The Commissioner may upon application made by a licensee in accordance with this Ordinance, showing cause to his satisfaction, approve the transfer of the licence to another person.
- (3) In approving the transfer of a licence, the Commissioner may—
 - (a) amend any conditions endorsed on the licence or impose any new conditions as he thinks fit, including any conditions referred to in section 5(2)(b); and
 - (b) assign to the person to whom the licence is transferred a manufacturer's code in substitution for the manufacturer's code endorsed on the licence.

9. Display of licence

- (1) Subject to subsection (2), a licensee shall cause his licence to be displayed at all times in a conspicuous location at the licensed premises.
- (2) If there is more than one licensed premises, the licensee shall—
 - (a) cause the licence to be displayed at any of the licensed premises; and
 - (b) obtain a duplicate licence from the Commissioner for each other licensed premises and cause it to be displayed at all times in a conspicuous location at that licensed premises.

10. New information to be furnished

- (1) A licensee shall notify the Commissioner of any change which occurs in relation to any particulars set out in—
 - (a) any application made by him under this Ordinance; or
 - (b) any notice previously given by him under this section.
- (2) The licensee shall so notify the Commissioner not later than 30 days after the change takes effect.
- (3) A notice under this section shall be given in such form and manner as the Commissioner may require.

11. 拒絕批予特許或拒絕將特許續期

- (1) 關長如信納有以下情況，可拒絕批予特許，或拒絕將特許續期——
- (a) 申請特許或申請續期的申請人或由該申請人管理、擁有或控制的合夥或法人團體曾被裁定犯本條例或《版權條例》(1997 年第 92 號) 所訂的罪行，或曾被裁定犯香港過往的與版權有關的法律所訂的罪行；
 - (b) 曾有人就特許或續期的申請所關乎的處所犯本條例或《版權條例》(1997 年第 92 號) 所訂的罪行，或犯香港過往的與版權有關的法律所訂的罪行，而不論是否有人曾被裁定犯該罪行；
 - (c) 該申請人曾就其根據本條例提出的任何申請或給予的任何通知向關長提供虛假資料或具誤導性資料；或
 - (d) 基於令關長滿意的任何其他理由，申請人並非持有特許的合適和適當人選。
- (2) 關長如拒絕批予特許或拒絕將特許續期，須在其作出決定後 14 日內以書面將拒絕的理由通知有關申請人。

12. 特許的撤銷

- (1) 關長可基於他根據第 11(1) 條可拒絕批予特許或拒絕將特許續期的任何理由而撤銷特許。
- (2) 此外，關長如信納特許持有人——
- (a) 已停止在香港製造光碟；
 - (b) 已停止在任何獲批特許的處所製造光碟；或
 - (c) 正違反或未能遵守批註於特許內的任何條件，
- 則關長可撤銷特許。
- (3) 關長在撤銷特許前，須先行——
- (a) 以書面通知有關特許持有人他撤銷特許的意圖及他擬以何理由撤銷該特許；及
 - (b) 准許該特許持有人以書面向他作出申述。
- (4) 第 (3)(b) 款所指的申述，須在自第 (3)(a) 款所指的通知的日期起計的 14 日內作出，或在該通知所指定的較長期間內作出。
- (5) 關長如撤銷特許，須在其作出決定後 14 日內以書面將撤銷的理由通知有關特許持有人。

11. Refusal to grant or renew licence

- (1) The Commissioner may refuse to grant a licence, or to renew a licence, if he is satisfied that—
- (a) the applicant for the licence or renewal, or a partnership or body corporate managed, owned or controlled by him, has been convicted of an offence under this Ordinance or the Copyright Ordinance (92 of 1997) or under any previous law of Hong Kong relating to copyright;
 - (b) an offence under this Ordinance or the Copyright Ordinance (92 of 1997) or under any previous law of Hong Kong relating to copyright has been committed in connection with any premises to which the application for the licence or renewal relates, whether or not any person has been convicted of that offence;
 - (c) the applicant has furnished to the Commissioner any false or misleading information in connection with any application made, or notice given, by him under this Ordinance; or
 - (d) the applicant is not, for any other reason satisfactory to the Commissioner, a fit and proper person to hold a licence.
- (2) If the Commissioner refuses to grant or renew a licence, he shall notify the applicant in writing of the grounds for the refusal within 14 days after his decision.

12. Revocation of licence

- (1) The Commissioner may revoke a licence on any of the grounds for which he may refuse to grant or renew a licence under section 11(1).
- (2) In addition, the Commissioner may revoke a licence if he is satisfied that the licensee—
- (a) has ceased to manufacture optical discs in Hong Kong;
 - (b) has ceased to manufacture optical discs at any licensed premises; or
 - (c) is in breach of, or is unable to comply with, any conditions endorsed on the licence.
- (3) The Commissioner shall not revoke a licence unless he first—
- (a) notifies the licensee in writing of his intention and the grounds upon which he proposes to revoke the licence; and
 - (b) permits the licensee to make representations to him in writing.
- (4) Representations under subsection (3)(b) shall be made within 14 days from the date of the notification under subsection (3)(a) or within such greater period as is specified in the notice.
- (5) If the Commissioner revokes a licence, he shall notify the licensee in writing of the grounds for the revocation within 14 days after his decision.

(6) 就第 (1) 款而言——

- (a) 在第 11(1) 條中任何對申請人的提述，均須解釋為對特許持有人的提述；及
- (b) 在第 11(1)(b) 條中對特許或續期的申請的提述，均須解釋為對特許的提述。

13. 特許的取消

關長可應特許持有人按照本條例提出的申請而取消有關特許。

14. 向行政上訴委員會上訴

任何人如因關長根據第 11 或 12 條作出的決定而感到受屈，可就該決定而向行政上訴委員會提出上訴。

在光碟上標上標記**15. 光碟必須標上製造者代碼**

- (1) 每名特許持有人均須安排在每張由他在香港製造的光碟上，標上批註於他的特許內的製造者代碼。
- (2) 第 (1) 款不適用於為規例所訂明的目的而製造光碟。
- (3) 在本條中，“標上”(marked) 指按照關長根據第 16 條指明的準則而標上。

16. 標上標記的準則

- (1) 關長可藉在憲報刊登公告而指明在光碟上標上製造者代碼的準則。
- (2) 在不局限第 (1) 款的一般性的原則下，根據本條刊登的公告可——
 - (a) 就不同種類或類別的光碟而指明準則；
 - (b) 指明關於在光碟上或在任何種類或類別的光碟上標上製造者代碼的方式及方法的準則；及

(6) For the purpose of subsection (1)—

- (a) any reference in section 11(1) to an applicant shall be construed as a reference to a licensee; and
- (b) the reference in section 11(1)(b) to the application for the licence or renewal shall be construed as a reference to the licence.

13. Cancellation of licence

The Commissioner may cancel a licence upon application made by the licensee in accordance with this Ordinance.

14. Appeals to Administrative Appeals Board

Any person who is aggrieved by a decision of the Commissioner made under section 11 or 12 may appeal the decision to the Administrative Appeals Board.

Marking of optical discs**15. Optical discs must be marked with manufacturer's code**

- (1) Every licensee shall cause each optical disc manufactured by him in Hong Kong to be marked with the manufacturer's code endorsed on his licence.
- (2) Subsection (1) does not apply to the manufacture of optical discs for a purpose prescribed by the regulations.
- (3) In this section, “marked” (標上) means to be marked in accordance with the standards specified by the Commissioner under section 16.

16. Marking standards

- (1) The Commissioner may by notice published in the Gazette specify standards for the marking of manufacturers' codes on optical discs.
- (2) Without limiting the generality of subsection (1), a notice published under this section may—
 - (a) specify standards in relation to different classes or descriptions of optical discs;
 - (b) specify standards relating to the manner in which, and the means by which, manufacturers' codes are to be marked on optical discs or on optical discs of any class or description; and

- (c) 以提述方式採納或收納任何團體或主管當局所公布的準則，該等準則可加以修改或不加修改而採納或收納，所採納或收納的準則亦可以該公告內指明的某日期生效的為準或以不時經修訂的為準。
- (3) 根據本條刊登的公告不得視為附屬法例。

視察及執行

17. 獲授權人員視察獲批特許的處所的權力等

- (1) 為施行本條例，每名獲授權人員均有權力作出以下所有或任何事情——
- (a) 在所有合理時間(如關長以書面特別授權，則在任何時間)進入任何獲批特許的處所；
 - (b) 視察和搜查該獲批特許的處所及其每一部分；
 - (c) 要求出示關於該獲批特許的處所的經營或關於有關的業務的任何特許，不論該特許是否根據本條例批予的；
 - (d) 要求出示關於有關的業務的任何簿冊或文件，包括任何關於某人製造光碟的權利的特許或其他文件；
 - (e) 為進行檢查而查閱、移走和扣留任何該等特許、簿冊或文件，為期按關長認為需要而定，並予以檢查和抄錄或複印；
 - (f) 為進行檢查而移走和扣留在該獲批特許的處所發現的光碟樣本，為期按關長認為需要而定，並予以檢查；
 - (g) 進行所需的檢查及查究，以確定本條例或《版權條例》(1997 年第 92 號)的條文或根據本條例批予的任何特許的條件是否正獲遵守或已獲遵守；及
 - (h) 行使任何執行本條例的條文所需的其他權力。
- (2) 特許持有人及特許持有人的僱員、傭工或代理人須提供獲授權人員所需的方便，以使獲授權人員能根據本條行使其權力或執行其職責。
- (3) 如任何獲授權人員已依據本條於任何地方的入口處着令讓其進入該地方並宣告其姓名及職務，而不立刻獲准進入該地方，則該獲授權人員及任何協助其行事的人即可強行進入該地方。

- (c) adopt or incorporate by reference standards that have been published by any body or authority, with or without modification and either as in effect on a particular date specified in the notice or as amended from time to time.

(3) A notice published under this section shall not be regarded as subsidiary legislation.

Inspection and enforcement

17. Power of authorized officers to inspect licensed premises, etc.

- (1) Every authorized officer shall for the purposes of this Ordinance have power to do all or any of the following things—
- (a) to enter at all reasonable times (or, if specially authorized in writing by the Commissioner, at any time) any licensed premises;
 - (b) to inspect and search the licensed premises and every part thereof;
 - (c) to require the production of any licence relating to the operation of the licensed premises or the business concerned, whether granted under this Ordinance or otherwise;
 - (d) to require the production of any book or document relating to the business concerned, including any licence or other document relating to a person's right to manufacture optical discs;
 - (e) to inspect, remove and detain for the purpose of examination for so long as the Commissioner may consider necessary and to examine and copy any such licence, book or document;
 - (f) to remove and detain for the purpose of examination for so long as the Commissioner may consider necessary and to examine samples of optical discs found in the licensed premises;
 - (g) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Ordinance or the Copyright Ordinance (92 of 1997) or the conditions of any licence granted under this Ordinance are being, or have been, complied with; and
 - (h) to exercise such other powers as may be necessary for giving effect to the provisions of this Ordinance.
- (2) A licensee and the employees, servants or agents of a licensee shall furnish the means required by an authorized officer to enable him to exercise his powers or perform his duties under this section.
- (3) If in pursuance of this section any authorized officer, having demanded admission into any place and declared his name and business at any entrance thereof, is not immediately admitted, he and any person acting in his aid may break into and forcibly enter the place.

18. 獲授權人員進入和搜查的權力等**(1) 獲授權人員可——**

- (a) 在符合第 19 條的規定下進入和搜查任何地方；及
- (b) 截停、登上和搜查任何船隻、航空器或車輛（軍艦、軍用航空器及軍用車輛除外）；

但他在行使上述權力前須有合理理由懷疑在該地方、船隻、航空器或車輛中有——

- (i) 任何在違反本條例的情況下製成的光碟；或
- (ii) 任何可能是或相當可能是本條例所訂罪行的證據或任何包含或相當可能包含本條例所訂罪行的證據的機械、設備或其他東西。

(2) 獲授權人員在根據第 (1) 款行使權力時，可檢取、移走或扣留——

- (a) 任何他覺得是或相當可能是在違反本條例的情況下製成的光碟；及
- (b) 任何他覺得是或相當可能是本條例所訂罪行的證據或任何他覺得是包含或相當可能包含本條例所訂罪行的證據的機械、設備或其他東西。

(3) 獲授權人員可接管、移走或扣留他獲本條賦權截停、登上和搜查而他合理理由懷疑是正在或曾經在與本條例所訂罪行有關連的情況下使用的船隻、航空器或車輛（軍艦、軍用航空器及軍用車輛除外）。

(4) 獲授權人員可——

- (a) 強行進入他獲本條賦權進入和搜查的地方；
- (b) 強行登上他獲本條賦權截停、登上和搜查的船隻、航空器或車輛；
- (c) 強行移走妨礙他行使本條授予他的權力的人或東西；
- (d) 扣留他在獲本條賦權進入和搜查的地方內發現的任何人，直至該地方已被搜查完畢為止；及
- (e) 防止任何人接近或登上他獲本條賦權截停、登上和搜查的船隻、航空器或車輛，直至該船隻、航空器或車輛已被搜查完畢為止。

(5) 凡依據第 (2)(b) 款移走任何機械、設備或其他東西並不切實可行，則獲授權人員可將該等機械、設備或其他東西加封或封閉存放該等機械、設備或其他東西的地方，以防止在未解封的情況下使用該等機械、設備或其他東西。

18. Power of authorized officers to enter and search, etc.**(1) An authorized officer may—**

- (a) subject to section 19, enter and search any place; and
- (b) stop, board and search any vessel, aircraft or vehicle (other than a ship of war, military aircraft or military vehicle),

in which he reasonably suspects that there is—

- (i) any optical disc which has been manufactured in contravention of this Ordinance; or
- (ii) any machinery, equipment or other thing which may be or may contain, or which may likely be or contain, evidence of an offence under this Ordinance.

(2) An authorized officer may, in exercising his powers under subsection (1), seize, remove or detain—

- (a) any optical disc which appears to him to have been, or to be likely to have been, manufactured in contravention of this Ordinance; and
- (b) any machinery, equipment or other thing which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Ordinance.

(3) An authorized officer may seize, remove or detain any vessel, aircraft or vehicle (other than a ship of war, military aircraft or military vehicle) which he is empowered by this section to stop, board and search and which he reasonably suspects is being used, or to have been used, in connection with an offence under this Ordinance.

(4) An authorized officer may—

- (a) break into and forcibly enter any place which he is empowered by this section to enter and search;
- (b) forcibly board any vessel, aircraft or vehicle which he is empowered by this section to stop, board and search;
- (c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this section;
- (d) detain any person found in any place which he is empowered by this section to enter and search until such place has been searched; and
- (e) prevent any person from approaching or boarding any vessel, aircraft or vehicle which he is empowered by this section to stop, board and search until it has been searched.

(5) Where it is not practicable to remove any machinery, equipment or other thing pursuant to subsection (2)(b), an authorized officer may seal the machinery, equipment or other thing or the place where it is kept so as to prevent its use without breaking the seal.

(6) 凡某地方根據第 (5) 款被封閉，則除非有命令根據第 (8) 款作出，否則封閉期不得超逾 14 日。

(7) 關長可向裁判官申請一項命令，將第 (6) 款所指的封閉期延展或進一步延展至該項申請所指明的期限。

(8) 凡關長根據第 (7) 款提出申請，裁判官在顧及有關個案的所有情況後如認為恰當，可作出一項命令，將第 (6) 款所指的封閉期延展或進一步延展至他認為合適的期限。

19. 發出授權進入和搜查的手令的權限

(1) 裁判官如基於一項經宣誓而作的告發，信納有合理理由懷疑任何地方內有——

- (a) 任何在違反本條例的情況下製成的光碟；或
- (b) 任何可能是或相當可能是本條例所訂罪行的證據或任何包含或相當可能包含本條例所訂罪行的證據的機械、設備或其他東西，

則可發出手令授權任何獲授權人員進入和搜查該地方。

(2) 除第 (3) 款另有規定外，獲授權人員除非在根據本條發出的手令的權限下行事，否則不得根據第 18(1)(a) 條進入和搜查任何地方。

(3) 如取得手令所必然引致的阻延可能導致失去證據或毀滅證據，或因任何其他理由而使取得手令並非合理地切實可行，則獲授權人員可在沒有根據本條發出的手令的情況下根據第 18(1)(a) 條進入和搜查任何地方。

20. 可沒收被檢取的光碟等

(1) 不論是否有人已被控以本條例所訂罪行，任何由獲授權人員根據第 18(2) 條檢取、移走或扣留的光碟、機械、設備或其他東西，或任何由獲授權人員根據第 18(5) 條加封的機械、設備或其他東西，均可按照本條予以沒收。

(2) 《版權條例》(1997 年第 92 號) 第 131 及 133 條經作出視乎情況所需的變通後，就根據第 (1) 款可予以沒收的任何光碟、機械、設備或其他東西而適用。

(6) Where a place is sealed under subsection (5), the period for which the place is sealed shall not exceed 14 days unless an order has been made under subsection (8).

(7) The Commissioner may apply to a magistrate for an order that the period under subsection (6) be extended or further extended for such period as specified in the application.

(8) Upon an application made under subsection (7), the magistrate may, if having regard to all the circumstances of the case he thinks proper so to do, make an order extending or further extending the period under subsection (6) for such period as he thinks fit.

19. Authority to issue warrant for entry and search

(1) A magistrate may, if he is satisfied by information on oath that there are reasonable grounds for suspecting that there is in any place—

- (a) any optical disc which has been manufactured in contravention of this Ordinance; or
- (b) any machinery, equipment or other thing which may be or may contain, or which may likely be or contain, evidence of an offence under this Ordinance,

issue a warrant authorizing an authorized officer to enter and search the place.

(2) Subject to subsection (3), an authorized officer shall not enter and search any place under section 18(1)(a) except under the authority of a warrant issued under this section.

(3) An authorized officer may enter and search any place under section 18(1)(a) without a warrant issued under this section if the delay necessary to obtain a warrant could result in the loss or destruction of evidence or for any other reason it would not be reasonably practicable to obtain a warrant.

20. Seized optical discs, etc., liable to forfeiture

(1) Any optical disc, machinery, equipment or other thing seized, removed or detained by an authorized officer under section 18(2) or any machinery, equipment or other thing sealed by an authorized officer under section 18(5) is liable to forfeiture in accordance with this section and whether or not any person has been charged with an offence under this Ordinance.

(2) Sections 131 and 133 of the Copyright Ordinance (92 of 1997) shall apply in respect of any optical disc, machinery, equipment or other thing liable to forfeiture under subsection (1), with such modifications as the circumstances require.

(3) 就《版權條例》(1997 年第 92 號) 第 131 及 133 條的適用而言，該兩條條文中——

- (a) 對該條例第 118 或 120 條所訂罪行的提述，須解釋為對本條例所訂罪行的提述；
- (b) 對獲授權人員根據該條例第 122 條檢取或扣留的任何物品、船隻、航空器、車輛或東西的提述，須解釋為對獲授權人員根據本條例第 18(2) 條檢取、移走或扣留的任何光碟、機械、設備或其他東西的提述或對獲授權人員根據本條例第 18(5) 條加封的任何機械、設備或其他東西的提述；或
- (c) 對該條例第 132 條的提述，須解釋為對本條例第 27 條的提述。

罪行及罰則

21. 在無特許下製造光碟等

- (1) 任何人違反第 3 條，即屬犯罪——
 - (a) 如屬首次定罪，可處罰款 \$500,000 及監禁 2 年；及
 - (b) 如屬第二次或其後每次定罪，可處罰款 \$1,000,000 及監禁 4 年。
- (2) 任何人違反第 4 或 15 條，即屬犯罪——
 - (a) 如屬首次定罪，可處第 6 級罰款及監禁 2 年；及
 - (b) 如屬第二次或其後每次定罪，可處罰款 \$200,000 及監禁 4 年。
- (3) 任何特許持有人在違反批註於特許內的任何條件的情況下製造光碟，即屬犯罪——
 - (a) 如屬首次定罪，可處第 2 級罰款及監禁 6 個月；及
 - (b) 如屬第二次或其後每次定罪，可處第 4 級罰款及監禁 1 年。
- (4) 任何人違反第 9 或 10 條，即屬犯罪，一經定罪，可處第 2 級罰款及監禁 6 個月。
- (5) 在任何就第 (3) 款所訂罪行而進行的法律程序中，被控的人如證明已採取合理步驟並已盡一切應盡的努力，以避免犯該罪行，即可以此作為免責辯護。

(3) For the purpose of applying sections 131 and 133 of the Copyright Ordinance (92 of 1997), any reference in those sections—

- (a) to an offence under section 118 or 120 of that Ordinance shall be construed as a reference to an offence under this Ordinance;
- (b) to an article, vessel, aircraft, vehicle or thing seized or detained by an authorized officer under section 122 of that Ordinance shall be construed as a reference to any optical disc, machinery, equipment or other thing seized, removed or detained by an authorized officer under section 18(2) or any machinery, equipment or other thing sealed by an authorized officer under section 18(5) of this Ordinance; or
- (c) to section 132 of that Ordinance shall be construed as a reference to section 27 of this Ordinance.

Offences and penalties

21. Manufacturing optical discs without licence, etc.

- (1) Any person who contravenes section 3 commits an offence and is liable—
 - (a) on a first conviction, to a fine of \$500,000 and to imprisonment for 2 years; and
 - (b) on a second or subsequent conviction, to a fine of \$1,000,000 and to imprisonment for 4 years.
- (2) Any person who contravenes section 4 or 15 commits an offence and is liable—
 - (a) on a first conviction, to a fine at level 6 and to imprisonment for 2 years; and
 - (b) on a second or subsequent conviction, to a fine of \$200,000 and to imprisonment for 4 years.
- (3) Any licensee who manufactures optical discs in contravention of any conditions endorsed on his licence commits an offence and is liable—
 - (a) on a first conviction, to a fine at level 2 and to imprisonment for 6 months; and
 - (b) on a second or subsequent conviction, to a fine at level 4 and to imprisonment for 1 year.
- (4) Any person who contravenes section 9 or 10 commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.
- (5) In any proceedings for an offence under subsection (3), it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

22. 應用虛假的製造者代碼等

- (1) 任何人——
- (a) 偽造製造者代碼；
 - (b) 將製造者代碼或任何與製造者代碼非常相似而相當可能使人受欺騙的標記虛假地應用於光碟上；
 - (c) 製造任何供偽造製造者代碼或供用以偽造製造者代碼的印模、印版、機器或其他儀器；
 - (d) 處置或管有任何供偽造製造者代碼的印模、印版、機器或其他儀器；或
 - (e) 安排作出 (a)、(b)、(c) 或 (d) 段所提述的任何事情；

即屬犯罪。

- (2) 任何人犯第 (1) 款所訂罪行——

- (a) 如屬首次定罪，可處罰款 \$500,000 及監禁 2 年；及
- (b) 如屬第二次或其後每次定罪，可處罰款 \$1,000,000 及監禁 4 年。

(3) 在任何就第 (1) 款所訂罪行而進行的法律程序中，被控的人如證明他行事時並無欺騙或欺詐的意圖，即可以此作為免責辯護。

23. 虛假及具誤導性的陳述

任何人在與——

- (a) 其根據本條例提出的任何申請或給予的任何通知；或
- (b) 關長或任何獲授權人員根據本條例要求提供的資料，

有關連的情況下作出任何虛假或具誤導性的陳述，或提供任何虛假或具誤導性的資料，即屬犯罪，一經定罪，可處第 2 級罰款及監禁 6 個月。

24. 妨礙獲授權人員

- (1) 在不損害任何其他條例的原則下，任何人如——
- (a) 故意妨礙任何獲授權人員根據本條例行使權力或執行職責；
 - (b) 故意不遵從該獲授權人員向他恰當地提出的要求；

22. Applying false manufacturer's code, etc.

- (1) Any person who—
- (a) forges a manufacturer's code;
 - (b) falsely applies to an optical disc a manufacturer's code or any mark so resembling a manufacturer's code as to be calculated to deceive;
 - (c) makes any die, block, machine or other instrument for the purpose of forging, or of being used for forging, a manufacturer's code;
 - (d) disposes of or has in his possession any die, block, machine or other instrument for the purpose of forging a manufacturer's code; or
 - (e) causes to be done anything referred to in paragraph (a), (b), (c) or (d),

commits an offence.

- (2) Any person who commits an offence under subsection (1) is liable—
- (a) on a first conviction, to a fine of \$500,000 and to imprisonment for 2 years; and
 - (b) on a second or subsequent conviction, to a fine of \$1,000,000 and to imprisonment for 4 years.

(3) In any proceedings for an offence under subsection (1) it shall be a defence for the person charged to prove that he acted without intent to deceive or defraud.

23. False and misleading statements

Any person who makes any false or misleading statement or furnishes any false or misleading information in connection with—

- (a) any application made, or notice given, by him under this Ordinance; or
- (b) any request by the Commissioner or an authorized officer for information under this Ordinance,

commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

24. Obstruction of authorized officers

- (1) Without prejudice to any other Ordinance, any person who—
- (a) wilfully obstructs an authorized officer in the exercise of his powers or the performance of his duties under this Ordinance;
 - (b) wilfully fails to comply with any requirement properly made to him by any such authorized officer;

(c) 無合理辯解而沒有給予該獲授權人員任何其他協助，而該等協助是該獲授權人員為根據本條例行使權力或執行職責的目的而可合理要求給予的；或

(d) 破開或干擾獲授權人員根據第 18(5) 條附貼的加封物，即屬犯罪，一經定罪，可處第 4 級罰款及監禁 1 年。

(2) 任何人如在被要求向關長或任何根據本條例行使權力或執行職責的獲授權人員提供資料時，明知而提供虛假或具誤導性的資料，即屬犯罪，一經定罪，可處第 4 級罰款及監禁 1 年。

(3) 本條並不要求任何人提供可導致他自己入罪的資料。

(4) 任何人在以下情況下解封或干擾獲授權人員根據第 18(5) 條附貼的加封物，不屬犯第 (1)(d) 款所訂的罪行——

(a) 該人真誠地相信有需要立即解封或干擾該加封物，以防止任何人受損傷或任何處所、地方、機械、設備或其他東西遭受損壞；或

(b) 該人以公職人員身分執行其職責。

25. 與披露資料有關的罪行

(1) 除第 (2) 款另有規定外，任何人向任何其他人披露他依據本條例取得的任何資料，即屬犯罪，但如該項披露——

(a) 是他或任何其他人為根據本條例執行職責或職能而作出的；或

(b) 是根據法院的指示或命令而作出的，

則屬例外。

(2) 任何人如依據第 36 或 37 條披露資料，則不屬犯第 (1) 款所訂罪行。

(3) 任何人犯第 (1) 款所訂罪行，一經定罪，可處第 4 級罰款及監禁 1 年。

26. 主犯以外的人的法律責任

(1) 凡任何法人團體就任何作為而犯了本條例所訂罪行，而該罪行經證明是在該法人團體的任何董事、經理、秘書或其他相類高級人員或本意是以任何該等身分行事的任何人同意或縱容下犯的，或經證明是可歸因於該法人團體的任何董事、經理、秘

(c) without reasonable excuse, fails to give such authorized officer any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Ordinance; or

(d) breaks or interferes with a seal affixed by an authorized officer under section 18(5),

commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

(2) Any person who, when required to give information to the Commissioner or an authorized officer in the exercise of his powers or the performance of his duties under this Ordinance, knowingly gives false or misleading information commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

(3) Nothing in this section requires any person to give any information which may incriminate him.

(4) No person commits an offence under subsection (1)(d) if he breaks or interferes with a seal affixed by an authorized officer under section 18(5)—

(a) in the bona fide belief that it is necessary immediately to break or interfere with the seal in order to prevent injury being suffered by any person or damage being incurred to any premises, place, machinery, equipment or other thing; or

(b) in the exercise of his duties as a public officer.

25. Offences related to disclosure of information

(1) Subject to subsection (2), any person who discloses to any other person any information obtained by him in pursuance of this Ordinance commits an offence unless the disclosure was made—

(a) for the purpose of the performance by him or any other person of duties or functions under this Ordinance; or

(b) under the direction or order of a court.

(2) A person does not commit an offence under subsection (1) by disclosing information pursuant to section 36 or 37.

(3) Any person who commits an offence under subsection (1) is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

26. Liability of persons other than principal offender

(1) Where a body corporate commits an offence under this Ordinance in respect of any act which is proved to have been committed with the consent or connivance of, or to be attributable to any act on the part of, any director,

書或其他相類高級人員或本意是以任何該等身分行事的任何人本身的任何作為的，則該有關的人及該法人團體均屬犯該罪行。

(2) 任何法人團體的事務如是由其成員管理的，則第(1)款就任何成員在與管理職能有關連方面的作為而適用，猶如該成員是該法人團體的董事一樣。

(3) 凡由合夥的任何合夥人所犯的本條例所訂的罪行，經證明是在該合夥的任何其他合夥人或任何與該合夥的管理有關的人同意或縱容下犯的，或證明是可歸因於該合夥的任何其他合夥人或任何與該合夥的管理有關的人本身的任何作為的，則該其他合夥人或該名與該合夥的管理有關的人即屬犯相同罪行。

27. 在有人被控的情況下光碟等的處置

在不損害第 20 條的原則下，凡任何人被控本條例所訂罪行，法院如信納——

- (a) 獲授權人員就該罪行根據第 18(2) 條檢取、移走或扣留的任何光碟，是在違反本條例的情況下製成的；或
- (b) 任何根據第 18(2) 條如此檢取、移走或扣留的任何機械、設備或其他東西或由獲授權人員根據第 18(5) 條加封的任何機械、設備或其他東西，曾在與本條例所訂罪行有關連的情況下使用，

則不論被控人是否被裁定犯該罪行，法院亦可命令將該光碟、機械、設備或東西——

- (i) 沒收歸予政府；或
- (ii) 以法院認為合適的其他方式處置。

28. 對告發人的保障

(1) 除非法院認為為維護司法公正而有需要，否則任何告發人的姓名或身分以及所提供的資料，均不得在就本條例所訂罪行而進行的法律程序中披露。

(2) 法院可為防止任何該等披露而作出任何所需的命令和採取任何所需的程序。

manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he, as well as the body corporate, commits the offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Ordinance committed by a partner in a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any act on the part of, any other partner of the partnership or any person concerned in the management of the partnership, that other partner or the person concerned in the management of the partnership commits the like offence.

27. Disposal of optical discs, etc., where a person is charged

Without prejudice to section 20, where a person is charged with an offence under this Ordinance, the court may, if it is satisfied that—

- (a) any optical disc seized, removed or detained by an authorized officer under section 18(2) in connection with the offence has been manufactured in contravention of this Ordinance; or
- (b) any machinery, equipment or other thing so seized, removed or detained under section 18(2) or any machinery, equipment or other thing sealed by an authorized officer under section 18(5) has been used in connection with any offence under this Ordinance,

order that the optical disc, machinery, equipment or thing be—

- (i) forfeited to the Government; or
- (ii) disposed of in such other way as the court may think fit,

whether or not the person charged is convicted of the offence with which he was charged.

28. Protection of informers

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

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

29. 提出檢控的時限

自犯本條例所訂罪行的日期起計的 3 年屆滿或由檢控人發現該罪行的日期起計的 1 年屆滿 (兩者中以較早者為準) 後, 不得就該罪行而提出檢控。

雜項**30. 申請書的格式等**

- (1) 根據本條例提出的每項申請, 均須按關長所規定的格式及方式向關長提出。
- (2) 根據本條例提出的每項申請, 均須隨附——
 - (a) 附表 2 所列的適用的費用; 及
 - (b) 載有關長所規定的詳情的書面陳述。
- (3) 由法人團體根據本條例提出的申請, 可由該法人團體為此而授權的該法人團體的任何董事、經理、秘書或其他相類高級人員簽署, 而關長可規定須就該項授權提供他認為需要的證明。
- (4) 由合夥根據本條例提出的申請, 須最少由其中一名合夥人簽署, 而關長可規定須就該合夥提供他認為需要的證明。

31. 登記冊

- (1) 關長須設立並維持一份登記冊, 而該登記冊須採用關長認為合適的格式, 並載有其認為合適的關於特許及製造者代碼的資料。
- (2) 關長須將登記冊按關長認為合適的條件供公眾查閱。

32. 獲授權人員的委任

關長可以書面授權任何公職人員行使本條例授予獲授權人員的權力, 以及執行本條例委予獲授權人員的職責。

29. Time limit for prosecutions

No prosecution for an offence under this Ordinance shall be commenced after the expiration of 3 years from the date of commission of the offence or 1 year from the date of discovery of the offence by the prosecutor, whichever is the earlier.

Miscellaneous**30. Form of applications, etc.**

- (1) Every application under this Ordinance shall be made to the Commissioner in such form and manner as he may require.
- (2) Every application made under this Ordinance must be accompanied by—
 - (a) any fee applicable under Schedule 2; and
 - (b) a statement in writing containing such particulars as the Commissioner may require.
- (3) Any application made under this Ordinance by a body corporate may be signed by any director, manager, secretary or other similar officer of the body corporate who is authorized in that behalf by the body corporate, and the Commissioner may require such proof of the authorization as he considers necessary.
- (4) Any application made under this Ordinance by a partnership must be signed by at least one of its partners, and the Commissioner may require such proof of the partnership as he considers necessary.

31. Register

- (1) The Commissioner shall establish and maintain a register in such form and containing such information respecting licences and manufacturers' codes as he thinks fit.
- (2) The Commissioner shall make the register available to public inspection subject to such conditions as he thinks fit.

32. Appointment of authorized officers

The Commissioner may authorize in writing any public officer to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by this Ordinance.

33. 對關長、獲授權人員及協助他們的人的保障

(1) 如關長及獲授權人員在行使他們在本條例下的權力或執行他們在本條例下的職責時，真誠地採取或真誠地遺漏採取任何行動而導致任何人蒙受任何損失或損害，他們均無須對該等損失或損害負上任何法律責任。

(2) 任何人可應看似的在合法地行使本條例下的權力或執行本條例下的職責的任何獲授權人員的請求而行事以協助該獲授權人員，而無須查究該獲授權人員是否合法地或在其權力或職責範圍內行事。

(3) 任何人如根據第(2)款真誠地行事以協助獲授權人員，則無須對因他如此行事時所採取或遺漏採取的任何行動而使任何人蒙受的任何損失或損害，負上任何法律責任。

(4) 本條並不影響政府因其受僱人的錯誤作為所承擔的民事法律責任。

34. 為檢取等等而作出的補償

(1) 凡任何光碟、機械、設備或其他東西被任何獲授權人員根據第 18(2) 條檢取、移走或扣留，或任何機械、設備或其他東西被任何獲授權人員根據第 18(5) 條加封，則政府在本條的規限下，有法律責任補償該光碟、機械、設備或東西的擁有人因該光碟、機械、設備或東西被檢取、移走、扣留或加封或因該光碟、機械、設備或東西在被扣留或加封的期間失掉或損壞而蒙受的任何損失，但在下列情況下，該擁有人無權獲補償該等損失——

- (a) 該光碟、機械、設備或東西已根據第 20 條被沒收；
- (b) 該擁有人已被裁定就該光碟、機械、設備或東西而犯本條例或《版權條例》(1997 年第 92 號) 所訂的罪行；或
- (c) 法院已根據第 27 條就該光碟、機械、設備或東西而作出命令。

(2) 在根據第(1)款所提述的理由而針對政府進行的補償申索法律程序中，可追討的補償款額須為就有關個案的所有情況而言屬公正和公平的款額，而所有情況包括下列各人的行為及相對的過失程度——

- (a) 該光碟、機械、設備或東西的擁有人；

33. Protection of the Commissioner, authorized officers and persons assisting them

(1) The Commissioner and authorized officers are not liable for any loss or damage suffered by any person as a result of any action taken or omitted to be taken by them in good faith in the exercise of their powers or the performance of their duties under this Ordinance.

(2) Any person may act in aid of an authorized officer who appears to be lawfully engaged in the exercise of any power or the performance of any duty under this Ordinance upon being requested by the authorized officer to do so and without being bound to inquire whether or not the authorized officer is acting lawfully or within the scope of his powers or duties.

(3) A person acting in good faith in aid of an authorized officer under subsection (2) is not liable for any loss or damage suffered by any person as a result of any action taken or omitted to be taken by him while so acting.

(4) Nothing in this section shall affect any civil liability of the Government for the wrongful acts of its servants.

34. Compensation for seizure, etc.

(1) Where any optical disc, machinery, equipment or other thing is seized, removed or detained by an authorized officer under section 18(2) or any machinery, equipment or other thing is sealed by an authorized officer under section 18(5), the Government shall, subject to this section, be liable to compensate the owner thereof for any loss suffered by him by reason of the seizure, removal, detention or sealing thereof or by reason that the optical disc, machinery, equipment or thing is lost or damaged during the period when it is detained or sealed; but the owner shall not be entitled to compensation for any such loss if—

- (a) the optical disc, machinery, equipment or thing is forfeited under section 20;
- (b) the owner has been convicted of an offence under this Ordinance or the Copyright Ordinance (92 of 1997) committed in relation to the optical disc, machinery, equipment or thing; or
- (c) an order has been made in respect of the optical disc, machinery, equipment or thing under section 27.

(2) In any proceedings against the Government in respect of a claim for compensation on any of the grounds referred to in subsection (1), the amount of the compensation recoverable shall be such amount as is just and equitable in all the circumstances of the case, including the conduct and comparative blameworthiness of—

- (a) the owner of the optical disc, machinery, equipment or thing;

- (b) 該光碟、機械、設備或東西被檢取、移走或加封時掌管或控制該光碟、機械、設備或東西的人；
- (c) (a) 及 (b) 段所指明的人的代理人；及
- (d) 獲授權人員、公職人員及其他相關的人。

(3) 根據第 (1) 款所提述理由而提出補償申索的法律程序須按以下規定展開，否則不得進行——

- (a) 如有關光碟、機械、設備或東西是按法院命令或按裁判官命令向擁有人交付的，或是由任何有權向其擁有人交付的人交付的，則就該光碟、機械、設備或東西而提出補償申索的法律程序，須在該光碟、機械、設備或東西交付後的 6 個月內展開；
- (b) 如有關光碟、機械、設備或東西在被扣留或加封的期間遭遺失，則基於遺失的理由而提出補償申索的法律程序須在下列時間 (兩者中以較早者為準) 的 6 個月內展開——
 - (i) 當該擁有人發現有該項理由時；或
 - (ii) 該擁有人如已盡合理努力則本可發現有該項理由的日期。

35. 輔助證明

- (1) 任何證明書如看來是由關長親自簽署核證的，並述明——
 - (a) 證明書所指名的人是否已根據本條例獲批特許；
 - (b) 根據本條例批予的證明書所指名的人的特許，是否已期滿失效或是否已撤銷或取消；或
 - (c) 證明書內所指明或描述的製造者代碼是否已根據第 5(2)(a) 或 8(3)(b) 條編配予證明書內所指名的人，

即為證明其內所述事項在該證明書的日期當日屬實的證據，而在根據本條例進行的任何法律程序中，該證明書須收取為證據而無須進一步證明。

(2) 任何看來是由關長親自簽署核證的特許副本，即為該特許的證據以及證明該特許內所述事項在該副本的日期當日屬實的證據，而在根據本條例進行的任何法律程序中，該副本須收取為證據而無須進一步證明。

- (b) the person in charge or control of the optical disc, machinery, equipment or thing at the time it was seized, removed or sealed;
- (c) the agents of the person specified in paragraphs (a) and (b); and
- (d) authorized officers, public officers and other persons concerned.

(3) No proceedings shall be maintainable in respect of any claim for compensation on any of the grounds referred to in subsection (1) unless the proceedings are commenced—

- (a) in the case of a claim for compensation in respect of any optical disc, machinery, equipment or thing delivered to its owner by order of a court or magistrate or by any person having authority to deliver the optical disc, machinery, equipment or thing to him, not later than 6 months after the delivery thereof;
- (b) in the case of a claim for compensation on the ground that any optical disc, machinery, equipment or thing was lost during the period when it was detained or sealed, not later than 6 months after—
 - (i) the discovery by the owner of the existence of such ground; or
 - (ii) the date on which the owner could, by the exercise of reasonable diligence, have discovered the existence of such ground,
 whichever is the earlier.

35. Aids in proof

(1) A certificate purporting to be certified under the hand of the Commissioner and stating whether—

- (a) a person named in the certificate has or has not been granted a licence under this Ordinance;
- (b) a licence granted under this Ordinance to a person named in the certificate has or has not expired or has or has not been revoked or cancelled; or
- (c) a manufacture's code specified or described in the certificate has or has not been assigned under section 5(2)(a) or 8(3)(b) to a person named in the certificate,

shall be evidence of the matters stated therein as at the date of the certificate and shall be received in evidence in any proceedings under this Ordinance without further proof.

(2) A copy of any licence which purports to be certified under the hand of the Commissioner shall be evidence of the licence and of the matters stated therein as at the date of the copy and shall be received in evidence in any proceedings under this Ordinance without further proof.

36. 披露資料、檢查、發還樣本等

《版權條例》(1997 年第 92 號) 第 126 及 128 條經作出視乎情況所需的變通後，就獲授權人員根據本條例第 18(2) 條檢取、移走或扣留的任何光碟、機械、設備或其他東西或獲授權人員根據本條例第 18(5) 條加封的任何機械、設備或其他東西而適用。

37. 多邊合作

為促進在保護知識產權權利方面的多邊合作，關長可向以下國家、地區或地方的海關當局或負責強制執行知識產權權利的其他當局披露依據本條例取得的資料——

- (a) 在有關時間屬世界貿易組織成員的任何國家、地區或地方；或
- (b) 關長認為適合的其他國家、地區或地方。

38. 規例

工商局局長可訂立規例——

- (a) 訂明根據本條例需要或准許訂明的事情；及
- (b) 以使能就任何事宜而更有效地施行本條例的條文。

39. 附表的修訂

工商局局長可藉命令修訂附表 1 或 2。

40. 為其他成文法則而訂的保留條文

本條例的條文增補而非減損以下條例的條文——

- (a) 《版權條例》(1997 年第 92 號)；或
- (b) 任何與光碟的製造有關的其他條例。

36. Disclosure of information, inspection, release of samples, etc.

Sections 126 and 128 of the Copyright Ordinance (92 of 1997) shall apply in respect of any optical disc, machinery, equipment or other thing seized, removed or detained by an authorized officer under section 18(2) or any machinery, equipment or other thing sealed by an authorized officer under section 18(5) of this Ordinance, with such modifications as the circumstances require.

37. Multilateral co-operation

The Commissioner may, for the purpose of promoting multilateral co-operation in the protection of intellectual property rights, disclose information obtained in pursuance of this Ordinance to the customs authorities or other authorities responsible for the enforcement of intellectual property rights of—

- (a) any country, territory or area which is, at the relevant time, a member of the World Trade Organization; or
- (b) such other country, territory or area as the Commissioner thinks fit.

38. Regulations

The Secretary for Trade and Industry may make regulations—

- (a) prescribing anything required or permitted to be prescribed under this Ordinance; and
- (b) for the better carrying into effect of the provisions of this Ordinance in relation to any matter.

39. Amendment of Schedules

The Secretary for Trade and Industry may by order amend Schedule 1 or 2.

40. Saving for other enactments

The provisions of this Ordinance are in addition to and not in derogation of the provisions of—

- (a) the Copyright Ordinance (92 of 1997); or
- (b) any other Ordinance relating to the manufacture of optical discs.

相應及有關連的修訂

《公職指定》

41. 修訂附表

《公職指定》(第 1 章, 附屬法例) 的附表現予修訂, 加入——
“海關關長 防止盜用版權條例 (1998 年第 22 號)”。

《香港海關條例》

42. 第 17 及 17A 條內提述的條例

《香港海關條例》(第 342 章) 附表 2 現予修訂, 加入——
“《防止盜用版權條例》(1998 年第 22 號)”。

《行政上訴委員會條例》

43. 修訂附表

《行政上訴委員會條例》(第 442 章) 的附表現予修訂, 加入——
“41. 《防止盜用版權條例》 海關關長根據該條例第 11 或 12 條所作的決定。”
(1998 年第 22 號)

《版權條例》

44. 加入條文

《版權條例》(1997 年第 92 號) 現予修訂, 加入——

“120A. 提出檢控的時限

自犯本條例所訂罪行的日期起計的 3 年屆滿或由檢控人發現該罪行的日期起計的 1 年屆滿 (兩者中以較早者為準) 後, 不得就該罪行而提出檢控。”

Consequential and Related Amendments

Specification of Public Offices

41. Schedule amended

The Schedule to the Specification of Public Offices (Cap. 1 sub. leg.) is amended by adding—

“Commissioner of Prevention of Copyright Piracy Ordinance
Customs and Excise (22 of 1998).”

Customs and Excise Service Ordinance

42. Ordinances referred to in sections 17 and 17A

Schedule 2 to the Customs and Excise Service Ordinance (Cap. 342) is amended by adding—

“Prevention of Copyright Piracy Ordinance (22 of 1998)”.

Administrative Appeals Board Ordinance

43. Schedule amended

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by adding—

“41. Prevention of A decision of the Commissioner of Customs
Copyright Piracy and Excise under section 11 or 12 of the
Ordinance (22 of Ordinance.”
1998)

Copyright Ordinance

44. Section added

The Copyright Ordinance (92 of 1997) is amended by adding—

“120A. Time limit for prosecutions

No prosecution for an offence under this Ordinance shall be commenced after the expiration of 3 years from the date of commission of the offence or 1 year from the date of discovery of the offence by the prosecutor, whichever is the earlier.”

45. 調查人員的權力

第 122 條現予修訂——

- (a) 在第 (1)(a)(i) 款中，廢除“處所或”；
- (b) 廢除第 (2)(a) 款而代以——
“*(a)* 強行進入他獲本部賦權或授權進入和搜查的地方；”；
- (c) 加入——
“*(3)* 獲授權人員可召請任何獲授權人員協助他行使他在本條下的任何權力。”。

46. 取代條文

第 123 條現予廢除，代以——

“123. 發出授權進入和搜查的手令的權限

(1) 裁判官如基於一項經宣誓而作的告發，信納有合理理由懷疑任何地方內有根據第 122(1)(b) 條可予檢取、移走或扣留的物品或東西，則可發出手令授權任何獲授權人員進入和搜查該地方。

(2) 在符合第 (3) 款的規定下，獲授權人員除非在根據本條發出的手令的權限下行事，否則不得根據第 122(1)(a)(i) 條進入和搜查任何地方。

(3) 如取得手令所必然引致的阻延可能導致失去證據或毀滅證據或因任何其他理由而使獲取手令並非合理地切實可行，則獲授權人員可在沒有根據本條發出的手令的情況下根據第 122(1)(a)(i) 條進入和搜查任何地方。”。

附表 1

[第 2 及 39 條]

光碟

1. CD (雷射碟)。
2. CD-ROM (光碟——唯讀記憶體)。
3. CD-R (光碟——可錄的)。
4. CD-RW (光碟——可重寫的)。
5. CD-W (光碟——可寫的)。
6. DVD (數碼影碟)。
7. DVD-ROM (數碼影碟——唯讀記憶體)。
8. LD (雷射影碟)。
9. MD (迷你光碟)。
10. VCD (影像光碟)。

45. Powers of investigating officers

Section 122 is amended—

- (a) in subsection (1)(a)(i), by repealing “premises or”;
- (b) in subsection (2)(a), by repealing “open any outer or inner door of” and substituting “into and forcibly enter”;
- (c) by adding—
“*(3)* An authorized officer may call upon any authorized officer to assist him in the exercise of any of his powers under this section.”.

46. Section substituted

Section 123 is repealed and the following substituted—

“123. Authority to issue warrant for entry and search

(1) A magistrate may, if he is satisfied by information on oath that there are reasonable grounds for suspecting that there is in any place any article or thing which may be seized, removed or detained under section 122(1)(b), issue a warrant authorizing an authorized officer to enter and search the place.

(2) Subject to subsection (3), an authorized officer shall not enter and search any place under section 122(1)(a)(i) except under the authority of a warrant issued under this section.

(3) An authorized officer may enter and search any place under section 122(1)(a)(i) without a warrant issued under this section if the delay necessary to obtain a warrant could result in the loss or destruction of evidence or for any other reason it would not be reasonably practicable to obtain a warrant.”.

SCHEDULE 1

[ss. 2 & 39]

OPTICAL DISCS

1. CD (compact disc).
2. CD-ROM (compact disc—read only memory).
3. CD-R (compact disc—recordable).
4. CD-RW (compact disc—rewritable).
5. CD-W (compact disc—writable).
6. DVD (digital video disc).
7. DVD-ROM (digital video disc—read only memory).
8. LD (laserdisc).
9. MD (mini-disc).
10. VCD (video compact disc).

附表 2

[第 30 及 39 條]

SCHEDULE 2

[ss. 30 & 39]

費用

FEES

項	事項或程序	款額 \$	Item	Matter or proceeding	Amount \$
1.	特許申請	5,500	1.	Application for licence	5,500
2.	特許續期申請	5,500	2.	Application for renewal of licence	5,500
3.	特許轉讓申請	5,500	3.	Application for transfer of licence	5,500