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No. 5 OF 1973

L.S.

I assent.

MURRAY MACLEHOSE,
Governor.

1st February, 1973.

An Ordinance to modify the Copyright Act 1956 as amended by the Design Copyright Act 1968, in its application to Hong Kong and to make further provision with respect to copyright law in Hong Kong.

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Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Copyright Ordinance 1973, and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Short title and commencement.

2. (1) In this Ordinance, unless the context otherwise requires—

Interpretation.

“Act” means the Copyright Act 1956 as amended by the Design Copyright Act 1968;

(1956 c. 74.)
(1968 c. 68.)

“authorized officer” means any public officer authorized in writing by the Director to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer under this Ordinance;

“Director” means the Director of Commerce and Industry, the Deputy Director and any Assistant Director of Commerce and Industry;

“plate” has the meaning assigned by the Act and also includes any machine, device or equipment.

(2) Subject to the provisions of this Ordinance, any word or expression used herein to which a meaning is assigned by the Act shall have in or for the purpose of this Ordinance the meaning that it has in or for the purposes of the Act.

3. The Act as extended to Hong Kong shall apply in Hong Kong to every television broadcast and every sound broadcast made by any organization specified in the Schedule from a place in Hong Kong as it applies to every television broadcast and every sound broadcast made by the British Broadcasting Corporation or the Independent Television Authority from a place in the United Kingdom.

4. (1) Where a television broadcast or sound broadcast is made by any organization specified in the Schedule from a place in Hong Kong, and the broadcast is an authorized broadcast within the meaning of section 40 of the Act, any person who, by the reception of the broadcast, causes a programme to be transmitted to subscribers to a diffusion service, being a programme comprising a literary, dramatic or musical work, or an adaptation of such a work, or an artistic work, or a cinematograph film, shall be in the like position, in any proceedings for infringement of the copyright (if any) in the work or film, as if he had been the holder of a licence granted by the owner of that copyright to include the work, adaptation or film in any programme caused to be transmitted by him to subscribers to that service by the reception of the broadcast.

(2) For the purposes of this section, a broadcast shall be taken, in relation to a work or cinematograph film, to be an authorized broadcast if, but only if, it is made by, or with the licence of, the owner of the copyright in the work or film.

5. (1) Without prejudice to section 21 of the Act, any person who, at a time when copyright subsists in a work or other subject matter under the Act or this Ordinance, has in his possession for the purposes of trade or business—

- (a) any article that is an infringing copy of such a work or other subject matter; or
- (b) any plate used or intended to be used for making infringing copies of such a work or other subject matter,

Acts restricted by copyright in television and sound broadcasts by Hong Kong organizations. Schedule.

Transmission of authorized broadcasts by a diffusion service. Schedule. [cf. 1956 c. 74, s. 40(3).]

Offences of possession of infringing copy of a protected work.

shall, unless he proves to the satisfaction of the court that he did not know and that he had no reason to believe that the article was an infringing copy of such a work or other subject matter or that the plate was used or intended to be used for making an infringing copy of such a work or other subject matter, be guilty of an offence and shall be liable on conviction—

- (i) if it is his first conviction of an offence under this section, to a fine not exceeding five hundred dollars for each article to which the offence relates; and
- (ii) on any second or subsequent conviction of an offence under this section, to such a fine and to imprisonment for twelve months:

Provided that a fine imposed by virtue of this subsection shall not exceed fifty thousand dollars.

(2) The court before which a person is charged with an offence under this section may, whether he is convicted of the offence or not, order that any article in his possession which appears to the court to be an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance or a plate used or intended to be used for making infringing copies of such a work or other subject matter shall be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit.

(3) Where an article is seized by a police officer or an authorized officer in connexion with a suspected offence under the Act or this Ordinance a court, on the application of the Attorney General or the Director, may, if it is satisfied that the article is—

- (a) an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance; or
- (b) a plate used or intended to be used for making infringing copies of any such work or other subject matter,

order that the article be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit, notwithstanding that no person has been charged with the suspected offence.

6. (1) Any police officer not below the rank of Inspector or any authorized officer may—

- (a) (i) subject to section 7, enter and search any premises or place;
- (ii) stop, board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft); or

Powers of
investigating
officers.

(iii) stop and search any vehicle, in which he reasonably suspects that there is an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance or a plate used or intended to be used for making infringing copies of any such work or other subject matter; and

(b) seize, remove or detain—

(i) any article which appears to him to be an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance or any plate which appears to him to be intended for use for making infringing copies of any such work or other subject matter; and

(ii) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under the Act or this Ordinance.

(2) Any police officer not below the rank of Inspector or any authorized officer may—

(a) break open any outer or inner door of any place which he is empowered or authorized by this Ordinance to enter and search;

(b) forcibly board any vessel, aircraft or vehicle which he is empowered by this Ordinance 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 Ordinance;

(d) detain any person found in any place which he is empowered or authorized by this Ordinance to search until such place has been searched;

(e) detain any vessel or aircraft which he is empowered by this Ordinance to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;

(f) detain any vehicle which he is empowered by this Ordinance to stop and search until it has been searched.

7. (1) No domestic premises shall be entered and searched by a police officer or an authorized officer unless—

(a) a magistrate has issued a warrant under subsection (2); or

(b) the Director has given an authorization under subsection (3).

(2) A magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is

Restrictions on the entry and search of domestic premises.

in any domestic premises any article which may be seized, removed or detained under section 6(1)(b), issue a warrant authorizing a police officer not below the rank of Inspector or an authorized officer to enter and search the premises.

(3) The Director may, if he is satisfied that there is reasonable ground for suspecting—

- (a) that there is in any domestic premises any article which may be seized, removed or detained under section 6(1)(b); and
- (b) that unless the premises are entered and searched immediately such thing is likely to be removed from the premises,

authorize in writing a police officer not below the rank of Inspector or an authorized officer to enter and search the premises.

(4) A police officer not below the rank of Inspector or an authorized officer authorized under subsection (2) or (3) to enter and search any domestic premises may call upon any police officer or any authorized officer to assist him in entering and searching the premises.

8. (1) Without prejudice to any other Ordinance, any person who—

- (a) wilfully obstructs a police officer or an authorized officer in the exercise of his powers or the performance of his duties under the Act or this Ordinance;
- (b) wilfully fails to comply with any requirement properly made to him by any such police officer or authorized officer; or
- (c) without reasonable excuse, fails to give such police officer or 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 the Act or this Ordinance,

shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars and to imprisonment for three months.

(2) Any person who, when required to give information to a police officer or to an authorized officer in the exercise of his powers or the performance of his duties under the Act or this Ordinance, knowingly gives false or misleading information to any such police officer or authorized officer shall be guilty of an offence and shall be liable on conviction to a fine of five thousand dollars and to imprisonment for three months.

Obstruction of
investigating
officers.

(3) Nothing in this section shall be construed as requiring any person to give any information which may incriminate him.

Affidavit
evidence.

9. (1) An affidavit which—

(a) purports to have been made by or on behalf of the owner of a work or other subject matter in which copyright subsists under the Act; and

(b) states that—

(i) at a time specified therein copyright subsisted in the work or other subject matter;

(ii) the person named therein is the owner of the copyright in the work or other subject matter; and

(iii) a copy of the work or other subject matter exhibited to the affidavit is a true copy of the work or other subject matter,

shall, if it complies with subsection (3), be admitted without further proof in any proceedings under the Act or this Ordinance.

(2) The court before whom an affidavit is produced under subsection (1) shall presume, until the contrary is proved—

(a) that the statements made therein are true; and

(b) that it was made and authenticated in accordance with subsection (3).

(3) An affidavit for the purposes of this section shall be—

(a) made on oath—

(i) before a magistrate or a notary public if it is made at any place within the Commonwealth; or

(ii) before a consular officer of Her Majesty's Government in the United Kingdom or a notary public if it is made at any place outside the Commonwealth; and

(b) authenticated, so far as relates to the making thereof, by the signature of the magistrate, notary public or consular officer before whom it is made.

Time limit for
prosecutions.

10. No prosecution for an offence under the Act or this Ordinance shall be commenced after the expiration of three years after the commission of the offence or one year after the discovery thereof, whichever date last occurs.

Governor's
power to
amend the
Schedule.

11. The Governor may, by notice in the *Gazette*, amend the Schedule.

12. The Copyright Ordinance and the Fine Arts Copyright Ordinance are repealed.

Repeal.
(Caps. 39 and 40.)

(2) The Copyright (Application of the Copyright Act) Regulations are revoked.

(Cap. 39, sub. leg.)

SCHEDULE

[s. 3.]

BROADCASTING ORGANIZATIONS

1. Radio Hong Kong.
2. Hong Kong Commercial Broadcasting Company Limited.
3. Television Broadcasts Limited.

Passed by the Hong Kong Legislative Council this 31st day of January, 1973.

R. J. FRAMPTON,
Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

R. J. FRAMPTON,
Clerk to the Legislative Council.